STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jason Ralph,
Petitioner,

vs. No: 12 WC 02357

Currier's Hydro Service, LLC,
Respondent.

15IWCC0502

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of Respondent's Motion to Dismiss Application for Adjustment of Claim, and being advised of the facts and law, finds that the Arbitrator's Decision to deny Respondent's Motion is interlocutory and not final. Therefore, the Commission lacks jurisdiction to review the Arbitrator's Decision. The Commission dismisses Respondent's Petition for Review as untimely and remands this matter to the Arbitrator for further proceedings.

On five occasions during calendar years 2013 and 2014, Respondent filed Motions to Dismiss this claim. The instant motion alleges that Petitioner failed to fully participate in a Section 12 examination by refusing to complete a patient information form or answer questions regarding his mental health prior to his examination by Dr. Konowitz. Arbitrator Steffen heard arguments from both parties regarding the motion on April 9, 2014 and struck Respondent's motion as untimely by Order of June 9, 2014. Respondent appealed the Arbitrator's dismissal of its Motion to Dismiss Petitioner's Application for Adjustment of Claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

15IWCC0502

1. Petitioner alleged that on January 6, 2012, while in the performance of his job, he suffered an injury to his left leg when it became caught in a hose attached to a vacuum.

2. Respondent denied liability for Petitioner's condition after its initial Section 12 examiner, an orthopedist, concluded that there was no causal connection between Petitioner's work accident and the condition of his left leg.

3. Petitioner was diagnosed with compartment syndrome and underwent surgery for compartment decompression, but failed to improve following the surgery.

4. Petitioner's surgeon subsequently referred him to pain management specialist, Dr. Anwar, who diagnosed Petitioner with compartment syndrome, neuropathic pain, and possible RSD/CRPS. Dr. Anwar administered lumbar sympathetic blocks and suggested a spinal cord stimulator trial.

5. Dr. Anwar recommended a psychological evaluation before beginning the spinal cord stimulator trial and referred in his office notes to Petitioner's stress and anxiety-related mood disorder.

6. After Dr. Anwar had recommended a stimulator trial, Respondent scheduled another Section 12 examination, this time with a pain management specialist, Dr. Konowitz. On February 12, 2013, Petitioner appeared for his Section 12 examination, but refused to complete the patient information sheet Dr. Konowitz required before his examination.

7. Dr. Konowitz refused to perform the examination without Petitioner's completed patient information sheet, on the ground that he could not perform a proper and reliable examination without the necessary foundational background information, including a history of Petitioner's pre-accident medical status, psychiatric condition, prior diagnoses, and treatment.

8. Petitioner maintained that he would never complete the questionnaire or answer any questions about his pre-accident psychiatric conditions.

9. Respondent filed a Motion to Dismiss Application for Adjustment of Claim, arguing it was effectively denied its right to a Section 12 examination by Petitioner's refusal to complete the patient questionnaire or to answer questions about his mental health.

10. A motion hearing was held before Arbitrator Cronin on March 14, 2013. The Arbitrator did not rule on the motion, but recommended the parties agree on a psychologist or psychiatrist to administer the MMPI and obtain a complete patient mental history.

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11. Respondent represents that Petitioner has refused to submit to any psychological testing and has stated that he was never complete the patient information form or answer questions regarding his mental health.

12. Petitioner has continued to obtain treatment for his chronic pain and possible RSD/CRPS. Respondent scheduled a second Section 12 examination with Dr. Konowitz for July 26, 2013, but this appointment was canceled when Petitioner again refused to complete the requisite patient questionnaire.

13. Respondent filed an updated Motion to Dismiss Application for Adjustment of Claim, and the parties proceeded to hearing on the motion on March 6, 2014 and April 11, 2014 before Arbitrator Steffen.

14. On June 9, 2014, Arbitrator Steffen entered an order striking Respondent's Motion to Dismiss as untimely. She advised the parties that the Motion should be presented following a hearing on the merits of the case. Moreover, she found that the Motion was moot, as Petitioner had elected not to engage in the spinal cord stimulator trial, rendering his mental health history irrelevant.

15. The Arbitrator also noted that her Order was interlocutory and should not be reviewed "until the case has been heard and adjudicated on the merits."

Despite the Arbitrator's admonition that her Order denying Respondent's Motion to Dismiss was interlocutory and not subject to immediate review by the Commission, Respondent filed its Petition for Review, seeking review of the June 9, 2014 Order by the Commission.

The Commission concurs with the Arbitrator's assessment of her Order as interlocutory and non-reviewable at this time. As the Commission found in *Larkin v. Village of Wauconda*, 2 IIC 359 (95 WC 069014), when it remanded the matter to the arbitrator:

> If the Arbitrator denies the Motion to Dismiss on any grounds, the finding is interlocutory and the matter shall remain at Arbitration for trial on the merits, with all objections preserved for possible review by either party in accordance with Commission rules and the Act.

The Commission similarly found an Arbitrator's denial of an employer's Motion to Dismiss interlocutory in nature and dismissed the employers' Petitions for Review as untimely in *Morrell v. KB & Sons Installations*, 1 IIC 39 (99 WC 038051), and *Moody v. State of Illinois, Shapiro Developmental Center,* 7 IWCC 474 (02 WC 014747).

After considering the entire record, and for the reasons set forth above, the Commission finds it presently lacks jurisdiction to review the Arbitrator's denial of Respondent's Motion to Dismiss. The Commission finds that the Arbitrator's Order is interlocutory and non-reviewable at this time and therefore dismisses Respondent's Petition for Review.

15IWCC0502

IT IS THEREFORE ORDERED BY THE COMMISSION that the Respondent's Petition for Review of the Arbitrator's Decision is dismissed as untimely.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for further proceedings.

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: JUL 1 - 2015

Joshua D. Luskin

Charles J. DeVriendt

o-05/20/15
jdl/dak
68

Ruth W. White

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PHILLIP BIRCHLER,

Petitioner,

vs. NO: 11 WC 32755

STATE OF ILLINOIS/
MENARD CORRECTIONAL CENTER,

15IWCC0503

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both the Petitioner and Respondent herein, and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, §8(a) choice of physician, temporary total disability and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Findings of fact and conclusions of law

The Commission finds:

1. Petitioner was a Plumber for Respondent. On June 29, 2010 Petitioner was loading scaffold on a flatbed to remove it out of the east house during lockdown. However, while lifting the scaffold Petitioner felt a pull in his back.

2. The following day, he completed an accident report and began treating with his primary physician, Dr. Krieg. Petitioner complained of low back pain and was diagnosed with a lumbosacral strain.

3. During his treatment, Petitioner was referred by Dr. Krieg to both Drs. Albanna and Raskas. Petitioner also chose to treat with Dr. Murry. An August 2011 note from Dr. Krieg indicated Dr. Raskas as a referral.

4. On September 23, 2010 Petitioner presented with complaints of a funny feeling over the past 3 days, along with achiness, fever and abdominal pain. However, he specifically denied any back pain.

5. Petitioner subsequently began complaining of back pain again in March of 2011. However, on May 13, 2011, Petitioner again denied any back pain.

6. On June 1, 2011, a lumbar MRI revealed grade 1 spondylolisthesis at L5 with bilateral pars defect, and a moderate disc bulging at L5-S1 with bilateral foraminal narrowing and apparent neural impingement.

7. On August 4, 2011 Dr. Albanna diagnosed Petitioner with foraminal stenosis, a lumbago, herniated disc and spondylolisthesis in his low back. Surgery was said to be the best option. Dr. Albanna opined that the diagnosis likely pre-existed the June 2010 work accident, but was aggravated by said accident.

8. Medical records indicate that in January and February of 2009 Petitioner treated for back pain. However, Dr. Raskas, based on Petitioner's assertions, noted that Petitioner did not have any back pain from 2007 to 2010, and thus opined that Petitioner's current back pain was causally connected to the accident.

9. Petitioner underwent surgery September 20, 2011.

10. Dr. Pineda performed a medical records review December 31, 2011. He noted that there was a disconnect between Petitioner's work injury and his need for surgery. He opined that it is common for a person with degenerative disc disease and spondylolisthesis to have intermittent aggravation of pain followed by periods of resolution of symptoms. This appears to be what has been identified in Dr. Krieg's records.

Based on the evidence, the Commission reverses in part and modifies in part the ruling of the Arbitrator.

The Commission finds no causal relationship between Petitioner's accident and his need for surgery. In January and February of 2009, Petitioner complained of back pain. Petitioner specifically denied back pain on September 23, 2010, and on May 13, 2011. In between these two dates, Petitioner complained of back pain in March 2011. Dr. Pineda opined that intermittent aggravations of pain followed by periods of resolution of symptoms are an indication of degenerative disc disease. Moreover, the fact that Petitioner also had complaints of back pain prior to the accident in question lends further credence to the opinion of Dr. Pineda that Petitioner's symptoms were not causally related to the accident. The opinion of Dr. Raskas is unreliable, as it was based on

Petitioner's false claim of being pain free in his back from 2007 to 2010.

With accident stipulated in this case, the only question is when did causal connection terminate. The most reasonable date is September 23, 2010, which is the first time subsequent to the accident that Petitioner specifically denied back pain. The Commission finds such, and modifies the causal connection date, thereby terminating causal connection on September 23, 2010.

The Commission reverses the ruling on Petitioner's §8(a) choice of physician. Petitioner's physician choices were Drs. Krieg and Murry. However, Dr. Raskas himself stated that Petitioner was referred to him by Dr. Krieg, and this referral is alluded to in an August 2011 note from Dr. Krieg. Accordingly, Dr. Raskas falls within the 2-physician rule. Nevertheless, due to the causal connection ruling, Respondent is not liable for Dr. Raskas' treatment, as his treatment occurred well after the causal connection termination date.

The Commission further reverses and vacates the temporary total disability award, as these benefits manifested well after the September 23, 2010 termination of causal connection.

The Commission further modifies the medical expenses award. The Arbitrator awarded all reasonable and necessary expenses stemming from treatment of all physicians within the 2-physician rule. However, due to the termination of causal connection, the Commission modifies this award, and limits Respondent's liability only through September 23, 2010.

Lastly, the Commission modifies the Arbitrator's permanent partial disability award. Based on the causal connection ruling, only Petitioner's low back strain is related to the accident in question. Accordingly, the permanent partial disability award should reflect such an injury, and the Commission finds that the injury is consistent with a 5% loss of a man as a whole, rather than the 25% loss of a man award that was granted due to Petitioner's surgery.

IT IS THEREFORE ORDERED BY THE COMMISSION that causal connection related to Petitioner's work injury was terminated on September 23, 2010.

IT IS FURTHER ORDERED BY THE COMMISSION that Dr. Raskas' treatment did in fact fall within the 2-physician rule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is not liable for any benefits related to Petitioner's temporary total incapacity under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 25 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the 5% loss of use of Petitioner's person as a whole.

15IWCC0503

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses from June 29, 2010 through September 23, 2010, under §8(a) of the Act.

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

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

DATED: JUL 1 - 2015
O: 4/30/15
DLG/wde
45

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BIRCHLER, PHILLIP
Employee/Petitioner

Case# **11WC032755**

ST OF IL-MENARD CORRECTIONAL CENTER
Employer/Respondent

15IWCC0503

On 7/14/2014, 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 0.06% 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:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
FARRAH L HAGAN
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JUL 14 2014

RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0503

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

☐ 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

PHILLIP BIRCHLER
Employee/Petitioner

v.

STATE OF ILLINOIS –
MENARD CORRECTIONAL CENTER
Employer/Respondent

Case # 11 WC 32755

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 **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Herrin**, on **April 3, 2014**. 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: Did Petitioner exceed his choice of physicians under Section 8(a) of the Act?

FINDINGS

On **June 29, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$78,341.12**; the average weekly wage was **$1,506.56**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit for any TTD, TPD, maintenance, or other benefits paid by Respondent.

Respondent is entitled to a credit for any medical payments made under Section 8(j) of the Act.

ORDER

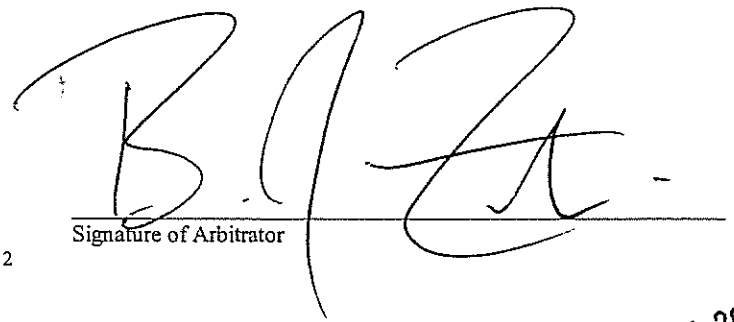
Petitioner exceeded his choice of physicians allowed under Section 8(a) of the Act, but Respondent is liable for payment of medical expenses incurred that were within his allowable choices and chains of referral thereunder. See the Memorandum of Decision of Arbitrator for further analysis.

Respondent shall pay Petitioner temporary total disability benefits of $1,004.37/week for 35 4/7 weeks, commencing July 26, 2011 through April 1, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $664.72/week for 125 weeks because the injury sustained caused the 25% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act.

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

07/03/2014
Date

JUL 14 2014

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

15IWCC0503

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

PHILLIP BIRCHLER
Employee/Petitioner

v. Case # 11 WC 32755

STATE OF ILLINOIS –
MENARD CORRECTIONAL CENTER
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Phillip Birchler, had a history of low back problems before his stipulated date of accident at issue. Petitioner testified that at the time of his accident, he was not receiving any medical treatment to his low back. On June 29, 2010, Petitioner was working for Respondent, Menard Correctional Center, as a plumber when he injured his back when moving scaffolding and loading a truck. (See Respondent's Exhibit (RX) 2; RX 3; RX 4; PX 13, p. 10). Petitioner initially presented to his primary care doctor, Dr. James Krieg, the day after his accident, and was evaluated by Dr. Stephen Platt, Dr. Krieg's partner. (PX 3; PX 13, p. 9). Petitioner then presented to Chris Murry, a chiropractor, by his own choosing. (PX 4). While three plumbers were to be on duty with Respondent following Petitioner's work accident, he was the only plumber working, as the other two were out due to injuries. Petitioner did not present for further medical treatment following his course of treatment with Chiropractor Murry in July 2010 until March 2011, when he returned to Chiropractor Murry. (PX 4).

When asked regarding this gap of treatment to Petitioner's low back and why there were not consistent reports of low back pain during this gap, Petitioner explained that in his line of work, pain is a daily occurrence, and that only when the pain becomes intolerable is when he seeks treatment. Petitioner's supervisor, Stephen Wallace, testified at trial. Mr. Wallace has known Petitioner since his hire 11 years prior, and testified that Petitioner is an exemplary employee. Mr. Wallace observed Petitioner attempting to perform his job duties after his injury and testified that "he was making do with what he could." He testified that there were no tasks that he could recall Petitioner refused to perform. He testified that while Petitioner did not make known to him every pain he had, he was certain that Petitioner was in pain and noted that Petitioner just was not a complainer by nature. Mr. Wallace also testified on cross-examination that while he was unaware of Petitioner's 2002 back surgery, he knew of no back complaints from Petitioner prior to June 29, 2010. However, he did recall Petitioner complaining after the June 29, 2010 accident. Petitioner testified that he was able to continue working for as long as he did because his inmate crew relieves some of the physical stress of his job.

After Petitioner returned to Dr. Krieg in 2011 with continued complaints of back pain, Dr. Krieg referred Petitioner to Dr. Faisal Albanna. (PX 13, p. 15). Petitioner presented to Dr. Albanna on August 4, 2011. Dr. Albanna diagnosed foraminal stenosis, lumbago, herniated disc and spondylolisthesis in Petitioner's low back, and opined that surgery was the best option. Dr. Albanna noted that Petitioner's diagnoses more than likely pre-existed the June 2010 work accident, but "were aggravated by it." (PX 7).

Petitioner next presented to Dr. David Raskas. While Dr. Raskas testified that Dr. Krieg was the referring physician to him (PX 12, p. 5), Dr. Krieg testified that he did not in fact refer Petitioner to Dr. Raskas. (PX 13, p. 56). Petitioner was not sure who in fact referred him to Dr. Raskas. Dr. Raskas provided orthopedic treatment to Petitioner. (PX 8). On September 20, 2011, Dr. Raskas performed surgery on Petitioner, consisting of an L4-5 and L5-S1 laminectomy and nerve root decompression, an L4-5 posterior lumbar interbody fusion, and an L4-S1 posterolateral fusion with pedicle screw instrumentation and insertion of biomechanical spacers. (PX 8; PX 9; PX 12, p. 8).

Dr. Krieg opined that Petitioner's condition that required surgery was aggravated by the work accident. (PX 13, pp. 19-22). Dr. Raskas also opined that Petitioner's work accident caused the need for surgery. (PX 12, pp. 9-10).

On December 31, 2011, Dr. Stephen Pineda performed a medical records review at Respondent's request. Based upon his review of the medical records, Dr. Pineda opined the following:

> In my view when one evaluates causality, history line is going to be critical. If the history line identified in Dr. Krieg's note is accurate and appropriate, then there is a disconnection between the work injury and the need for surgery. It is very common for individuals with degenerative disc disease and spondylolisthesis to have intermittent aggravations of pain followed by periods of resolution of symptoms. This appears to be what has occurred and is identified in Dr. Krieg's records. Dr. Raskas (sic) records do contrast that. Dr. Raskas are, of course, taken only on 1 day as far as I can see from a preoperative standpoint, but his record essentially suggests that the patient had developed the back and leg pain at the time of the accident and that that pain persisted and never resolved. If that is indeed the history that is accepted, then there is a relationship between the accident and the need for surgery. The reason there would be that the accident, in my view, would be considered a permanent aggravation of his condition. That, too, is possible. Regardless of history line accepted, the treatment options and plan do appear to be logical for this gentleman.
>
> (RX 6).

Petitioner was off work or on un-accommodated work restrictions from July 26, 2011 through April 1, 2012. (PX 6; PX 8; RX 7). Petitioner has no current work restrictions, and takes over-the-counter pain medication for his back condition about once per week. He testified that the surgery improved his condition. Yard work and house chores are more difficult for Petitioner now due to his low back condition.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the work accident, and adopts the causation opinions of Dr. Krieg, Dr. Albanna, and Dr. Raskas. The Arbitrator does not find that the pre-existing back condition or the gap in treatment at issue negate a finding of causal connection in this matter.

Issue (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?; and

Issue (O): Did Petitioner exceed his choice of physicians under Section 8(a) of the Act?

All of the treatment to Petitioner's low back in this matter is found to be reasonable and necessary. However, Petitioner exceeded his choice of physicians allowed under Section 8(a) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"). While Dr. Raskas testified that Dr. Krieg referred Petitioner to him, the evidence shows that this is not the case. Dr. Kreig testified and his records confirm that he did not refer Petitioner to Dr. Raskas. Dr. Kreig (and his partner, Dr. Platt, of the Chester Clinic) constituted Petitioner's first choice. Dr. Kreig referred Petitioner to Dr. Albanna, and Dr. Albanna is therefore within the chain of referrals. Chiropractor Murry, by Petitioner's own testimony, constituted Petitioner's second choice allowed under the Act. Chiropractor Murry did not refer Petitioner to any other provider. The treatment provided and referred by Dr. Raskas is accordingly outside the chain of referrals, and liability for those expenses are not Respondent's responsibility. Therefore, only payment for medical treatment provided from or referred by Dr. Krieg/Dr. Platt, Dr. Albanna and Chiropractor Murry shall be the responsibility of Respondent, subject to the medical fee schedule, Section 8.2 of the Act.

Issue (K): What temporary benefits are in dispute? (TTD)

The record shows that Petitioner became temporarily disabled on July 26, 2011, and the time log submitted by Respondent confirms the same. Petitioner was released to work by Dr. Raskas with restrictions on April 1, 2012. Petitioner is therefore entitled to 35 4/7 weeks of temporary total disability benefits.

Issue (L): What is the nature and extent of the injury?

As a result of the work injury at issue, Petitioner underwent an L4-5 and L5-S1 laminectomy and nerve root decompression, an L4-5 posterior lumbar interbody fusion, and an L4-S1 posterolateral fusion with pedicle screw instrumentation and insertion of biomechanical spacers. The surgery provided improvement to Petitioner's condition, but he still has some problems with house work, and occasionally takes over-the-counter pain medication. As a result of his condition, Petitioner has sustained the 25% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LETTY ANN YUVIENCO,

Petitioner,

vs. NO: 13 WC 33782

GATEWAY REGIONAL MEDICAL CENTER, 15IWCC0507

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability and permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

Findings of fact and conclusions of law

The Commission finds:

1. On July 23, 2013 Petitioner was an ER Communicator for Respondent. She had held this position for 18 years, but had been employed by Respondent for 37 years total.

2. The hospital is on one side of the street and there is an aerial walkway connecting it to the Wolf Building. Next to the Wolf Building is a parking lot owned by Respondent.

3. Petitioner parked in this lot because it was closer to where she worked. She was permitted to park there, but not instructed to. She had used the lot for 18 years, but has never before complained that it was too dark. Petitioner acknowledged that other lots were available for her to park in.

4. On the date of accident, Petitioner arrived in the parking lot a few minutes prior to 6p.m. She completed her shift and returned to the parking lot shortly after 4a.m. While walking to her car, she tripped and fell over a parking block. She landed on her right shoulder.

5. Petitioner got up and quickly got into her car. She tried to call the ER, but was unable to move her right arm. She stated that she is unable to dial a phone with her left hand, so she called her son on speed dial and requested his assistance.

6. Petitioner claimed that with the lighting in the parking lot as it was on the morning in question, she would not have been able to read a book.

7. Petitioner's son testified that, after receiving the call from his mother he went to help her. He ran to the parking lot but did not see her. He then entered the ER, and some employees came back out with him to look for her. They found her in her car. Petitioner's son testified that he could not see his mom at first because it was too dark outside.

8. Ms. Marcia Walker is the Risk Manager for Respondent. She agreed that if the lighting in the parking lot was inadequate, it could increase the risk of a person not being able to see things. However, Ms. Walker makes her rounds around the hospital grounds frequently, and has never noticed defective lighting in the parking lot. If she had, she would have had the bulbs replaced with appropriate lighting. She acknowledged that periodically, work orders are put in for parking lot lights, but stated that there were no parking lot light work orders pending at the time of accident.

9. Petitioner initially treated at Gateway ER and was referred to an orthopedic specialist, Dr. Sola. He treated Petitioner until January 2014. Petitioner's shoulder was immobilized for a period of time. She was released to work on January 14, 2014 with 5-7 pound lifting restrictions.

10. Currently Petitioner cannot reach items above her head due to shoulder pain. Every morning she experiences stiffness and cannot close her hand. Occasionally she cannot hold a spoon or a pen.

The Commission views the evidence slightly different than does the Arbitrator, and thus reverses the Arbitrator's finding of accident.

This case hinges on whether or not there was a defect present in the parking lot at the time of Petitioner's injury, and whether or not the Respondent directed Petitioner's parking location. It is established that parking lots owned and controlled by an employer are considered to be an integral part of the employer's premises. ***See*** **DeHoyos v. Industrial Comm'n, 26 Ill.2d 110.** Thus, injuries that occur in such a lot have presumably satisfied the "in the course of" prong of the accident test, as long as it occurred within a reasonable time before, during or after work. Such is the case for

Petitioner, as she was injured shortly after her shift ended at work.

Regarding the defective condition in the parking lot, Petitioner claimed the darkness of the lot contributed to her trip and fall. Her son seems to corroborate her claim by stating that he looked in the lot for his mother, but was unable to see her at first, until he came outside with other hospital staff to search more closely. However, Respondent's Risk Manager testified that she was aware of previous work orders for parking lot light replacement. The fact that there were no such work orders at the time of the accident seems to indicate that there was no issue with the lighting at the time.

While it is true that accidents occurring on a Respondent-operated lot open to both employees and the public are usually compensable as long as there is a defect on the premises, a major factor is the control the Respondent exerted over Petitioner's parking choices. Although Respondent in the case at bar allowed Petitioner to park in the lot during her shifts, Respondent did not *direct* her to park there. Petitioner testified that she simply parked there out of convenience, although there were other places she could have parked. The case at bar is distinguishable from **Mores-Harvey v. Industrial Commission**, where a claimant's accident was found to be compensable in part because she had been directed by her employer to park in the lot where the accident occurred. **345 Ill.App.3d 1034**.

Thus, with no exposure to a risk greater than that of the general public, Petitioner's fall did not arise out of her employment with Respondent. Accordingly, the Commission does not find accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner has failed to prove accident, thus Respondent is not liable in the case at bar. All remaining issues are moot.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $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: JUL 1 - 2015
O: 4/29/15
DLG/wde
45

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

YUVIENCO, LETTY ANN
Employee/Petitioner

Case# **13WC033782**

GATEWAY REGIONAL MEDICAL CENTER
Employer/Respondent

15IWCC0507

On 9/15/2014, 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 0.04% 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:

1580 BECKER SCHROADER & CHAPMAN PC
MATT CHAPMAN
PO BOX 488
GRANITE CITY, IL 62040

0560 WIEDNER & McAULIFFE LTD
MARY SABATINO
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

15IWCC0507

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ 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

LETTY ANN YUVIENCO
Employee/Petitioner

v.

GATEWAY REGIONAL MEDICAL CENTER
Employer/Respondent

Case # 13 WC 33782

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 **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Collinsville**, on **May 21, 2014**. 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

15IWCC0507

FINDINGS

On **July 23, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$26,657.28**; the average weekly wage was **$512.64**.

On the date of accident, Petitioner was **53** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$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 **$33,974.87** under Section 8(j) of the Act.

ORDER

Respondent shall pay the medical expenses listed in Petitioner's Exhibit 8, pursuant to the medical fee schedule, subject to one exception: for the prescription bills, Respondent is only liable for those bills incurred for prescriptions ordered by Dr. Sola. Per stipulation, Respondent shall have a credit in the amount of $33,974.87 pursuant to Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $341.76/week for 25 weeks, commencing July 23, 2013 through January 14, 2014, pursuant to Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $307.58/week for a period of 37.5 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the 7.5% loss of use to the person as a whole.

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

08/22/2014
Date

SEP 15 2014

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LETTY ANN YUVIENCO
Employee/Petitioner

v. Case # 13 WC 33782

GATEWAY REGIONAL MEDICAL CENTER
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

On July 23, 2013, Petitioner, Letty Yuvienco, was employed as an emergency room (ER) communicator with Respondent, Gateway Regional Medical Center. Petitioner had held this position for approximately 18 years and had been employed with Respondent since 1976. As an ER communicator, Petitioner received phone calls from both outside and inside the hospital. Her responsibility was to either answer the calls herself or forward the caller to the appropriate hospital department. She also performed various tasks as needed within the ER. Petitioner worked the night shift, beginning at 6:00 p.m., and ending at 4:30 a.m. Before the accident in this case, Petitioner was working full duty with no restrictions related to her right arm.

Respondent's hospital is located in Granite City, Illinois. The hospital is connected via an elevated walkway to the Wolfe Building, which houses medical offices. Respondent stipulated that it owned, maintained, operated, and controlled the Wolfe Building parking lot. In the daytime, during business hours, Respondent only permitted patients to park in the parking lot. Petitioner testified that if she parked her car in the Wolfe Building parking lot during the day, Respondent would place a citation sticker on her car and could have it towed. Petitioner testified that Respondent's security staff informed her that she had to be out of the parking lot by 7:00 a.m. As shown on Petitioner's Exhibit 10, the Wolfe Building parking lot is the closest parking lot to the ER entrance. Respondent did not provide staff parking in close proximity to the ER. Instead, staff parking for the ER was located approximately two blocks away.

Petitioner testified that Respondent designated the Wolfe Building parking lot for night shift workers. Respondent specifically gave Petitioner permission to park in that lot. Otherwise, she would not have used the parking lot. Petitioner routinely parked in the Wolfe Building parking lot and then used the sidewalk to walk toward the ER entrance, across 21st Street, and into the hospital. Petitioner testified that the path from the Wolfe Building parking space to the ER entrance was her usual and customary access route to and from Respondent's premises. Petitioner explained that the Wolfe Building was closed during her shift and visiting hours at the hospital end at 8:00 p.m. Petitioner testified that, during her shift, the Wolfe Building parking spaces would typically only be used by Respondent's employees.

On July 22, 2013, Petitioner drove herself to work and parked in the Wolfe Building parking lot in a space next to the sidewalk that leads toward the ER. The space was eight or nine spaces away from 21st Street and was identified on Petitioner's Exhibit 10. Petitioner testified that she parked there because it was her usual parking space for her job. Petitioner testified that she did not want to park any further away because she would have to leave her employment at night and she was concerned for her safety.

On the night of the accident, Petitioner left work shortly after 4:00 a.m., crossed 21st Street, and walked on the sidewalk toward her car. She was carrying her work ID and an ink pen. When she turned toward her car, she tripped over a parking block. She tried to catch herself on her car, but instead fell to the ground on her right shoulder. Petitioner testified that she did not see the parking block due to the poor lighting in the parking lot. On an illumination scale of 1 to 10, Petitioner testified that the parking lot lighting was a 2 or 3. Petitioner testified that the lighting conditions were so poor that one could not read a book while standing in the parking lot.

Elson Neal Kessler, Petitioner's son, testified on behalf of Petitioner. He arrived at the scene shortly after Petitioner's fall. He parked his vehicle and walked on the sidewalk toward where he believed his mother had fallen. Because of the lighting conditions, Mr. Kessler did not notice that his mother was actually sitting in the car waiting for him. He then proceeded into the ER to inquire of his mother. Mr. Kessler testified that the lighting was very poor on the night of the accident. On a scale of 1 to 10, he also characterized the lighting conditions as being a 2 or 3 at the time of the accident. Mr. Kessler testified that he too hit his toe on a parking block because it was too dark to see the block. Mr. Kessler helped Petitioner to Respondent's ER for treatment.

Marcia Walker, Respondent's risk manager, testified that Respondent provided parking for night shift workers in the Wolfe Building parking lot. The lot was provided for convenience and for the safety of the night shift workers. Ms. Walker also admitted that inadequate lighting in the parking lot could increase the risk of the parking blocks, posing trip hazards. Ms. Walker did not witness the accident and did not observe the lighting conditions at the time of the accident. Ms. Walker did not feel comfortable answering questions from Respondent's counsel regarding the lighting conditions in the parking lot at night near the time of Petitioner's fall. In addition, Ms. Walker admitted that she could not refute Petitioner's or Mr. Kessler's testimony about the lighting conditions at the time of Petitioner's accident.

Respondent called Jeanine Gillmeister, the ER Director. Ms. Gillmeister was at the counsel table during the testimony of Petitioner and her son. Ms. Gillmeister admitted that she could not refute any of the testimony regarding the poor lighting conditions on the night of the accident.

In the ER, Petitioner reported the incident and explained she landed on her right shoulder and was unable to move her shoulder. (Petitioner's Exhibit (PX) 1, p. 2). An x-ray of the shoulder revealed a fracture of the greater tubercle. The fracture fragment was distracted laterally by about 3 mm. (PX 2, p. 1) Petitioner also underwent an x-ray of her chest, due to complaints of chest pain after the accident. (PX 2, p. 2).

On July 25, 2013, Petitioner presented to Dr. James Sola, an orthopedic surgeon. (PX 6). Petitioner was placed in a shoulder immobilizer and Dr. Sola recommended a CT scan, which was performed on July 25, 2013 at Respondent's facility. (PX 6, p. 1; PX 3). The CT scan revealed a vertical avulsion fracture of greater tuberosity of the right humerus. The radiologist noted a 10 mm long second bony fragment seen in the lateral aspect of the right humeral head just medial to the grater tuberosity indicative of fracture of the right humeral head laterally. (PX 3). On July 29, 2013, Petitioner continued to use a shoulder immobilizer and Dr. Sola recommended Petitioner work on range of motion exercises for the elbow. (PX 6, p. 2). On August17, 2013, Petitioner reported to Respondent's ER, due to increased pain in her shoulder while wearing the shoulder immobilizer. (PX 4, p. 2). New films were obtained. (PX 5). On August 19, 2013, Dr. Sola recommended

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physical therapy for passive motion, which Petitioner performed at Gateway Regional Medical Center. (PX 6, p. 4; PX 7). On September 9, 2013, Dr. Sola recommended that Petitioner wean herself from the shoulder immobilizer into a sling and he prescribed therapy designed to promote active assist motion. (PX 6, p. 5). On September 23, 2013, Dr. Sola continued the physical therapy prescription. (PX 6, p. 6). On October 14, 2013, Dr. Sola suggested that Petitioner wean herself from the sling while in her home, but still recommended use of the sling out of the house. Dr. Sola also added Thera-Band strengthening. (PX 6, p. 7). On December 9, 2013, Petitioner reported that she had not been performing any therapy on her shoulder for the past three weeks because she had a cardiac cath and was told she could not perform any therapy. She was fairly stiff upon examination. Dr. Sola recommended that Petitioner continue her therapy. (PX 6, p. 8). On January 13, 2014, Dr. Sola noted that Petitioner's fracture seemed to be healing. Dr. Sola recommended that Petitioner continue a home exercise program. (PX 6, p. 10). Dr. Sola also released Petitioner back to work at full duty beginning January 14, 2014. (PX 6, p. 11).

When Petitioner attempted to return to work, Respondent informed her that she had been replaced. Petitioner testified that she would have tried to continue her job if allowed to return. Petitioner testified that she still experiences pain and discomfort in her right shoulder. Specifically, Petitioner currently feels pain when she attempts to lift her arm above shoulder level. In the morning, she experiences stiffness in her hand that affects her grip.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Petitioner sustained an accident that arose out of and in the course of her employment with Respondent. Accidental injuries sustained on an employer's premises within a reasonable time before and after work are generally deemed to arise in the course of the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 57, 541 N.E.2d 665 (1989). When the injury occurs in a parking lot, "recovery has been permitted where the employee has sustained injuries in a parking lot 'provided by and under the control' of an employer." *Mores-Harvey v. Industrial Comm'n*, 804 N.E.2d 1086, 1090 (3d Dist. 2004) (quoting *Illinois Bell Telephone Co. v. Industrial Comm'n*, 546 N.E.2d 603 (1989)). The rationale for awarding compensation is that the employer-provided parking lot is considered part of the employer's premises. *Mores-Harvey,* 804 N.E.2d at 1090. "Whether a parking lot is used primarily by employees or the general public, the proper inquiry is whether the employer maintains and provides the lot for its employees' use." *Id.* at 1092. *See also De Hoyos v. Industrial Comm'n*, 26 Ill.2d 110, 185 N.E.2d 885 (1962) (noting that the "court has consistently held that where an employee is injured on company property while going to or leaving work such injuries are compensable").

More specifically, falls on parking blocks or curbs due to dark parking lots are compensable. *Hagerud v. North American Lighting*, 08 IWCC 1272 (2008) (finding fall compensable when the petitioner testified that lighting was a 3 to 4 out of 10, which caused her to trip over parking curb).

Falls are also compensable when the worker is exposed to a special risk or hazard "in an area which is the sole or usual route to the employer's premises." *Brais* v. *Ill. Workers' Comp. Comm'n*, 2014 IL App (3d) 120820WC. In *Brais*, the worker was walking on a public sidewalk returning to the courthouse from a meeting in another building. The worker took this path every day. On her way to the front entrance of the courthouse, she tripped on a broken portion of sidewalk. The court noted that it did not matter that the general public used the same sidewalk and faced the same hazard. Finding the fall compensable, the court noted that "when an

employee is injured in an area which is the sole or usual route to the employer's premises, and there is a special risk or hazard on the route, the hazard becomes part of the employment." *Id.* at ¶ 28.

In Petitioner's case, Respondent owned, maintained, operated, and controlled the parking lot. Therefore, like in *Mores-Harvey*, which involved a restaurant parking lot, it does not matter that the parking lot was open to the public during part of the day. Respondent provided the parking lot for use by Petitioner and other night shift employees, who, like in *Brais*, used the parking lot as their sole or usual route to Respondent's premises. Like in *Hagerud*, the poor lighting of Respondent's parking lot was a hazard that contributed to cause Petitioner's injury and became part of Petitioner's employment.

Petitioner's case is distinguishable from the Supreme Court's holding in the *Caterpillar Tractor* decision. *Caterpillar Tractor Co. v. Industrial Comm'n*, 541 N.E.2d 665 (1989). First, as noted in *Brais* and *Mores-Harvey*, there was no evidence of a defect on the premises in that case. As such, the Court found that the condition of the premises was not a contributing cause of the claimant's injury. In Petitioner's case, like in the cases cited above, the condition of the premises was a contributing cause of Petitioner's injury. Second, in *Caterpillar Tractor*, the Court did not question the precedent set by *De Hoyos*. Instead, the Court noted that, like in Petitioner's case, liability will be imposed when "the injury occurred either as a direct result of a hazardous condition on the employer's premises or arose from some risk connected with, or incidental to, the employment." *Id.*

Based on the foregoing, Petitioner suffered a compensable accident that arose out of and in the course of her employment by Respondent.

Issue (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?

Respondent agreed that Petitioner incurred the medical bills set forth in Petitioner's Exhibit 8, and further agreed that the treatment Petitioner received was reasonable and necessary. Respondent disputed liability for said medical expenses on the basis of its accident defense. Having found Petitioner sustained her burden of proof regarding accident, the Arbitrator hereby awards Petitioner the medical expenses set forth in Petitioner's Exhibit 8, subject to the medical fee schedule, Section 8.2 of the Illinois Worker's Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"). Respondent shall have a credit of $33,974.87 in medical bills that were paid pursuant to Section 8(j) of the Act.

Issue (K): What temporary benefits are in dispute? (TTD)

Respondent disputed the issue of temporary total disability (TTD) on the basis of its accident defense. Having found a compensable accident, the Arbitrator also awards Petitioner TTD benefits for the time she was off work due to the work injury, that period being July 23, 2013 through January 14, 2014.

Issue (L): What is the nature and extent of the injury?

Petitioner's date of accident falls after September 1, 2011, and therefore Section 8.1b of the Act shall be discussed concerning the permanent partial disability (PPD) award being issued. No PPD impairment report pursuant to Sections 8.1b(a) and 8.1b(b)(i) of the Act was offered into evidence by either party. This factor is thereby waived.

Concerning Section 8.1b(b)(ii) of the Act (Petitioner's occupation), Petitioner was an ER communicator, but her job was filled while she was off work due to her work injury. She is currently unemployed. She testified that she tried to return to her previous job, and would have attempted to perform the work. Some weight is placed on this factor when determining the permanency award.

Regarding Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of the injury), Petitioner was 53 years old on the date of accident. The Arbitrator considers Petitioner to be a middle-aged person, approaching older age. Petitioner will therefore likely not have to work with the permanency as long as a younger worker. Some weight is placed on this factor when determining the PPD award.

Concerning Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), the evidence reveals that Petitioner is now unemployed due to Respondent filling her position while she was off work due to the work accident. The work accident therefore had direct bearing on Petitioner losing her job, and she is now unemployed. This has clearly affected Petitioner's earning capacity in the short term. However, the extent of how her injury will affect her long term earning capacity is uncertain. Therefore, some weight is afforded this factor when assessing the permanency award.

With regard to Section 8.1b(b)(v) of the Act (evidence of disability corroborated by Petitioner's treating medical records), the medical records confirm that Petitioner suffered a fractured shoulder that did not require surgery. At the time of her last visit with Dr. Sola, Petitioner was prescribed home exercises to help with the stiffness in her shoulder. Accordingly, Petitioner's testimony of continued discomfort is corroborated by the medical records. The Arbitrator also makes note that Petitioner was a credible witness at trial, and said credibility was assessed by her open and forthcoming testimony. Great weight is placed on the foregoing factor when determining the PPD award.

The determination of PPD is not simply a calculation but an evaluation of all five of the aforementioned factors stated in Section 8.1b of the Act. In making a PPD evaluation, consideration is not given to any single factor as the sole determinant. Based on all of the foregoing factors, the Arbitrator finds that Petitioner has sustained the 7.5% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEVEN WILHELM, SR.,

Petitioner,

vs. NO: 12 WC 38883

15IWCC0505

NORTHERN ILLINOIS UNIVERSITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection and medical expenses, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

Findings of fact and conclusions of law

The Commission finds:

1. Petitioner worked for Respondent for 29 years. In 2012 he was Building Services Operations Supervisor. He oversaw all of the foreman, kept inventory of supplies and department vehicles. His office was located in the Building Services West Building. Only employees had access to this building, although non employees could come to the reception desk to fill out applications. This was as far as they were allowed to go, however.

2. On September 11, 2012 Petitioner was asked to retrieve some microfiber towels from the storage room in the back of the Building Services West Building. Only he and one other employee had keys to the storage room. Petitioner was walking back down the stairs when he tripped and fell. He attempted to catch himself by reaching for the hand rail, but when he grabbed it he felt a sharp pain in his shoulder.

15IWCC0505

3. Petitioner testified that there was no water on the stairs at the time of his fall. The stairs are old and made of wood. The building itself used to be a John Deere tractor shop, so there was grease embedded in the stairs.

4. Petitioner checks the inventory once every couple of weeks. The accident occurrence was the only time that day Petitioner had traversed the staircase in question.

The Commission finds that, without more, simply slipping and tripping on a staircase is not compensable. Petitioner testified that he slipped or tripped but he could not say that there was anything he slipped on or that any defect existed on the stairs. There was no evidence presented of any defect on the staircase, or that Petitioner was exposed to any risk greater than that of the general public. The Court in **Nabisco Brands v. Industrial Comm'n** held that the "act of walking down the stairs at employer's place of business by itself does not establish a risk greater than those faced outside the work place." **266 Ill.App. 3d 1103, 1107 (1st Dist. 1991)**.

There was no evidence presented that Petitioner had to traverse the stairs multiple times per day. In fact, this was the only time on the date of accident that Petitioner navigated the staircase in question. Further, Petitioner did not directly implicate either the alleged grease on the stairs or the microfiber towels he was carrying as causing or contributing to his fall. Lastly, it cannot be assumed that, simply because the stairs were older, they were inherently defective in any way. Petitioner also did not allege any defects. Thus, there was no evidence of any increased risk for Petitioner. With no increased risk, it is irrelevant that the staircase was not available to the general public.

Based on this evidence, accident cannot be found in this case.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner has failed to prove accident, thus Respondent is not liable in the case at bar. All other issues are hereby moot.

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: JUL 1 - 2015
O: 5/7/1
DLG/wde
45

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WILHEELM, STEVEN
Employee/Petitioner

Case# **12WC038883**

NORTHERN ILLINOIS UNIVERSITY
Employer/Respondent

15IWCC0505

On 7/17/2014, 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 0.06% 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:

0657 TURNER LAW OFFICES
ALICE SACKETT HENRIKSON
107 W EXCHANGE ST
SYCAMORE, IL 60178

5204 ASSISTANT ATTORNEY GENERAL
CHRISTOPHER FLETCHER
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0904 STATE UNIVERSITY RETIREMENT SYS
PO BOX 2710 STATION A*
CHAMPAIGN, IL 61825

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy pursuant to 820 ILCS 305/14

JUL 17 2014

RONALD A. RASPIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0505

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Steven Wilhelm
Employee/Petitioner

v.

Northern Illinois University
Employer/Respondent

Case # **12** WC **38883**

Consolidated cases: **N/A**

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Geneva**, on **May 29, 2014**. After reviewing all of the evidence presented, the undersigned 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. [x] 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. [x] 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. [x] 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. [x] 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 **September 11, 2012**, 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 as explained *infra*.

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

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

In the year preceding the injury, Petitioner earned $**58,500.00**; the average weekly wage was $**1,280.73**.

On the date of accident, Petitioner was **56** years of age, ***married*** with **no** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services as explained *infra*.

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

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 $**35,799.04** under Section 8(j) of the Act.

ORDER

As explained in the Arbitration Decision Addendum, Petitioner established that he sustained a compensable accident on September 11, 2012 and causal connection between his right shoulder condition and injury at work.

Medical Benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $56,658.73, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of $35,799.04 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 Section 8(j) of the Act.

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $712.55/week for 62.5 weeks, because the injuries sustained caused the 12.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

July 9, 2014
Date

JUL 17 2014

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Steven Wilhelm
Employee/Petitioner

v.

Northern Illinois University
Employer/Respondent

Case # **12** WC **38883**

Consolidated cases: **N/A**

FINDINGS OF FACT

The issues in dispute at this hearing include accident, causal connection, Respondent's liability for certain unpaid medical bills, and the nature and extent of Petitioner's injury. Arbitrator's Exhibit[1] ("AX") 1. The parties have stipulated to all other issues. AX1.

Background

Petitioner testified that he worked for Respondent for approximately 29 years. He started out as a janitor and after five years he became a foreman. In 2011, Petitioner became the Building Services Operations Supervisor. He testified that his responsibilities included overseeing 13 foremen, keeping inventory and ordering supplies, and keeping track of the department's vehicle.

Petitioner's office was located in the Building Services West building, which is one floor with a small storage area/garage and a small attic area where the furnaces were located. The building was only open to employees, with the exception of the very front reception area where applicants came in. Petitioner estimated that three quarters of the building was assigned to his department and the other portions of the building were open only to masons, etc.

September 11, 2012

In the early morning on September 11, 2012, Petitioner testified that he was asked by one of the other foremen, whom he supervised, to get him some microfiber towels from a locked storage area on the second floor in the attic of his building.

Petitioner testified that this storage area held microfiber towels, dust mops, and buckets, and that this was the only location on campus for these supplies at the time. He also testified that there is a set of approximately 25 stairs located in the back half of the building leading up to the storage area. Only Petitioner and one other foreman, Joseph Sarfnek, had a key at the time. After his accident, Petitioner testified that these supplies were kept down on the main floor.

Petitioner testified that while descending the stairs, he slipped or tripped on the stairs and fell. He testified that he tried to stop the fall by grabbing the handrail, and he felt a sharp pain and pulling in his shoulder. on cross examination, Petitioner testified that the stairs are old, wooden stairs and there was no water on the stairs at the

[1] The Arbitrator similarly references the parties' exhibits herein. Petitioner's exhibits are denominated "PX" and Respondent's exhibits are denominated "RX" with a corresponding number as identified by each party.

time of his fall. He added that the attic was an old John Deere tractor garage so there was imbedded grease in the stairs and that, even if this is not what caused him to fall, the the fall did happen.

Petitioner then went back to his office and contacted his immediate supervisor, Acting Superintendent Bill Nicholas, and reported falling down the stairs and injuring his shoulder and falling on his right knee.

Petitioner testified that as the day went on his right shoulder got worse; he could not lift a lot with it. Petitioner testified that he did not notice how severe his injury was at the time. A couple of days later, Petitioner could not lift anything with it.

Medical Treatment

Petitioner sought medical attention at the Dreyer Medical Clinic on September 17, 2012 and saw an orthopedic physician, Dr. Neena Szuch ("Dr. Szuch"). PX1. Petitioner reported that he was right hand dominant and had right shoulder pain after an injury on September 10, 2012. *Id.* He provided a history of the accident reporting that he "slipped while coming down some stairs, grabbed onto the railing to break his fall and significantly hurt his right shoulder." *Id.* Petitioner also reported hurting his right knee, but stated that it was doing ok. *Id.* Petitioner further reported difficulty raising his arm overhead, lifting objects, reaching behind him, and sleeping on the right side. *Id.* After an examination, Dr. Szuch diagnosed Petitioner with a significant right shoulder contusion and poor functioning of the subscapularis. *Id.* She ordered an MRI, physical therapy, and restricted Petitioner to left-handed work only. *Id.*

Petitioner underwent the recommended MRI on October 23, 2012. PX1. The interpreting radiologist noted moderate tendinosis of the supraspinitus tendon, moderate acromioclavicular arthrosis with inferiorly directed spurs, tendinosis involving the intraarticular long head biceps tendon, and a small amount of fluid within the subacromial – subdeltoid bursa. *Id.*

Petitioner returned to Dr. Szuch on November 2, 2012 who offered and administered a corticosteroid injection. PX1. Petitioner underwent physical therapy beginning November 9, 2012 through November 15, 2012 at Midwest Orthopaedic Institute. PX2. On November 30, 2012, Petitioner reported that he had 1 ½ to 2 weeks of relief from the injection after which his pain returned. PX1. He also reported pain despite the physical therapy. *Id.* Dr. Szuch recommended surgery. *Id.* Petitioner testified that he underwent pre-operative clearance at the DeKalb Clinic. *See also* PX6.

Petitioner underwent the recommended surgery on December 21, 2012 at Provena Mercy Medical Center. PX1; PX4. Pre-operatively, Dr. Szuch diagnosed Petitioner with right shoulder impingement, right shoulder acromioclavicular joint arthrosis with partial-thickness rotator cuff tear. *Id.* She performed a right shoulder arthroscopy, subacromial decompression, distal clavicle excision and rotator cuff debridement. *Id.*

Post-operatively, Dr. Szuch ordered physical therapy. PX1. Petitioner underwent the recommended physical therapy at Northern Physical Therapy beginning on December 31, 2012. PX3. On March 8, 2013, Petitioner reported that his physical therapy visits had run out and Dr. Szuch transitioned him to a home exercise program to help build his strength, range of motion, etc. PX1.

On April 19, 2013, Petitioner reported to Dr. Szuch that he had minimal pain which was manageable and that he could perform all activities of daily living. PX1. He requested to return to work without restrictions. *Id.* Dr. Szuch discharged him from care. *Id.*

In a narrative letter dated May 1, 2013, Dr. Szuch stated that Petitioner's injury "was produced by the acute injury which occurred on September 11, 2012 while at work." PX1; PX9.

Additional Information

Regarding his current condition, Petitioner testified that his life is changed. He has a three-year old grandson that he has problems holding. He has difficulty doing yard work and he cannot do the same activities in the yard for long. He also plays baseball and goes fishing and camping, but he has pain and can only engage in these activities for a short period of time. Petitioner testified that he is right handed and he now tries to perform activities with his left hand. He also takes three Aleve every morning when he gets up; his pain is worse if he does not do this.

Prior to his injury, Petitioner testified that he had no problems with or injury to his right shoulder. Regarding his result, Petitioner thought that his shoulder would get better, but his shoulder is still not 100%.

Petitioner testified that he is now retired. He also testified that he spent $105 out of pocket in associated medical costs and that the bills submitted in Petitioner's Exhibit 7 reflect the bills for medical services associated with this injury.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (C), whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds the following:

An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (LEXIS 2011). The "in the course of employment" element refers to "[i]njuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work...." *Metropolitan Water Reclamation District of Greater Chicago v. Ill. Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (1st Dist. 2011). The "'arising out of' component refers to the origin or cause of the claimant's injury and requires that the risk be connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Metropolitan Water Reclamation District*, 407 Ill. App. 3d at 1013-14 (*citing Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989)). A claimant must prove both elements were present (i.e., that an injury arose out of and occurred in the course of his employment) to establish that his injury is compensable. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (1st Dist. 2006).

Where an "employee is exposed to a risk common to the general public to a greater degree than other persons, the accidental injury is also said to arise out of his employment." *Metropolitan Water Reclamation District*, 407 Ill. App. 3d at 1013-14. That is, a claimant must demonstrate that the risk of injury was peculiar to or increased by his work duties and the "increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Id.*, at 1014 (*citations* omitted).

In this case, Petitioner was walking down stairs in a building that was not open to the public at the time of his fall. He was retrieving supplies for a subordinate employee from a locked storage area to which only he and one other co-worker had access with a key, and which was the only place holding certain supplies for the entire NIU campus. While Petitioner testified that did not know whether the stairs embedded with grease caused him to fall, his description of the stairs as old and wooden in a staircase leading to an attic space reasonably explains the increased risk to which Petitioner was exposed in regularly executing his duties to obtain materials from a small, locked storage area for any employee needing them on campus. Moreover, Petitioner's reported mechanism of injury at trial is specifically corroborated by contemporaneous treating medical records of Dr. Szuch and Petitioner's testimony at trial is un-rebutted.

Based on the foregoing, the Arbitrator finds that Petitioner did sustain a compensable accident that arose out of and in the course of his employment with Respondent on September 11, 2012 as claimed.

In support of the Arbitrator's decision relating to Issue (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

As explained above, the Arbitrator finds that Petitioner sustained a compensable accident at work as claimed and, thus, further finds that his claimed current condition of ill being in the right shoulder is causally related to his accident at work as opined by Dr. Szuch. In so finding, the Arbitrator again notes the consistency of

Petitioner's testimony with the medical records submitted into evidence and the uncontroverted causal connection opinion rendered by Dr. Szuch that Petitioner's right shoulder condition was caused by the acute injury at work. Additionally, the evidence establishes that Petitioner had no prior right shoulder condition requiring medical treatment and the whole of this evidence is uncontroverted. Thus, the Arbitrator finds that Petitioner's claimed current condition of ill-being is related to the injury sustained at work on September 11, 2012.

In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

"Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2006)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of her employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury." *Absolute Cleaning/SVMBL v. Ill. Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470 (4th Dist. 2011) (*citing University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164 (1st Dist. 1992)). Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534 (1st Dist. 2001).

As explained more fully above, the Arbitrator finds that Petitioner sustained a compensable accident and causal connection between his right shoulder condition and accident. Moreover, the medical bills submitted into evidence are for the reasonable and necessary medical treatment rendered to Petitioner to address his right shoulder condition after September 11, 2012. Thus, the Arbitrator awards the medical bills incurred by Petitioner that remain unpaid to be paid by Respondent as provided in Sections 8(a) and 8.2 of the Act.

In support of the Arbitrator's decision relating to Issue (L), the nature and extent of Petitioner's injury, the Arbitrator finds the following:

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.

First, no 8.1b subsection (a) report delineating Petitioner's level of impairment was submitted into evidence by either party. Thus, the Arbitrator considers the parties to have waived their right to do so and assigns no weight to this factor.

Second, the evidence established that Petitioner was a building services supervisor. The Arbitrator finds Petitioner's testimony regarding his duties at work on the date of accident to be credible and, as this evidence is uncontroverted, the Arbitrator assigns it significant weight.

Third, the parties stipulated that Petitioner was 56 years old on the date of accident. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.

Fourth, while there is evidence reflecting Petitioner's physical capabilities (i.e., Petitioner's own testimony, Dr. Szuch's medical records releasing Petitioner to work, physical therapy records, etc.) no evidence was introduced regarding Petitioner's future earning capacity as a result. Moreover, Petitioner testified that he is retired. Thus, no weight is assigned to this factor as there is no evidence of any impact on Petitioner's future earning capacity as a result of his injury.

Fifth, the treating medical records reflect that Petitioner underwent medical treatment that included a right shoulder arthroscopy, subacromial decompression, distal clavicle excision and rotator cuff debridement to address his right shoulder impingement and right shoulder acromioclavicular joint arthrosis with partial-thickness rotator cuff tear. Petitioner continued with post-operative physical therapy and followed up with his orthopaedic surgeon, Dr. Szuch, for several months. Petitioner credibly testified that after his release back to full duty work he continues to have some pain and discomfort in the right shoulder as well as difficulty with certain activities and hobbies requiring more use of his non-dominant arm. In view of all of the foregoing, the Arbitrator finds that there is credible evidence of ongoing disability as reflected in the treating medical records corroborating Petitioner's testimony of continuing symptomatology in his dominant right arm. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.

Based on all of the foregoing, and 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 sustained permanent partial disability to the extent of 12.5% loss of use of the man as a whole pursuant to Section 8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

☐ 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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LORI SANDERS,

Petitioner,

vs. NO: 12 WC 16770

CAHOKIA UNIT SCHOOL DISTRICT #187,

15IWCC0506

Respondent.

DECISION AND OPINION ON REVIEW

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

Findings of fact and conclusions of law

The Commission finds:

1. Petitioner is a Custodian. On February 16, 2012 she was at work searching for cleaning supplies. She walked down a hallway where there was a crew cleaning floors, as well as another Custodian who had thrown all of his equipment down. She had to navigate through all of this equipment to reach the cleaning supplies. She reached up in the room to grab a box of garbage bags, and as she was pulling it down she turned and her foot got caught in an extension cord lying on the floor. She lost her balance and fell into some racks, scratching up the left side of her arm. She also fell into a stripping machine and her head bounced off of an air conditioning vent. She injured her left ankle and left shoulder.

2. Petitioner did not complete her shift that day. Instead she sat and directed someone else. The following day she reported to Midwest Occupational Medicine, where she was diagnosed with mild left ankle and left shoulder strains.

3. On March 20, 2012 Petitioner was prescribed an ankle brace and was referred for physical therapy. She was returned to work with restrictions.

4. On April 2, 2012 a shoulder MRI revealed subscapularis muscle strain and minimal rotator cuff tendonitis.

5. On May 9, 2012 a left shoulder MRI revealed an inferior labral tear with large adjacent paralabral cyst. A cervical MRI revealed minimal annular disc bulges at C4-5 and C5-6.

6. Petitioner treated with Dr. Paletta on May 6, 2012. She complained of pain and a burning sensation in her left shoulder. Upon examination, Dr. Paletta found limited range of motion with popping and grinding in the shoulder. An x-ray revealed a small crescentic loose body (possibly bone fragment) in the back of the shoulder. After reviewing an MRI arthrogram, Dr. Paletta diagnosed intra-articular loose body within the left shoulder joint.

7. Eventually Petitioner was referred to Dr. Weimer for her shoulder, whom provided her with a cortisone injection.

8. On May 8, 2012 Petitioner visited Dr. Eavenson and complained of cervical pain and pain in her left trapezius and left foot. On May 10, 2012 Dr. Eavenson took her off of work.

9. On May 16, 2012 Dr. Paletta released Petitioner to full duty. However, Dr. Paletta opined that the loose body was causally related to the accident. Petitioner's complaints of pain and burning sensation continued, however. In fact. Petitioner's complaints continued through the date of surgery. Dr. Paletta stated that if another treating physician offered Petitioner ongoing care after this date of release, he would defer to them.

10. On June 1, 2012 Dr. Paletta reviewed a May 29, 2012 EMG, which was normal and made it clear that the burning sensation was not coming from Petitioner's neck or brachial plexus.

11. On June 5, 2012 Dr. Eavenson released Petitioner to work with restrictions, which could not be accommodated by Respondent.

12. Dr. Collard performed an Independent Medical Examination (IME) on Petitioner July 18, 2012. Upon examination, Dr. Collard diagnosed a left ankle sprain and found that the shoulder symptoms were related to tenderness and palpation over the posterior aspect and the trapezium.

13. Dr. Collard evaluated Petitioner's MRI's and noted an inferior labral cyst. He also noted an intra-articular loose body in the posterior aspect of Petitioner's shoulder. He diagnosed left shoulder trapezial myofasciitis, left shoulder intra-articular loose body and a grade 1 left ankle sprain. He opined that Petitioner had reached MMI with respect to her left ankle.

14. In January 2013 Dr. Paletta performed arthroscopic left shoulder surgery.

15. In February and April 2013 Petitioner continued with her subjective complaints of pain and burning sensation.

16. On June 3, 2013, after reviewing additional shoulder records, Dr. Collard opined that Petitioner's shoulder condition could have at least been aggravated by her fall. He also opined that Petitioner's trapezial complaints were causally related to the accident.

17. On June 10, 2013 Dr. Paletta again reviewed the May 29, 2012 EMG results and found normal results. Petitioner was placed at maximum medical improvement (MMI) and released to work with no restrictions.

18. Currently, Petitioner still has burning sensations in her left shoulder and difficulty reaching above her head. Petitioner also continues to experience pain in her foot. She is now back to working her regular hours with no restrictions.

The Commission affirms the Arbitrator's ruling on permanent partial disability.

The Commission, however, modifies the Arbitrator's rulings on temporary total disability (TTD). The Arbitrator awarded TTD benefits from March 20, 2012 through May 16, 2012, as well as January 22, 2013 through June 10, 2013. However, with Petitioner's assertion that her complaints were continuous after the accident through the date of surgery, along with the fact that Dr. Paletta himself deferred to the opinions of any other treating physician regarding Petitioner's ability to work subsequent to May 16, 2012, it appears that TTD was terminated prematurely. The records of Dr. Eavenson indicate that Petitioner was taken off of work on May 10, 2012, and was not released back to work until June 5, 2012. Thus, it follows that Dr. Paletta defers to the opinion of Dr. Eavenson.

Petitioner requests that the TTD period be extended continuously through June 10, 2013, the date Dr. Paletta reviewed the May 29, 2012 EMG results and released Petitioner to work with no restrictions. However, the records show that Dr. Paletta reached the same conclusion for the same reasons on June 1, 2012. Thus, although the initial TTD award should be extended past May 16, 2012, the Commission rules that it should only be extended to June 1, 2012, rather than the June 10, 2013 date requested by Petitioner.

The second TTD period from January 22, 2013 through June 10, 2013 remains

15IWCC0506

unchanged.

The Commission also modifies the Arbitrator's ruling on medical expenses. For the same reasons set forth in the TTD analysis, the Commission also awards all reasonable and necessary medical expenses from May 16, 2012 through June 1, 2012.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $398.54 per week for a period of 36-3/7 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 sum of $358.69 per week for a period of 50.025 weeks, as provided in §8(d)(2) and §8(e) of the Act, for the reason that the injuries sustained caused a 7.5% loss of use of Petitioner's person as a whole and a 7.5% loss of use of her left foot.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses. With respect to the medical care provided by Dr. Eavenson/MultiCare Specialists, Respondent is liable for bills through June 1, 2012 under §8(a) of the Act.

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

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

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: JUL 1 - 2015
O: 4/30/15
DLG/wde
45

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SANDERS, LORI
Employee/Petitioner

Case# **12WC016770**

CAHOKIA UNIT SCHOOL DISTRICT #187
Employer/Respondent

15IWCC0506

On 5/15/2014, 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 0.05% 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:

4463 GALANTI LAW OFFICES PC
LESLIE COLLINS
PO BOX 99
EAST ALTON, IL 62024

0810 BECKER PAULSON & HOERNER PC
RODNEY W THOMPSON
5111 W MAIN ST
BELLEVILLE, IL 62226

15IWCC0506

STATE OF ILLINOIS)
)SS.
COUNTY OF ST. CLAIR)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Lori Sanders
Employee/Petitioner

v.

Cahokia Unit School District #187
Employer/Respondent

Case # 12 WC 016770

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Collinsville**, on **March 27, 2014**. 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 **2/16/12**, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$31,086.12**; the average weekly wage was **$597.81**.

On the date of accident, Petitioner was **37** years of age, ***single*** with **0** children under 18.

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

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

Respondent shall be given a credit of **$14,042.96** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$14,042.96**.

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

ORDER

The Arbitrator finds that the Petitioner's current conditions of ill-being with regard to her left ankle and left shoulder are related to the event of 2/16/12.

The Respondent finds that the Respondent shall be responsible for all the medical bills submitted by the Petitioner except for those of Dr. Mark Eavenson and/or MultiCare Specialists. With regard to the medical bills of Dr. Mark Eavenson/MultiCare Specialists, Respondent shall be responsible for said medical expenses through 5/16/12. The Respondent shall be given credit for payment of any of these bills that have already been paid and the bills shall be paid in accordance with the Illinois Medical Fee Schedule and/or any agreements that the Respondent may have with the various medical providers listed in the Award.

The Petitioner shall receive, and the Respondent shall pay, the sum of $398.54 for a period of 34-1/7 weeks covering the periods of time of 3/20/12 to 5/16/12 and 1/22/13 to 6/10/13 as and for temporary total disability benefits. The Respondent shall be given a credit for $14,042.96 in benefits already paid for lost time to the Petitioner. Any over payment of said benefits shall result in a credit toward the permanent partial disability hereinafter awarded to the Petitioner.

The Arbitrator finds that the Petitioner shall be entitled to 37.5 weeks of disability at the rate of $358.69 for a period of 37.5 weeks based upon a 7.5% loss of use of the body as a whole due to the left shoulder injury and for a further period of 12.525 weeks of permanent disability as the Petitioner sustained a 7.5% loss of use of the left foot.

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.

Ed Lee
Signature of Arbitrator

5-14-14
Date

MAY 15 2014

STATE OF ILLINOIS)
)
COUNTY OF ST. CLAIR)

15IWCC0506

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION, continuation
Lori Sanders v. Cahokia Unit School District #187
Case Number: 12 WC 016770

Findings of Fact and Conclusions of Law:

The Petitioner testified that on 2/16/12 she was a custodian for the Respondent. As she was reaching into storage closet, she slipped on some cords and fell injuring her left foot, left ankle and left shoulder.

Initial treatment began on 2/17/12 with Midwest Occupational Medicine. Diagnoses were mild left shoulder strain and mild left ankle sprain. She was allowed to continue to work full duty. She followed up with Midwest Occupational Medicine thereafter and on 3/30/12. Diagnoses remained the same. She was prescribed an ankle brace and was told to undergo physical therapy. She was returned to work, but with restrictions that did not allow her to return to work for the Respondent. She began receiving temporary total disability benefits at that time.

An MRI was ordered for her left shoulder. It revealed subscapularis muscle strain and minimal rotator cuff tendonitis. She continued with the physical therapy and with the work restrictions that did not allow her to work.

On 5/3/12 she saw Dr. Donald Weimer, an orthopedist who reviewed her MRI and injected the subacromial space in the left shoulder. He recommended a neurological evaluation as her symptoms did not coincide with her physical findings and prescribed Tramadol.

On 5/8/12 the petitioner was examined by Dr. Mark Eavenson, a chiropractor to whom she was referred by her attorney. He ordered an MRI of her neck that revealed minimal annular disc bulge at C4-5 and a minimal annular disc bulge at C5-6, an MRI of her left foot that showed some slight edema under the skin on the top of the foot with a minimal amount of fluid in the second intermetatarsal bursa and an MRI of the left shoulder with an arthrogram. This revealed an inferior labral tear with a large adjacent paralabral cyst and a large intra-articular body in the posterior aspect of the glenohumeral joint. There was no rotator cuff tear identified.

She returned to Dr. Eavenson and he referred her to Dr. George Paletta.

She saw Dr. Paletta on 5/16/12. His physical examination revealed an equivocal O'Brien's sign. He reviewed the MRI and noted evidence of the loose body. His diagnosis was intra-articular loose body of the left shoulder. He thought that this could account for her pain, but did not explain her complaints of a burning sensation and other subjective complaints. He recommended a nerve conduction study. He released her to return to work without restrictions. Temporary total disability benefits were terminated as of that date by the Respondent.

The Petitioner then returned to Dr. Eavenson, although no referral back to Dr. Eavenson had been made by Dr. Paletta. Dr. Eavenson stated that she could return to work with certain restrictions. The Petitioner did not return to work at that time.

On 5/29/12 she saw Dr. Daniel Phillips, a neurologist, at Dr. Paletta's request. An EMG/NCV of the upper extremities was negative for radiculopathy or plexopathy. She continued to see Dr. Eavenson and his therapist thereafter.

On 6/1/12 Dr. Paletta prepared a supplemental report after he reviewed the EMG/NCV. He said it revealed no evidence of cervical radiculopathy or brachial plexopathy and stated that she could return to work, without restrictions.

On 6/4/12 the Petitioner returned to Dr. Eavenson and told him that she did not think that she could return to work without restrictions. Dr. Eavenson's notes indicated that he told her to try to return to work on that basis. When she returned to Dr. Eavenson again on 6/5/12 and told him that she could not perform all the duties of her job (although she did not attempt to return to work at that time), Dr. Eavenson provided her with work restrictions. The Petitioner remained off work. Benefits were not being paid.

She continued to see Dr. Eavenson thereafter and eventually saw Dr. Matthew Collard at the Respondent's request on 7/18/12. Following his examination he concluded that she had reached MMI with regard to her left ankle injury and that she could return to work without restrictions. With regard to her left shoulder, he thought that the injury aggravated the pre-existing loose body in the left shoulder and that some of her complaints were due to the injury and some were not, such as the burning sensation. He said that she could return to work on a full duty basis.

The Petitioner remained off work and eventually underwent surgery by Dr. George Paletta on 1/22/13. He found the loose body and thought that it probably originated from a glenoid labral articular cartilage defect. He removed the loose body. He performed a debridement of the labrum and a debridement and chondroplasty of the glenoid labral articular cartilage defect. He also performed a subacromial decompression and bursectomy. His post-operative diagnoses were left shoulder pain, left shoulder intra-articular loose body, left shoulder secondary subacromial

impingement syndrome and left shoulder glenoid labral articular cartilage defect with labral fraying. The Petitioner was taken off work at that time by Dr. Paletta and lost time benefits were once again resumed to her.

Dr. Paletta ordered another EMG/NCV by Dr. Daniel Phillips and this revealed no evidence of any cervical radiculopathy in the neck.

On 6/10/13 Dr. Paletta stated that he had reviewed the EMG/NCV of Dr. Phillips and found that there was no evidence to support the Petitioner's complaints of burning and numbness, along with tingling in her arm. He concluded that he had nothing else to offer to her and had no explanation for his subjective complaints. She was released to return to work without restrictions and he stated that she was at maximum medical improvement. Temporary total disability benefits were terminated as of that date as the petitioner did return to work on 6/11/13.

Dr. Collard prepared a supplemental report, and also testified via deposition, that the event of 2/16/12 could have been a causative factor in the development of the intra-articular loose body that was removed by Dr. Paletta.

The Petitioner testified at trial that she had a burning sensation in the left shoulder area and had difficulty reaching overhead. She testified that her strength was returning. She complained that her left foot injury was not properly treated and that she still had pain with a shooting sensation in her left foot. She had returned to work on a full duty basis and was performing all of her job responsibilities, which included several moderate to heavy activities. She stated that she was earning the same amount of money or more money as she was at the time of the accident and was not taking any prescription medication for her injuries. She also stated that she was not taking any over the counter medications for any pain or discomfort she was experiencing due to her accident of 2/16/12.

Based upon these facts, the Arbitrator finds that the Petitioner's current condition of ill-being with regard to her left shoulder and left foot are related to the event of 2/16/12. Dr. Paletta testified that the event of 2/16/12 caused all of the conditions of ill-being that he treated during the surgical procedure and Dr. Collard also testified that the event of 2/16/12 could have aggravated her potentially pre-existing loose body in her left shoulder or caused the development of the loose body. There was no controversy with regard to the left ankle as the Petitioner complained of that injury immediately and continued to complain throughout her course of care and treatment.

Based upon the facts presented, the Arbitrator finds that the Petitioner is entitled to have and receive from the Respondent 34-1/7 weeks of temporary total disability at the rate of $398.54 per week for the period of time of 3/20/12 through 5/16/12 and 1/22/13 through 6/10/13. There is no dispute that the Petitioner began to lose time

from work on 3/20/12 and continued off thereafter. She then saw Dr. George Paletta on 5/16/12, to whom she was referred by Dr. Eavenson, for the treatment of her injuries. Dr. Paletta, after evaluating her and reviewing an MRI of her shoulder, concluded that she could return to work, without restrictions. Further, after the Petitioner saw Dr. Paletta, she saw Dr. Daniel Phillips at Dr. Paletta's request who performed an EMG/NCV study that did not find any evidence of cervical radiculopathy or brachial plexopathy. Thereafter, on 6/1/12, Dr. Paletta prepared a supplemental report stating that the Petitioner could return to work without restrictions. The Petitioner, however, chose to return to Dr. Eavenson and, after being released to return to work by Dr. Eavenson on 6/4/12, returned the next day and convinced Dr. Eavenson to provide her with restricted duties that would not allow her to return to work. Therefore, the Arbitrator finds that she is not entitled to any further temporary total disability benefits after 5/16/12 until she underwent surgery by Dr. Paletta on 1/22/13. The record is clear that she remained off work thereafter until released to return to work on a full duty basis by Dr. Paletta on 6/10/13. Respondent shall receive a credit for lost time benefits previously paid of $14,042.96.

Based on the facts as presented and the law as it is applied to said facts, the Arbitrator finds that the Respondent shall be responsible for the medical bills of Midwest Occupational Medicine, Memorial Hospital, The Work Center, Dr. Donald Weimer, MRI Partners of Chesterfield, Dr. George Paletta, Dr. Daniel Phillips, The Imaging Center at Wolff Creek, ProRehab Physical Therapy, The Orthopedic Center of St. Louis, Timberlake Surgery Center and Premier Anesthesia. Respondent shall be given credit for all amounts previously paid with regard to those medical bills. The bills shall be paid in accordance with the Illinois Workers' Compensation Fee Schedule and/or in accordance with any contractual agreements that the Respondent has with the various medical providers previously listed. With regard to the medical bills of Dr. Mark Eavenson and his therapist, referred to as MultiCare Specialists, Respondent shall be responsible for any and all charges incurred through MultiCare Specialists through May 16, 2012. The records and the testimony of the Petitioner indicates that the Petitioners' care and treatment was transferred to Dr. George Paletta by Dr. Mark Eavenson of MultiCare Specialists and that Dr. Paletta initially saw the Petitioner on 5/16/12. Therefore, the Respondent is not liable for any further bills from MultiCare Specialists after 5/16/12. Said treatment by MultiCare Specialists after 5/16/12 was not reasonable or necessary to try to cure and/or relieve the Petitioner from the effects of the event of 2/16/12. Again, Respondent shall be given credit for any and all amounts previously paid to MultiCare Specialists through 5/16/12 and the balance, if any, shall be paid in accordance with the Illinois Medical Fee Schedule and/or any contractual agreement that the Respondent may have with MultiCare Specialists.

With regard to the nature and extent of permanent disability, the Arbitrator finds that the Petitioner shall receive, and the Respondent shall pay, the sum of $358.69 per week for a further period of 37.5 weeks as the Petitioner sustained a loss of use of 7.5% of the

body as a whole due to the injury sustained to the left shoulder. The Petitioner shall also receive, and the Respondent shall pay, a further sum of $358.69 per week for a further 12.525 weeks of disability as the Petitioner sustained a 7.5% loss of use of the left foot.

In evaluating the credit to be given to the Respondent for temporary total disability benefits of $14,042.96, the Arbitrator finds that the Respondent shall be entitled to a credit of $360.92 toward the award of permanent partial disability due to an overpayment in that amount for temporary total disability that the Respondent paid for the periods of time of 3/20/12 to 5/16/12 and 1/22/13 to 6/10/13.

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☐ Affirm and adopt	☐ 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

DIANE PATTERSON,

Petitioner,

15IWCC0511

vs.

NO: 13 WC 29359

COLLINSVILLE REHABILITATION & HEALTHCARE CENTER,

Respondent.

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 accident, medical expenses and TTD and being advised of the facts and law, reverses the 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 medical expenses, TTD and PPD.

Petitioner, registered nurse, testified to leaving a patient's room on August 12, 2013, to retrieve medication from a treatment cart located at a nurse's station. She testified further that, to reach the nurse's station, she would have been required to walk upon a linoleum floor, traverse a metal threshold, descend a carpeted ramp, traverse a second metal threshold, and resume walking upon a linoleum floor. It is an action Petitioner testified to performing "probably hundreds" of times a day. On that particular day, however, while in the process of retrieving the medication from the treatment cart, Petitioner stumbled and subsequently fell while negotiating that path.

It was Petitioner's unrebutted testimony that she tripped when her shoe caught the carpet at the top of the ramp, struggled to remain upright as she stumbled down the ramp but ultimately fell when one of her feet landed on the threshold at the bottom of the ramp. As a result of falling, Petitioner sustained injuries to both hamstrings, specifically evulsions, that required surgical intervention and, following each intervention, rehabilitative therapy.

The Commission finds Petitioner's testimony did not include a claim of there being any defect with the flooring. Respondent provided witnesses who corroborated as much. The Commission does not require Petitioner to make a showing of any defect in the flooring for her claim to prevail. "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of evidence,

15IWCC0511

that he suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671, 278 Ill. Dec. 70 (2003).

"Arising out of" can be satisfied by showing "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro,* 207 Ill. 2d at 203. In the instant matter, Petitioner's injuries satisfy both considerations for "arising out of" as is articulated in *Sisbro*. The "risk connected" to her injury is found to be both Petitioner's repeatedly using the ramp as well her rushing to obtain the medication before the patient who was to receive the medication was put to bed. Both situations increased the risk of Petitioner injuring herself. The "incident risk," defined as a "risk incidental to the employment where it . . . is connected with what an employee has to do in fulfilling his duties." *Sisbro*, 2017 Ill. 2d at 204. Petitioner, as a registered nurse, was tasked by Respondent to care for its patients. Petitioner fell and injured herself while doing so. The Commission is satisfied Petitioner has shown her accident as "arising out of" her employment with Respondent.

"In the course of employment" is understood to refer to the time, place and circumstances surrounding the injury, notably with the injury occurring "within the time and space boundaries of the employment." *Sisbro*, 207 Ill. 2d at 203. The Commission finds Petitioner's unrebutted testimony of tripping and falling while in the process of retrieving medication of a patient satisfies the second prong of *Sisbro.*

The Decision of the Arbitrator, having found Petitioner failed to prove a compensable accident, did not address the other contested issues, deeming them, as a result of her findings with respect to accident, moot. Having found otherwise, the Commission now finds it necessary to remand this matter to the Arbitrator to address those issues previously deemed moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the April 14, 2014, Decision of the Arbitrator is reversed.

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 the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $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: JUL 7 - 2015
KWL/mav
O: 05/12/15
42

Thomas J. Tyrrell

Michael J. Brennan

15IWCC0511

DISSENT

I respectfully dissent from the decision of the majority. I would affirm and adopt the Arbitrator's decision, and would specifically find persuasive Petitioner's numerous and inconsistent histories with respect to the circumstances of her August 20, 2013 fall. The majority's decision engages in speculation but in the end fails to cure Petitioner's deficient case. Arbitrator Lindsay's opinion pays close attention to Petitioner's testimony as it compares to the entire record. I would affirm and adopt this decision in its entirety.

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0511

PATTERSON, DIANE
Employee/Petitioner

Case# **13WC029359**

COLLINSVILLE REHABILITATION & HEALTHCARE CENTER
Employer/Respondent

On 4/11/2014, 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 0.05% 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:

4463 GALANTI LAW OFFICES PC
LESLIE N COLLINS
PO BOX 99
EAST ALTON, IL 62024

1337 KNELL & KELLY LLC
PATRICK JENNETTEN
504 FAYETTE ST
PEORIA, IL 61603

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 15IWCC0511

Diane Patterson
Employee/Petitioner

v.

Collinsville Rehabilitation & Healthcare Center
Employer/Respondent

Case # **13** WC **029359**

Consolidated cases: **N/A**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **February 14, 2014**. 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. [X] 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. [X] 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. [X] 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. [X] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [X] TTD
L. [X] 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 _____

15IWCC0511

FINDINGS

On **8/20/13**, 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 not*** sustain an accident that arose out of and in the course of employment.

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

In the year preceding the injury, Petitioner earned $**25,456.25**; the average weekly wage was $**476.63**.

On the date of accident, Petitioner was **52** years of age, ***single*** with **0** 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** 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

Petitioner failed to prove she sustained an accident on August 20, 2013 that arose out of and in the course of her employment with Respondent. Petitioner's claim is denied and no benefits are awarded.

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

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

Nancy Lindsay
Signature of Arbitrator

April 3, 2014
Date

APR 11 2014

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Arbitrator finds:

According to medical records, emergency personnel were called to Respondent's premises on August 20, 2013, after an employee (Petitioner herein) had reportedly fallen "possibly seizing." (RX 2, p. 3; PX 1, p. 37/56) Upon arrival emergency personnel found Petitioner sitting in a chair. A bystander reported Petitioner was dizzy and light headed and had fallen to her knees. Petitioner was observed to be "going in and out of consciousness." Petitioner's pulse and blood pressure were reportedly low. Petitioner stood and pivoted to the stretcher with assistance of emergency personnel. Petitioner's complaints included bilateral lower buttock pain when standing. Upon leaving for the emergency room, Petitioner's vitals were normal. Petitioner requested transportation to St. Anthony's in Alton. (RX 2, RX 3; PX 1, p. 37/56)

Petitioner presented to St. Anthony's Hospital where she gave a history of having proceeded down a hallway when she tripped and fell. She denied hitting her head but felt light headed and emergency personnel were called. (PX 1, p. 31/56) Petitioner denied any loss of consciousness. Petitioner's primary complaint was right hip and pelvic area pain. Pelvic and right hip x-rays were taken. They were read as unremarkable. (PX 1, p.p. 25-26/56; PX 3) Petitioner was diagnosed with a hip strain, given medication, and discharged with a note she could return to work the next day. (PX 1)

Petitioner next saw her family physician, Dr. Kopjas, on August 26, 2013 reporting she had fallen at work the preceding Tuesday when she was walking down a ramp and her foot got caught. Petitioner's complaints included left lower buttocks pain and pelvic/hip pain with shooting pains down her left leg. Petitioner was very tender to palpation and the doctor further noted pain with movement of both her hamstrings. There was no visible swelling or discoloration and Petitioner's pain extended from the inferior aspect of her buttocks to just superior/posterior of her knees bilaterally. Both hamstrings were very painful and the doctor suspected Petitioner had severely stretched both of them during her fall. He increased her medication and referred her for physical therapy. (PX 2; RX 4)

Petitioner signed her Application for Adjustment of Claim on August 29, 2013 alleging "she tripped over carpet on a ramp injuring her legs." (AX 2; RX 1)

A First Report of Injury was completed on September 4, 2013 by Clara Jackson. (RX 5) In it, Ms. Jackson indicated Petitioner was injured on August 20, 2013. Regarding details, Ms. Jackson wrote, "[Petitioner] was complaining of nausea and dizziness, feeling likes [sic] legs were going to give out, fell to floor, eyes rolling back." (RX 5)

There appears to be little, if any, dispute regarding the nature of Petitioner's treatment. On August 28, 2013 Petitioner saw Dr. Mark Eavenson, a chiropractor, on self-referral complaining of bilateral leg pain and lower back pain. According to the office note, Petitioner was walking across a floor very fast and as the floor changed from a hard surface to carpeting her left foot "stuck" and she fell forward landing on her right hip and striking her left knee. Petitioner felt pain in her low back and both hips. Dr. Eavenson suspected potential hamstring and low back problems, referring Petitioner for bilateral hip and low back MRI scans. (PX 7)

Petitioner underwent bilateral hip MRIs on August 30, 2013 which revealed a complete avulsion of the hamstring common origin from the ischial tuberosity bilaterally. (PX 3) A lumbar spine MRI revealed annular disc bulges at L5/S1 with advanced disc height loss and fatty endplate changes both above and below the disc. There was also mild bilateral foraminal stenosis with no central canal stenosis. At L3/4 there was an annular disc bulge with a superimposed left foraminal herniation resulting in mild left foraminal stenosis. (PX 3) After reviewing the MRIs Dr. Eavenson referred Petitioner to Dr. Mall for her hamstring injury and to Dr. Gornet for her back. (PX 7, p. 93/98)

Dr. Mall initially examined Petitioner on September 3, 2013. Petitioner provided information found on a "Progress Note" indicating she was running to get zinc for a patient and "was walking fast down hall to get to patient" and "front of shoe stuck doesn't remember how it happened." (PX 4, p. 59/60) According to the doctor's history found in the office note, Petitioner was "running to get some zinc before putting a patient back to bed and she was walking very fast down the hallway and her shoe got stuck causing her to fall." Petitioner did not recall exactly how she fell but reported it felt like the back of her legs were hit with a baseball bat. Petitioner's complaints included bilateral hip and buttocks pain and some lower back pain radiating down her left leg. Petitioner was diagnosed with bilateral hamstring ruptures and a disc herniation on the left side at L3-4. In light of Petitioner's active lifestyle and job, Dr. Mall felt that Petitioner's hamstrings should be surgically repaired and Petitioner opted to proceed as recommended. Dr. Mall noted, "This is not a common injury that would occur otherwise without significant injury and, therefore, I do believe that this did occur at the time of her injury." Dr. Mall further noted that what Petitioner was doing was a part of her normal job description and he believed that racing to get the material did contribute to her injury. (PX 4, p. 56/60)

Dr. Mall subsequently performed bilateral hamstring repairs at St. Louis Surgical Center with Petitioner's left hamstring repair occurring on September 12, 2013, (with operative findings noting the left hamstring was retracted approximately 3 cm). Petitioner was seen at Anderson Hospital emergency room on September 13, 2013 with a complaint of syncope. Petitioner had been taken to the emergency room by emergency medical personnel who noted she was unconscious when they arrived. (PX 7, p. 17/35) Petitioner was discharged the same day. She later underwent the right hamstring repair on October 10, 2013 (with a 2 cm retraction being found) (PX 5, 6)

Petitioner tolerated her bilateral hamstring repairs well, and continued to follow with Dr. Mall after surgery. Petitioner also continued to see her chiropractor, Dr. Eavenson. (PX 7) On December 17, 2013 Dr. Mall noted that Petitioner's injury would take awhile for total recovery as it was a slow process, especially since Petitioner had undergone two procedures. However, he

noted her recovery was going well and was on schedule. Petitioner later reported turning a corner in her recovery the day before Christmas and by January 20, 2013 she had resumed hiking and by January 21, 2014 she could "easily" sit in a chair. Petitioner reported being entirely pain free in her lower extremities as of January 28, 2014. (PX 7)

Petitioner last saw Dr. Mall on February 10, 2014, with the doctor noting Petitioner was doing well. Dr. Mall found Petitioner had limitations in squatting with some occasional flare-ups in her low back. Petitioner had good hip range of motion bilaterally, with some mild tenderness to palpation. Petitioner was released at maximum medical improvement on February 10, 2014, with a full duty release. Dr. Mall did not place any permanent work restrictions upon Petitioner as of February 10, 2014. (PX 4)

Prior to the arbitration hearing, the depositions of Phyllis Harrison, Clara Jackson, and Dara Offutt were taken on February 12, 2014. (RX 8) Petitioner testified that she was present for the depositions.

Ms. Harrison testified that she is Respondent's housekeeping laundry supervisor and has worked for Respondent a little over five years. Ms. Harrison testified that Petitioner was Respondent's treatment nurse. On August 20, 2013 Ms. Harrison was coming down "300 hall" and saw Petitioner in a kneeling position. According to Ms. Harrison, as she got closer to Petitioner she realized she had fallen. Petitioner was about five to six feet from the bottom of a ramp near the nurses' station. Ms. Harrison described the ramp as being a "medium slope." Petitioner was speaking with Respondent's assistant director of nursing ("Mindy") Ms. Harrison testified that she heard Petitioner tell "Mindy" that she had been tripping over her shoes all morning and had fallen. Thereafter, Ms. Harrison and another CNA attempted to help Petitioner stand up and as Petitioner did so she yelled in pain and Ms. Harrison rushed to get her a chair because she seemed unstable. As Petitioner sat in the chair she indicated she felt sick to her stomach so Ms. Harrison went to get a trashcan and when she returned "she kind of like started fainting" and we got cold rags for her and called the ambulance.

According to Ms. Harrison she did not even think Petitioner was injured at first as Petitioner was talking clearly to her. Ms. Harrison denied that there was any defect in the floor and Petitioner was located at the bottom of a carpeted area. There were no uneven surfaces, signs of debris, or wetness. Ms. Harrison did not hear Petitioner state that she fell because of any problem with the floor. Petitioner was wearing regular tennis shoes (white with a little bit of coloring).

On cross-examination Ms. Harrison acknowledged that Petitioner never told her she was dizzy. She did see her faint and Petitioner told her she felt like she was going to get sick. Ms. Harrison has never tripped on the rugs or carpet herself. To her knowledge, no one else has fallen on the ramps. Ms. Harrison also acknowledged she really wasn't certain where Petitioner fell. (RX 8)

Clara Jackson also testified on behalf of the Respondent. Ms. Jackson testified she was employed by Collinsville Rehab & Health Care and knew Petitioner. Ms. Jackson, a CNA, was Petitioner's co-worker, and had known her a little over a year. She was aware Petitioner was a

registered nurse and she routinely worked with Petitioner, including on the date of the occurrence on August 20, 2013. Ms. Jackson testified that she reported to work at 6:00 a.m. on that date. She and Petitioner were assisting a resident who needed zinc and Petitioner went to get it. Ms. Jackson testified there was no need to rush or hurry to get the zinc back to the patient and that either of them could have gone to retrieve the zinc. She further testified that the job did not require the employee to rush. Ms. Jackson learned that Petitioner had fallen as she was waiting for Petitioner to return with the zinc. (RX 8)

Ms. Jackson testified that she came upon the area where Petitioner fell and she visually inspected the floor to check for wetness, debris, and defects. Ms. Jackson testified she could find no issues with the flooring in and around the area where Petitioner fell. She further testified that she walks down the hallway where Petitioner fell over twenty (20) times per day, and was unaware of any defects or problems with the hallway and/or flooring. Ms. Jackson saw Petitioner walking prior to her fall, and had noticed Petitioner stumble on one occasion. Ms. Jackson testified that she saw Petitioner earlier in the day and she was "stumbling a little bit" and Ms. Jackson recalled asking Petitioner if she was okay. She did not know what kind of shoes Petitioner was wearing. Ms. Jackson testified that the carpet in the area where Petitioner fell was similar to carpet she encountered in normal everyday life. (RX 8)

On cross-examination Ms. Jackson acknowledged she didn't see Petitioner fall and Petitioner had never previously mentioned not feeling well or feeling dizzy earlier in the day. She's not sure of the exact area where Petitioner fell. When asked if she was aware of anyone else tripping or falling or stumbling on the ramps or the carpet Ms. Jackson testified, "I haven't seen, but I know myself." (RX 8, p. 22)

On re-direct examination Ms. Jackson testified she was unaware of any problems with the carpet in the area where Petitioner fell. (RX 8)

Dara Offutt also testified on behalf of the Respondent. Ms. Offutt has worked for Collinsville Rehab & Health Care close to three years, and has held the title of Director of Nursing the entire time. Ms. Offutt testified she was Petitioner's supervisor, and had been for Petitioner's entire employment with Respondent. Ms. Offutt further testified Petitioner was hired as a Registered Nurse (RN) for wound care treatment and wound dressings. Petitioner cared for patient's wounds at the Respondent's nursing care facility. Ms. Offutt testified Petitioner was not required to rush as part of her job duties for wound care. Ms. Offutt testified the only time Petitioner would be required to rush as part of her job duties would be a situation where a resident had an emergency such as a respiratory or heart attack. (RX 8)

Ms. Offutt testified she has an education background including a bachelor's and master's degree in nursing. She was working on August 20, 2013. Ms. Offutt testified she was told of an emergency in the 300 hall and she went to the scene where she saw Petitioner on the floor. Ms. Offutt testified Petitioner appeared to be experiencing seizure-like episodes, which prompted her to take Petitioner's vital signs. She observed Petitioner at the bottom of an area next to a hallway with a slightly sloping ramp. (RX 8)

Ms.Offutt further testified that she subsequently performed an investigation of the area following Petitioner's fall with injuries. She did not observe any defect, debris or water on the floor. Ms. Offutt testified that she called Petitioner later in the day on August 20, 2013. They discussed Petitioner's condition and while Ms. Offut could not recall exactly what Petitioner told her about the fall, her conclusion was that Petitioner didn't need to fill out paperwork for a work/job injury because it wasn't related to a job injury. Petitioner mentioned something about always rushing around and Ms. Offutt testified that Petitioner moves around quickly while on the job, but that is not required as part of her job duties. (RX 8)

Ms. Offutt testified that the flooring around by where Petitioner fell included an indoor/outdoor type of carpet on the sloping hallway and concrete tile flooring on the area where Petitioner was found. Ms. Offutt testified these flooring materials are the type of flooring materials encountered in everyday life. Ms. Offutt testified there was nothing that would cause someone to trip or fall in transitioning from the carpet into the tile flooring. She further testified there is a threshold separating the transition from carpet to tile which is a smooth strip to keep the carpet down; however, the threshold was not high. Ms. Offutt testified the threshold is smooth and low enough to where persons with wheeled walkers and patients can walk over it without any problem. She further testified the threshold is crossed by persons with wheeled walkers and wheelchairs on a daily basis without any problems. According to Ms. Offutt, the threshold is the type of threshold encountered in everyday life in public areas, and is the same type of threshold she encountered in everyday life outside of work. (RX 8)

On cross-examination Ms. Offutt explained that she felt Petitioner seemed "seizure-like" because her pupils were dilated and her speech was slurred -- basically, she was incoherent and had a blank stare. Her symptoms were similar to someone who could be going into shock after a traumatic injury. (RX 8)

On re-direct examination Ms. Offutt testified that the ramp was made of indoor/outdoor-type carpet and then there was concrete tile on the floor below the ramp. She did not believe there was anything that would cause one to fall or trip where the two transition into one another. There was a strip to keep the carpeting down. It is not very high because it has to be low enough for the wheeled walkers to go over it. (RX 8)

Petitioner testified that she is a registered nurse for Respondent and that she arrived at work at approximately 8:00 a.m. on August 20, 2013, feeling fine and having no difficulties with walking or stumbling. Petitioner further testified that she was assisting in a patient's room when she had to leave in order to get some zinc for the patient. Petitioner testified she went down the hallway to go to the nurse's station and had the keys to her cart in her hand. The hallway was sloped downward like a ramp, ending in a landing area by the nurse's station. The hallway was carpeted and the floor where the cart was located was a concrete/linoleum type floor. Between the hallway and the concrete/linoleum flooring was a metal threshold separating the two types of surfaces.

Petitioner testified that at the top of the carpeted ramp she "kinda tripped" on the carpet in the hallway where her shoe hit the carpet, causing her to stumble to the threshold, and her foot hit for teh final time at the threshold with the concrete/linoleum flooring. Petitioner testified that

she landed flat on her bottom with her side tucked and her knees up. Petitioner was unaware of any witnesses to her fall.

Petitioner indicated she walked up and down the ramp/hallway approximately 100 times per day, and she had seen other people fall in the hallway.

Petitioner testified she did not trip over her feet on the date of the fall "nor did she believe" she ever told anyone that. Petitioner testified that she always walks at a brisk pace, and is normally an active person. On the date of the accident she was working at her normal brisk pace.

Petitioner testified that after she fell, she couldn't get up. Petitioner testified that over her right shoulder she heard a man's voice inquiring as to whether she was okay and if she needed any help. She recalled seeing blue scrubs. On direct examination Petitioner testified that she did not know who "Mark" was.

On cross-examination Petitioner denied fainting after she fell; however, she felt like she almost passed out due to her level of pain. She also testified that when she saw the person in the blue scrubs she said it was "Mark" but she didn't know if "Mark" saw her fall.

Petitioner testified that she continues to have pain in both of her legs. She testified she can squat, but has problems staying in that position very long and sometimes needs help getting up from certain positions. Petitioner testified that she can no longer run, that she walks more slowly, and that she also cannot sleep on one side. Petitioner testified she continues to have numbness in her right thigh. When released by Dr. Mall on February 10, 2014 she was told she should continue to heal over the next year.

The Arbitrator concludes:

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Petitioner bears the burden of establishing all the elements of her claim by a preponderance of the evidence. In this instance, Petitioner failed to meet her burden of proof. The Arbitrator's reasoning is two-fold. First, the Arbitrator notes Petitioner's varying descriptions as to exactly what happened on August 20th. While she testified she fell going to get the zinc; she told Dr. Eavenson she was on her way back to the patient's room with the zinc (no one testified about finding any zinc in the area where she fell). Furthermore, there are not only inconsistent descriptions of what happened (ie, she "kinda tripped" when her shoe "hit" the carpet (Petitioner's testimony) v. her statement to a doctor that her shoe got "stuck" (PX 4)), but Petitioner also admitted to Dr. Mall that she did not recall exactly how she fell (PX 4) and several times during her testimony she stated "I don't believe...." suggesting to this Arbitrator that Petitioner is not entirely clear on what happened. Finally, there are some discrepancies as to the fall itself as Petitioner told Dr. Eavenson she fell on her right hip and struck her left knee; however, Petitioner testified she landed on her buttocks and was turned on her side but she mentioned no knee complaints.

Secondly, Petitioner failed to prove her fall "arose out of" her employment with Respondent. Just because an injury occurs on an employer's premises doesn't make the injury automatically compensable. Petitioner's fall was not witnessed. While Petitioner testified she had keys to a cart in her hand, no evidence was brought forth suggesting that the keys contributed in any way to her fall. Petitioner may have been hurrying; however, she was not being asked to hurry due to the demands of her job. Furthermore, no evidence was presented showing the hallway where Petitioner fell was limited/used solely by Respondent's employees and no one identified a defect or hazard in the area where Petitioner fell. Petitioner testified she "kinda tripped" on the carpet with her shoe. She then stumbled and fell over the threshold onto the flooring..

The act of standing and walking does not constitute a risk greater than that to which the general public is exposed. Karlman v. Citibank, 01 I.I.C. 0570 (July 23, 2001). In the Karlman case, Petitioner tripped on the carpet when her shoe became stuck. Id. The facts of the Karlman case are similar to the instant case. In the Karlman case, the claimant was rushing to a fax machine when her shoe hit the carpet causing her to fall; there was no depression or defect in the carpeting, but the claimant fell due to tripping on the carpet. Similarly, in the instant case, while Petitioner was rushing to obtain zinc, there was no job requirement that she rush, there was no defect in the flooring, there was no water or debris on the floor. While Petitioner testified that she also tripped over a threshold separating the carpet from the concrete flooring, her fall was admittedly started by her shoe "hitting" the carpet. There was no testimony by Petitioner that the condition of her employment or the premises caused an increased risk of injury. Respondent offered witnesses that specifically testified that the flooring and condition of the area was similar to that encountered by persons in everyday life in public places. As such, Petitioner failed to prove that she sustained an accident arising out of her employment.

Based on the Arbitrator's conclusion that Petitioner did not sustain an accident that arose out of and in the course of her employment with Respondent, the remaining issues are rendered moot. Petitioner's claim is denied and no benefits are awarded.

****

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Frank Utter, Jr.,

Petitioner,

15IWCC0514

vs.

NO: 13 WC 00997

Parsec,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent/Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, prospective medical care, and Penalties and attorney fees under §19(k), §19(l), & §16 and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission 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).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- The parties stipulated to accident and injury to Petitioner's left shoulder.

- Petitioner was a 35 year old employee of Respondent, who described his job as hostler driver, groundsman, and 850 crane operator. On the date of accident, December 6, 2012,

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Petitioner testified he was sitting in a parking lot waiting for an ambulance to pass by. While he was sitting in his truck, he was tilted towards the left looking out the back window waiting for the ambulance to go by to the scene of another accident, another co-worker tried to make a U-turn or did make a U-turn and crashed into Petitioner pretty much head on, cracking the windshield and side mirror. Petitioner stated he had shards of glass on his hand, face and around his neck. Petitioner was working for Respondent at that time. Petitioner testified prior to coming to work that day he was perfectly fine as to his left shoulder, neck and left elbow. Petitioner testified of his several job titles at Respondent. He stated his job requirements as a groundsman were to climb up and down each additional railcar, a 3-foot step ladder, holding onto both handrails to get onto the grate platform and place the IBC's (locking pins) into each container to lock the next trailer going on top into place for the outbound units and the opposite for the inbound units; removing the pins from the trailers that were to be taken off and also directing the crane operator on and off the tracks. Petitioner viewed PX12 and identified it as an interlocking pin (IBC) which goes inside one of the trailer corners. He stated there are four holes on every trailer that an IBC gets placed so the next trailer that goes in place is double stacked, and it gets locked down so as the train is moving the trailer does not fall off. Petitioner noted the photo was blurred but indicated the top of the pin. He noted the arm that turns the pin to lock the trailer going on top. Petitioner indicated there are several ways to lock and unlock the pins. He stated some were eased on and some were banged on with your hard hat or a metal bar depending on how smashed they were inside the trailers. Petitioner stated that the majority of the time he took a metal bar that he had inside the crane holder and whacked them open. Petitioner stated they had to use both arms or you would lose balance; one arm swings to lock or unlock. He is right handed.

- Petitioner testified that as a hostler driver he brought freight to and from the track and put it in the storage yard. That job entailed getting up and down from the truck, lifting overhead air hoses to hook up trailers, rolling the trailer dolly legs up and down, manually with a crank. Petitioner stated that with the dolly legs it depended on how high the road drivers left the legs; he stated if they were too high he could not lift the trailer too far as it could tip when they took it off, so he had to roll those legs up, using both arms. He stated some areas were easier doing it with one arm, but the majority of the time he used his whole body to crank them. He stated if he was moving empties and the back doors were open, he had to lock the trailer doors, using both arms and for the most part he had to climb up on the back of the trailer. Petitioner stated that he is not very tall and even a six foot tall person has a hard time getting to the set of arms to lock the doors in place. Petitioner noted there are three points of contact on whatever machine you are climbing at the time. He stated if you are climbing onto a hostler you make sure you have one hand on the handrail and your feet on the steps. He stated going on a crane you need four points of contact and the 4 story has a hand metal, like a fire escape. To maintain three points of contacts it depends on the side of the truck you are on and it depends on what side the safety line you have to get off.

- Petitioner stated the 850 crane operator job required him to climb the 1st story ladder and he would have to climb the three sets of stairs and get into the cab which is the cab trolleys in and out. Petitioner stated he would have to work the joy sticks to maneuver the machines to the proper direction and it is 80 feet up in the air, so he would be hunched over for the whole shift moving his arm back and forth. Petitioner stated that there are multiple joy sticks on both left and right sides so he used both arms. On the date of the accident as he was struck by the other employee (Jimmy Smith) Petitioner lashed forward Petitioner stated he hit the back of his neck on the seat and his shoulder hit the metal; metal roll bar inside the truck; he indicated he believed his elbow was off the plastic armrest. Petitioner stated the glass from the windshield cracked and he had shards of the side mirror on his hand and he had two little specs on his face and a bunch of shards inside his shirt. Petitioner testified after the accident the other employee got on the radio and said they needed a supervisor there immediately, that another driver had just smashed into Petitioner. Petitioner indicated that two supervisors arrived (James McFarland and Jim Helan) and he told them it was all on camera. Petitioner stated the other driver admitted it was his fault. The supervisors asked Petitioner if he needed medical attention and Petitioner stated he told them his shoulder hurt and did not then know if he needed medical attention. Petitioner stated that Mr. Helan pointed out that Petitioner had glass shards in his hand so Petitioner picked those out and the supervisor picked the shards from Petitioner's face. Petitioner believed they stood there for about 20 minutes and showed them his shoulder and they were still asking if Petitioner was okay and if he needed medical attention. Petitioner stated he told them again he did not know then if he needed medical attention, but his shoulder hurt and also his elbow a little bit, but the elbow was not as bad as the shoulder. Petitioner then sat in the manager's office and they wanted Petitioner to write out a report and Petitioner stated he told them his shoulder was really starting to hurt and that he wanted to see a doctor.

- Petitioner was taken to Physicians Immediate Care to see a doctor. Petitioner was looked over and they noted contusions on Petitioner's shoulder and ribs and he believed they said also the neck. Petitioner testified he did tell them where he was hurting; he stated he told them his neck hurt on the left side and down to his left shoulder blade and his elbow a little bit. Petitioner stated he told them the elbow was not hurting as bad as the shoulder and Petitioner was more concerned about the shoulder rather than the elbow. Petitioner indicated they were going to give him narcotic pain medication, but he stated he was on Suboxone then and the narcotics would make him sick and the doctors offered something else. Petitioner stated the doctor finally gave him Tylenol 500, he believed, and Naproxen. Petitioner was not then returned to work as he had to follow up with another doctor. Petitioner believed he went a week later to Physicians Immediate Care and saw another doctor. Petitioner stated he told the doctor he was feeling pretty much the same, and that his shoulder hurt severely and was really sore. Petitioner stated he had an aching sharp pain in his back and he told them of his elbow but that was not serious compared to the shoulder, and Petitioner stated he told the doctor he was getting tension headaches at that time. Petitioner testified the headaches started about 3-4 days after the accident

occurred. Petitioner testified that the doctor at the 2nd visit did not examine him and indicated that the doctor thought Petitioner could return to work. Petitioner stated he again told the doctor how he felt and the doctor suggested Petitioner try returning to work for a week and if he was still messed up they would take him off work again. Petitioner stated he asked the doctor if he thought moving it and steering would help loosen it up and the doctor said it could so Petitioner said okay and the doctor released him to return to work. Petitioner returned to work about December 11, 2012 and he stated he was still very sore and he was not up to par at work and he was not nearly as fast as his average with his moves. Petitioner stated he tried to work his left arm slowly and tried to do everything with his left and tried to loosen up his left arm as much as possible. Petitioner testified when he climbed in and out of the hostler tractor he was extremely sore and kept getting pain in his left shoulder blade up into the back of his neck and he started to get migraines. Petitioner indicated he was able to make contact climbing in and out of the hostler that day; he took several restroom breaks and he took Excedrin Migraine. Petitioner testified that at the end of the day Respondent asked for overtime and Petitioner stated he could not bear the pain anymore and vomited right in front of the terminal manager's office. Petitioner testified that the pain he was experiencing was in his left shoulder up to the left side of his neck and into the left side of his head. As to Respondent's concern maintaining three point contact climbing in and out of the tractors, Petitioner stated that Respondent is really big on safety and the rule is to always maintain three points of contact when climbing on any type of equipment. Petitioner stated that he did not work as a groundsman that day. There had been a day when he returned to work and operated the 850. He stated when he did that he maintained the three point contact and made it up the first climb, first flight which is not easy. Petitioner stated he was not up there too long and he informed Mr. Helan that it was very painful for Petitioner to get up and down and the supervisor told Petitioner he would not go back up there and they placed Petitioner back to the hostler. Petitioner testified he told Mr. Helan of a little pain in his elbow but not as much as the shoulder and the neck and the migraine that overpowered the elbow, so at that point Petitioner was not concerned with the elbow at all. On the day he returned he did not close doors of trailers. Petitioner testified that he only went back to work a couple more days and he saw the initial doctor at Physicians again. Petitioner testified it was 3-4 days and he could not take it anymore and he was doing everything with his right hand and just driving the truck around. He stated if there was no trailer on the back, as there is no suspension on them, you feel every bump and it is pretty rough on the body. He stated even when driving and backing in a 40-foot trailer you have to use both hands to get it in perfect or try to get it perfect. He stated with a big wheel you are going one way and look the opposite and you have to switch hands; not like using a mirror on a car. He indicated backing in with the trailer you use both hands because if you do not use both hands to get it done, it will take multiple attempts to get it done. With using his left hand it was still hurting in the same places, left side, left shoulder blade, up to the left portion of his neck and left part of his head giving him a migraine. Petitioner testified he never had that type of pain before December 6, 2012.

- Petitioner sought further treatment with Dr. Singla his doctor. Petitioner testified the doctor checked his shoulder and noticed Petitioner's left shoulder was elevated about an inch above his right shoulder. Petitioner stated that the doctor ran his finger down Petitioner's shoulder and he stated the doctor touched a nerve that almost put him through the ceiling. Petitioner stated the doctor had him extend his arm and asked if he had any arm numbness. Petitioner explained he was getting numbness in the arm. Petitioner testified his left shoulder was never elevated like that prior to the accident. Petitioner stated he had the numbness from his shoulder to his left ring finger and little finger and he never had numbness like that before. The doctor prescribed medication and took Petitioner off of work. Petitioner continued to treat with Dr. Singla (12/18/12, 12/21/12, 1/4/13, 1/25/13, 3/1/13, 5/17/13, 7/12/13, 8/9/13, 1/4/14, and 2/4/14); Petitioner testified the doctor never released him to return to work (Respondent objected indicating no off work slips after 3/1/13).

- Petitioner agreed he saw Dr. Chmell at request of his attorney and that doctor told Petitioner to stay off work. Petitioner had MRI's at Chicago Ridge Radiology and an EMG at Provena St. Joseph's Hospital in Joliet. Petitioner had hooked up trailers as part of his job; he stated he had to get out of the hostler seat and open the back sliding door and take the hooks off and hook them up to the trailer and get down and walk around to make sure the legs were not too high or too low; he again noted he had to make the three point contact clearing out of the holster. Petitioner stated that after he climbed down he grabbed the air hoses from overhead and attached them to the glad hands on the chassis and checked the legs and cranked them up or down and get back up and make sure the pins were locked or unlocked and make sure they were sealed. He then had to go to the other side and three point contact back to the hostler and get in and close the door and get the computer data and push the air brake and air hose and bring the trailer to the location; he stated that was a two hand job. He stated his shoulder had not changed doing that and it was still elevated on the left. Petitioner stated that he cannot turn his neck to the left side and still gets the pain from his left shoulder blade crossing over, going up the back of his neck into his head causing migraines. Petitioner did not have problems turning his neck prior to the injury and that has been a continuous problem since. Petitioner testified that he does not have the numbness in his shoulder to his elbow but still gets it from the elbow to his fingers. Petitioner again stated he still gets pain in his left shoulder blade crossing over, going up the back of his neck into his head; he still gets the migraine headaches and he still cannot turn his neck to the left as far as the right without feeling pressure in the back of his shoulder blade. With day to day activities, like putting on and taking off his shirt, he now cannot pull it straight over his head. He stated with taking it off he takes his right arm out first and then pulls it over his head and pulls it down his arm. He stated it is the same when he showers; he washes his hair with his right arm all around. Petitioner stated that if he grabs a gallon of milk at the store without a cart and takes it to the car and into the house he gets a migraine. Petitioner stated he has a different sleeping pattern now. He stated he usually sleeps upright in a recliner or more to his right side so no pressure is on the left. He sleeps with a pillow by his arm so he does

not wake with a migraine or have pain in his shoulder. He stated there is always tension in his shoulder now and he cannot throw a ball around or play Frisbee with his left hand/arm. He indicated if something is 5+ pounds he cannot do a lot of ROM with his left arm without suffering consequences later.

- Petitioner saw Dr. Fletcher at Respondent's request and stated that he used every effort to comply with the doctor's requests. When he was done with the exam, Petitioner asked if he could take the migraine medicine as it was already starting to build up and Petitioner stated the doctor placed Petitioner's hands against the door and tried to apply more pressure and Petitioner understood the doctor was doing his job to see if someone was faking, but he told the doctor that in that position, Petitioner was in massive pain and he told the doctor that was far enough as it was too much pain. Petitioner stated he told the doctor he was not pushing as hard with the left because of the pain and the doctor noticed he was in pain and said okay to put his arms down. Petitioner stated Dr. Fletcher asked him to raise his arms and then the doctor tried to raise his arm and Petitioner was on his toes; Petitioner testified he again told the doctor it was causing a lot of pain and the doctor let go. Petitioner stated the doctor had him stand against the wall and the doctor said Petitioner's left shoulder was higher. Petitioner stated the doctor said Petitioner messed himself up and that was pretty much the end of the exam. Petitioner indicated he can raise his left arm up about half way to his head when he starts feeling the pressure and he feels tension even putting his right hand up but he can put the right all the way up.

- Petitioner viewed PX10 and identified it as the overhead 850 crane with the stairwell fire escape and cab hooked up to a 20-foot trailer; it is blurred. Petitioner identified where he climbed up the first set of stairs; metal ladder, just metal bars; about a story, 10 feet off the ground. The crane itself is 80 feet high. Petitioner viewed PX11 and identified it as a picture of the rail yard, hostlers, which he noted they still need to be loaded, and smaller cranes.

- Mr. Malone, who testified for Petitioner, was employed at Respondent for 5 years. Mr. Malone stated that he started about with Respondent in June 2007 and left in 2013. He stated that he worked with Petitioner at Respondent as a driver and operator; he drove a hostler as Petitioner did. He indicated the 3-points of contact for the stairs and rails getting in and out of the hostler; hands on the rails and feet on the stairs climbing. He indicated that was a safety rule at Respondent that was explained during orientation. He stated that rule was enforced and some people were written up for violating that rule. He had also worked as groundsman at Respondent. Witness stated that a groundsman walks the tracks, puts in the IBC's, unlocks containers and up and down rail cars doing that. Witness stated that work requires 2 hands. He stated each car has a set of ladders on each side that you would climb and put in the IBC's, reach overhead and put them in, climb down and go to the other end of the car and climb up and repeat that all the way down the track. The ladders are 8 feet up and the 3-point contact rule applies there also. Mr. Malone viewed PX11 and identified it as a photo of a crane and rail cars and containers

and the height to climb up. Mr. Malone had worked a Taylor crane which was different than what Petitioner ran.

- Mr. Sullivan, who testified for Respondent, stated that he had been employed by Respondent since November 2005. Respondent is an intermodal company; they load and unload trains. Mr. Sullivan was ramp supervisor for the first year and he was then responsible for running manpower, directing track to track, checking inbound and outbound numbers, etc. He was responsible for directing groundsman, crane operators and holster operators. He stated the operations manager of each shift would determine what employee would do what position. There was an assignment sheet posted for the day. He indicated in 2005-2006 they usually ran about 6 cranes a shift so 6 groundsmen and there were 4-6, 850 operators and about 80 hostler drivers. In 2010-2011 they started rehiring people so there were then 90-110 hostler drivers and 4-6 crane operators and 6-8 groundsmen. After 2006 he was promoted to operations manager and he has been terminal manager for the past 2 years. Mr. Sullivan stated that the duties of operations manager was setting up who was operating on the ground and who was going to drive. Witness would also delegate to the supervisors the tracks to be worked and oversee the operations to make sure everything got done. He was promoted to assistant terminal manager and responsible for deciding manpower needs for the day and planning directly with the railroad what trains are to be loaded and where. Witness stated that he oversaw the overall operations and insured that managers and supervisors were carrying out what needed to be done. Witness was also responsible for discipline and accident investigations. Operations managers reported to him. They had always worked 3 shifts (2012). The shifts did overlap by a half hour. He indicated in 2012 there were at most 8 groundsmen and about 6 operators depending if the machine was needed; sometimes it was used constantly and sometimes hardly used. They then had 110-115 hostler drivers. He stated currently there are 8 groundsmen and the 850 is used almost constantly 6 days per week and the hostler drivers are 115-120; they are at max now. He viewed RX24 and identified it as the groundsmen job description (ability needs description) He viewed RX 25 and identified it as the job analysis for a driver and he stated everything there was relevant of the expectations of the job. Mr. Sullivan viewed RX21 and identified it as the manual from orientation training process for new hires. He indicated Petitioner would have received a copy of that. Mr. Sullivan identified RX20 as a photo of a hostler and noted the 3 steps and the rail on each side; there is only 1 rail on each side. He acknowledged the 3 point contact discussion. He stated that is a rule for climbing ladders and most equipment. He indicated with the hostler you cannot make 3 point contact as you would have to twist the body to keep a hand on the rail. The hostler is pictured in the training manual with that. He indicated you can get into a hostler from either side, and there is never a case you cannot. He indicated with hostler driver climbing there is 2 point contact; the 3 point contact does not apply there.

- Mr. Sullivan testified that per Petitioner's restrictions, they would have been able to accommodate the restrictions doing the hostler job. He stated Petitioner would have been

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able to drive the hostler truck. He stated there was no lifting required on that job; only air hoses and he did not believe they were 10 pounds. He testified as to other jobs there, Respondent had work available with Petitioner's qualifications as a hostler driver. The assignment comes from management with the person's qualifications for the job. Mr. Sullivan testified Respondent does have modified duty, a transitional duty program. He stated the program had been in existence since 2009-2010 so it was in existence 2012-2014. He indicated the program is to get people back to work with restrictions; they have certain tasks they can perform, depending on the restrictions, to match the work to the doctor's restrictions. They can change the work with the restrictions. He testified to his knowledge, Petitioner did not return and ask for work at Respondent.

- Ms. Rehm, who testified for Respondent, has been employed at Respondent for 8 years. She was office manager for 6-7 years and is now terminal manager of administration, basically the same position. Ms. Rehm handles all the administrative work from apparel to hiring to releasing to taking medical documentation, FMLA. She testified there is a rule regarding reporting or documenting time off for occupational or non-occupational injury. She stated you must keep Respondent updated as to what is going on once out on leave. She stated leaves are 30 days at a time and if more is needed they have to notify Respondent and provide medical updates for being off. Ms. Rehm knew Petitioner through employment and she had looked at his employment history. She agreed there was a period 9/8/10-10/10/10 that Petitioner was on a non-occupational medical leave and Petitioner then met his obligations and kept Respondent advised. Ms. Rehm was aware of Petitioner's work related injury December 6, 2012 and she indicated the employees have an obligation to keep Respondent advised of medical care and time off. She viewed and identified RX17 as Petitioner's termination letter. She indicated the purpose of that letter was due to Respondent not getting updates. She indicated that there was a December note and that she received a similar note in January stating that Respondent would receive an update around January 25, but they never received it. She indicated by February 25 Petitioner was released for not providing updates. She testified that Petitioner did not provide any other documentation after that letter. Ms. Rehm does get involved with relationship between Respondent and the union and she testified to her knowledge the union never grieved Petitioner's termination. She indicated she would be the person receiving those. Ms. Rehm testified Respondent did have modified/accommodated duty work since 2010-2011 so that was in existence 2011-2014. She stated once they get the restrictions from the doctor they look at some jobs the employee can participate in based on the restrictions and they then allow an 8 hour day and no overtime if the employee can participate in the modified work program. She indicated the program is monitored every 90 days to check the employee's status as to if they are improving and modifying the work per the restrictions. Ms. Rehm indicated that they keep reviewing it every 90 days and they remain on the transitional duty program in effort to get them back to full duty position. Ms. Rehm testified if Petitioner came with a modified duty slip there would be work available for Petitioner. She stated currently they had two people on modified duty. She was familiar with Petitioner's qualifications and job duties in the three job areas and

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she testified Petitioner would be able to be a hostler driver. She indicated the majority of the people are working there as hostler drivers.

The Commission finds, as to the issue of causal connection, that Petitioner suffered an undisputed accident. Petitioner did have prior cervical and lumbar degenerative disc disease and prior headache complaints and some treatment for cervical problems. Petitioner was a 35 year old employee of Respondent, who described his job as hostler drive, groundsman, and 850 crane operator. On the date of accident, December 6, 2012, Petitioner testified he was sitting in a parking lot waiting for an ambulance to pass by. While he was sitting in his truck, he was tilted towards the left looking out the back window waiting for the ambulance to go by to the scene of another accident, another co-worker tried to make a U-turn or did make a U-turn and the co-worker crashed into Petitioner pretty much head on cracking the windshield and side mirror. Petitioner stated he had shards of glass on his hand, face and around his neck. Petitioner was working for Respondent at that time. Petitioner testified prior to coming to work that day he was perfectly fine as to his left shoulder, neck and left elbow. Petitioner testified of his several job titles at Respondent. He stated his job requirements as a groundsman were to climb up and down each additional railcar, a 3-foot step ladder, holding onto both handrails to get onto the grate platform and place the IBC's (locking pins) into each container to lock the next trailer going on top into place for the outbound units and the opposite for the inbound units; removing the pins from the trailers that were to be taken off and also directing the crane operator on and off the tracks. On the date of the accident as he was struck by the other employee (Jimmy Smith) Petitioner lashed forward Petitioner stated he hit the back of his neck on the seat and his shoulder hit the metal; metal roll bar inside the truck; he indicated he believed his elbow was off the plastic armrest. Petitioner stated the glass from the windshield cracked and he had shards of the side mirror on his hand and he had two little specs on his face and a bunch of shards inside his shirt. Petitioner testified after the accident the other employee got on the radio and said they needed a supervisor there immediately, that another driver had just smashed into Petitioner. Petitioner indicated that two supervisors arrived (James McFarland and Jim Helan) and he told them it was all on camera. Petitioner stated the other driver admitted it was his fault. The supervisors asked Petitioner if he needed medical attention and Petitioner stated he told them his shoulder hurt and did not then know if he needed medical attention. Petitioner stated that Mr. Helan pointed out that Petitioner had glass shards in his hand so Petitioner picked those out and the supervisor picked the shards from Petitioner's face. Petitioner believed they stood there for about 20 minutes and showed them his shoulder and they were still asking if Petitioner was okay and if he needed medical attention. Petitioner stated he told them again he did not know then if he needed medical attention, but his shoulder hurt and also his elbow a little bit, but the elbow was not as bad as the shoulder. Petitioner then sat in the manager's office and they wanted Petitioner to write out a report and Petitioner stated he told them his shoulder was really starting to hurt and that he wanted to see a doctor. Petitioner was taken to Physicians Immediate Care to see a doctor. Petitioner was looked over and they noted contusions on Petitioner's shoulder and ribs and he believed they said also the neck. Petitioner testified he did tell them where he was hurting; he stated he told them his neck hurt on the left side and down to his left shoulder blade

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and his elbow a little bit. Petitioner stated he told them the elbow was not hurting as bad as the shoulder and Petitioner was more concerned about the shoulder rather than the elbow. Petitioner indicated they were going to give him narcotic pain medication, but he stated he was on Suboxone then and the narcotics would make him sick and the doctors offered something else. Petitioner stated the doctor finally gave him Tylenol 500, he believed, and Naproxen. Petitioner was not then returned to work as he had to follow up with another doctor. Petitioner believed he went a week later to Physicians Immediate Care and saw another doctor. Petitioner stated he told the doctor he was feeling pretty much the same, and that his shoulder hurt severely and was really sore. Petitioner stated he had an aching sharp pain in his back and he told them of his elbow but that was not serious compared to the shoulder, and Petitioner stated he told the doctor he was getting tension headaches at that time. Petitioner testified the headaches started about 3-4 days after the accident occurred. Petitioner testified that the doctor at the 2nd visit did not examine him and indicated that the doctor thought Petitioner could return to work. Petitioner stated he again told the doctor how he felt and the doctor suggested Petitioner try returning to work for a week and if he was still messed up they would take him off work again. Petitioner stated he asked the doctor if he thought moving it and steering would help loosen it up and the doctor said it could so Petitioner said okay and the doctor released him to return to work. Petitioner returned to work about December 11, 2012 and he stated he was still very sore and he was not up to par at work and he was not nearly as fast as his average with his moves. Petitioner stated he tried to work his left arm slowly and tried to do everything with his left and tried to loosen up his left arm as much as possible. Petitioner testified when he climbed in and out of the hostler tractor he was extremely sore and kept getting pain in his left shoulder blade up into the back of his neck and he started to get migraines. Petitioner indicated he was able to make contact climbing in and out of the hostler that day; he took several restroom breaks and he took Excedrin Migraine. Petitioner testified that at the end of the day Respondent asked for overtime and Petitioner stated he could not bear the pain anymore and vomited right in front of the terminal manager's office. Petitioner testified that the pain he was experiencing was in his left shoulder up to the left side of his neck and into the left side of his head. As to Respondent's concern maintaining three point contact climbing in and out of the tractors, Petitioner stated that Respondent is really big on safety and the rule is to always maintain three points of contact when climbing on any type of equipment. Petitioner stated that he did not work as a groundsman that day. There had been a day when he returned to work and operated the 850. He stated when he did that he maintained the three point contact and made it up the first climb, first flight which is not easy. Petitioner stated he was not up there too long and he informed Mr. Helan that it was very painful for Petitioner to get up and down and the supervisor told Petitioner he would not go back up there and they placed Petitioner back to the hostler. Petitioner testified he told Mr. Helan of a little pain in his elbow but not as much as the shoulder and the neck and the migraine that overpowered the elbow, so at that point Petitioner was not concerned with the elbow at all. On the day he returned he did not close doors of trailers. Petitioner testified that he only went back to work a couple more days and he saw the initial doctor at Physicians again. Petitioner testified it was 3-4 days and he could not take it anymore and he was doing everything with his right hand and just driving the truck around. He stated if there was no trailer on the back, as there is no suspension on them, you feel every bump and it is pretty rough on the body. He stated even when

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driving and backing in a 40-foot trailer you have to use both hands to get it in perfect or try to get it perfect. He stated with a big wheel you are going one way and look the opposite and you have to switch hands; not like using a mirror on a car. He indicated backing in with the trailer you use both hands because if you do not use both hands to get it done, it will take multiple attempts to get it done. With using his left hand it was still hurting in the same places, left side, left shoulder blade, up to the left portion of his neck and left part of his head giving him a migraine. Petitioner testified he never had that type of pain before December 6, 2012.

The Commission notes that the medical records and the §12 (IME) reports relay a consistent mechanism of injury, causal connection. Petitioner's testimony is unrebutted and supported as to accident and to a causal connection to at least the left shoulder condition. There is a causal connection opinion from the treating doctor as to headaches as well, but Petitioner did have prior headaches and the evidence is not really clear that the accident made those any worse other than Petitioner's testimony. Petitioner did have the various diagnostics regarding the shoulder, cervical, and brain (MRI's and the EMG/NCV) but Petitioner did not really receive any treatment regarding the left elbow or neck. The January 16, 2014 EMG/NCV indicated evidence of ulnar neuropathy left side, but no evidence of CTS, cervical radiculopathy, or brachial plexopathy of the left upper extremity. There was nothing noted in the medical records of Petitioner even sustaining an elbow injury to be causally related with that ulnar neuropathy; Petitioner only testified it was not as bad so he was concentrating on the shoulder. While Petitioner did have an ulnar neuropathy per that EMG there is no clear causal connection evidenced to the accident in that regard. The brain MRI was normal as was the cervical MRI (no herniation) so there is little evidence to support a causal relationship to the neck or head (headaches). Petitioner did have some noted neck spasms at times and that type of tension can cause headaches, but again there is no objective evidence otherwise that the headaches were aggravated in the accident. There was no testimony as to the speed/force of impact other than Petitioner's testimony that he was jolted back and forth. There was glass breakage on the truck and truck damage such that Petitioner had glass shards in his hand and body, but there is no indication that Petitioner struck his head, although Petitioner did indicate he hit his neck on the seat. The initial medical reports indicated the shoulder injury, chest contusions and pain and some neck pain complaints. **While diagnostics did look at the brain, cervical, shoulder and arm, that is indicated to rule out other possible areas causing the symptoms.** Petitioner's §12 IME, Dr. Chmell, opined a causal connection as to the left shoulder and headaches; the treating doctor noted the complaints and indicated a causal connection, by history, at least to the shoulder. Respondent's examiner, Dr. Fletcher, opined a causal connection as to the shoulder only (he did note objective findings consistent with subjective complaints, and pain diagram). Petitioner's treatment has been directed towards the shoulder throughout and there is clear evidence of a causal relationship as to the left shoulder, but as to the neck, left elbow, and headaches, the evidence is not supportive of a causal relationship by a preponderance of the evidence (the evidence seems to show rather the contrary). Petitioner failed to meet the burden of proving a causal connection regarding the headaches, neck, and left elbow ulnar neuropathy, but met the burden of proving a causal relationship regarding the left shoulder through the date of that EMG. The Commission finds the decision of the Arbitrator as not totally contrary to the

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weight of the evidence, and, herein, affirms and adopts the Arbitrator's finding as to causal connection only regarding the left shoulder and only through January 16, 2014.

The Commission finds, regarding the issue of temporary total disability, with the above finding of causal connection, that Petitioner was capable of working, and based on the EMG, indicating no positive shoulder pathology, terminates TTD benefits thereafter as Petitioner had then reached MMI, relative to the shoulder injury. The Commission notes that Dr. Fletcher opined Petitioner could perform at least light to light-medium level work and that work capacity exceeded the essential job functions of Petitioner's job. Dr. Fletcher further indicated that he believed that Petitioner suffered a legitimate injury, but did not feel the injury disabled Petitioner from performing his job at the time Dr. Fletcher examined Petitioner (June 28, 2013). Dr. Fletcher opined that based on the treating medical records, Petitioner could have returned to work by January 2013. There are medical notes from the treating doctors to support Petitioner having not yet reached MMI at that time through the time of the EMG, but given the negative findings of the January 16, 2014 EMG finds a MMI date to terminate TTD benefits. There is question whether Petitioner would have or could have been working some modified duty but for the fact of his termination as per Respondent witnesses, but as Petitioner had reached MMI from the injuries causally related, benefits are denied after that EMG finding. The evidence and credible testimony finds Petitioner failed to meet the burden of proving entitlement to the TTD benefits after that date. Therefore, the Commission finds the decision of the Arbitrator as contrary to the weight of the evidence and, herein, modifies the Arbitrator's finding as to total temporary disability to deny TTD benefits after January 16, 2014. (TTD awarded December 20, 2012 through January 16, 2014 (56 weeks at $390.22 per week=$21,852.32)

Regarding medical expenses/prospective medical care, the Commission finds Petitioner at MMI as of the EMG findings January 16, 2014, as to the shoulder injuries sustained and causally related. The Commission, therefore, modifies the Arbitrator's decision to deny any medical expense benefits and prospective medical care after that date.

The Commission finds, regarding penalties and attorney fees, that whether a finding above of causal connection or not, there are clear questions of compensability for Respondent to have relied on, given their IME opinion, and the questions raised and circumstances surrounding the termination, to stop benefits so Petitioner here failed to meet the burden of proving Respondent acted in an unreasonable or vexatious manner to warrant imposition of any penalties and/or attorney fees. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence and, herein, affirms and adopts the Arbitrator's finding as to denial of penalties and attorney fees

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $390.22 per week for a period of 56 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

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IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner for medical expenses under §8(a) of the Act, for the reasonable and necessary medical expenses through January 16, 2014. (denial of the prospective medical care recommended by Dr. Singla).

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $14,500.00. 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: JUL 7 - 2015
o-5/7/15
DLG/jsf
45

David L. Gore

Stephen Mathis

Mario Basurto

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

UTTER JR, FRANK
Employee/Petitioner

Case# 13WC000997

15IWCC0514

PARSEC
Employer/Respondent

On 7/10/2014, 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 0.06% 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:

0786 BRUSTIN & LUNDBLAD LTD
CHARLES E WEBSTER
10 N DEARBORN 7TH FL
CHICAGO, IL 60602

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT E MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

☐ 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
19(b)/8(a)

15IWCC0514

Frank Utter, Jr.,
Employee/Petitioner

v.

Parsec,
Employer/Respondent

Case # 13 WC 997

Consolidated cases: none

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Ottawa** on **3/27/14** and **Geneva** on **4/21/14**. 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 _____

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FINDINGS

On the date of accident, **12/6/12**, 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 with respect to the left shoulder ***is*** causally related to the accident, but Petitioner's conditions of ill-being with respect to his neck, left elbow and headache complaints ***are not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**30,437.16**; the average weekly wage was $**585.33**.

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

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

Respondent shall be given a credit of $**780.64** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**6,755.95** for other benefits (advance), for a total credit of $**7,536.59**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $390.22 per week for 69-5/7 weeks, commencing 12/20/12 through 4/21/14, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 12/7/12 through 4/21/14, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $780.64 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of $5,117.43, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner is entitled to prospective medical treatment in the form of Dr. Singla's referral to Dr. Puppalou for further evaluation of the left shoulder, and Respondent shall be liable for the reasonable and necessary costs associated therewith pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act.

Respondent shall 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 Section 8(j) of the Act.

Respondent shall pay to Petitioner penalties of $**0.00**, as provided in Section 16 of the Act; $**0.00**, as provided in Section 19(k) of the Act; and $**0.00**, as provided in Section 19(l) of the Act.

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

7/7/14
Date

ICArbDec19(b)

JUL 10 2014

STATEMENT OF FACTS:

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This case is assigned to the New Lenox venue. For purposes of judicial expediency, the Arbitrator allowed the matter to proceed to trial in Ottawa on March 27, 2014 and in Geneva on April 21, 2014 in order to close proofs. Petitioner testified at both hearings.

Mr. Utter began his employment with Parsec in March of 2008. He worked continuously, except for a period of time where he was laid off, through the date of injury – December 6, 2012. Mr. Utter indicated that he was a member of Local #707 during his employment with Parsec and worked under three separate classifications, those being hostler driver, groundsman and 850 crane operator.

Prior to the injury in question Petitioner was treated by Dr. Clark for a fractured hand and back injury. While under the care of Dr. Clark, he was placed on Norco. Petitioner testified that he initially saw Dr. Singla, a general practitioner, on January 31, 2012, to get off of Norco and begin on Suboxone. The records from Dr. Singla show that on January 30, 2012, February 7, 2012, March 6, 2012, July 31, 2012, and September 25, 2012, Petitioner was seen by Dr. Singla and diagnosed with cervical and lumbar disc disease. The records of Dr. Singla from November 20, 2012 contain a history of "very bad back pain and migraines."

Mr. Utter testified that his job duties as a groundsman required him to climb up and down each railroad car using a three foot stepladder and both handrails to get onto the platform. He would then place IBCs or locking pins into each container to lock the next trailer in place for outbound units. He indicated he would do the exact opposite for inbound units, removing the pins from the trailers that were taken off as well as directing the crane operator on and off the tracks. PX12 is a photo of an interlocking pin. He testified that he had to use two arms to lock and unlock these pins at times. He testified that sometimes the pins were easy and sometimes you had to bang on them with your hardhat or a metal bar. He testified that the majority of the time he took a metal bar and whacked the pins open.

The job analysis of a groundsman job was offered into evidence as RX24. That exhibit was testified to by assistant terminal manager Tim Sullivan. Mr. Sullivan testified that the petitioner would have to climb up and down railroad cars using a three-point contact. He testified that if the petitioner did have difficulties with strength in his left arm that he could fall.

Petitioner testified that his duties as a hostler driver entailed getting up and down from the truck, lifting air hoses overhead to hook up on the trailers, rolling the dolly legs up and down manually with a crank. He testified that there were three points of contact. A photograph of the hostler truck was offered into evidence as RX20. Petitioner testified that the rule was you always had to maintain three points of contact when climbing equipment. Mr. Sullivan testified that in his opinion petitioner could perform his job duties as a hostler driver even if he was restricted to with respect to the use of his left arm.

Petitioner testified to the job duties of an 850 crane operator. He testified to having to climb a first-story ladder and climb as high as 80 feet. A photo of a work-site crane was admitted at PX10. Petitioner testified that after climbing three sets of stairs to get into the cab he would have to use both arms to operate the crane. Mr. Sullivan testified that if the petitioner had problems with strength in his left arm, that it would be difficult for him to do that job because of the inability to have three points of contact.

Petitioner testified that on December 6, 2012, he was working as a hostler driver, waiting for an ambulance to pass, when he struck by another employee driving another hostle truck. He testified that he had his left arm out of the window. He testified that he hit the back of his neck on the seat, his shoulder on the metal roll bar and his

elbow on the armrest. He indicated that glass from the windshield and/or the sideview mirror hit him in the hand and face.

Petitioner testified that the incident in question was investigated and it was the other driver's fault. He testified that he was asked to fill out an accident report. The accident report was offered into evidence as RX1. Under "Employee Description of the Accident" it was noted that on December 6, 2012 at approximately 9:13 hours "I, Frank Utter, was parked in Lot 1, Roll 2, at south end, waiting for Supervisor Nathan to escort ambulance down angle ramp as I looked back towards Supervisor's truck, I was struck by a fellow employee in Hostler Truck No. 122036. I injured left shoulder blade and had shards of glass in hand and on body. Truck has damage. Employee in Truck No. 122036 was making U-turn when he hit me." (RX1).

Petitioner testified that he received initial care at Physicians Immediate Care on December 6, 2012 at which time he complained of pain in his left shoulder and gave a history of numbness radiating from the left side of his neck to his last three fingers on the left side. There was no mention of him striking his elbow or of having elbow complaints. The assessment was left upper back, left shoulder, left rib contusion, left hand, and paresthesia. Petitioner was released to return to modified duty.

Petitioner testified that he returned to work for Respondent on December 11, 2012. He indicated that he was very sore at the time and did not move as fast as he used to. He noted that he tried to do everything with his right arm and that when he tried climbing in and out of the hostle tractor he had pain in his neck and shoulder and started getting migraines. He stated that he took several bathroom breaks and an Excedrin Migraine. He testified that at the end of the day he could not stand the pain anymore and vomited in front of the office. He noted that the pain was in his left shoulder up the left side of his neck.

Petitioner returned to Physicians Immediate Care on December 11, 2012 with complaints to the left shoulder. He denied any paresthesia, numbness or weakness into his arms. The impression was left shoulder, upper back and left rib contusion, improving. He was released to return to work without restrictions. Again, there was no mention of an elbow injury or problem.

Petitioner testified that he worked for Respondent for three or four days until he could not take the pain anymore. He thereupon visited Dr. Singla on December 18, 2012. He testified that Dr. Singla took him off work. The records of Dr. Single for December 18, 2012 contain a history of "whiplash and left shoulder hit metal frame of truck. Has spasticitic pain from left shoulder up to neck and occipital headaches since then, no paresthesia down the left arm." The impression was neck pain and shoulder pain, from work injury, cervical disc disease. The petitioner was advised to continue on his Suboxone. There was no off-work slip at this time.

Petitioner returned to Physicians Immediate Care on December 19, 2012 with complaints of increased left shoulder and upper back pain. There was no mention of a left elbow injury. The impression was left upper back, shoulder and rib contusion, worse, left hand paresthesia, resolved. He was taken off from work until a recheck scheduled for December 27, 2012.

Petitioner returned to Dr. Singla on December 21, 2012 at which time he was diagnosed with shoulder and neck pain. There was a note of the petitioner complaining of migraine headaches but that was scratched out. He was taken off work at this time. There was no mention of any elbow problems.

Petitioner was next seen by Dr. Singla on January 4, 2013 complaining of left shoulder pain, neck pain and negative for headaches.

Respondent's "terminal manager of administrator" Beth Rehm, testified that employees are required to keep the company informed as to their injury. She testified that petitioner failed to bring in any follow-up note regarding his January 25, 2013 appointment with Dr. Singla and that as of February 25, 2013 he failed to call off, show up to work or notify the company of his status. As a result, petitioner was sent a letter dated February 25, 2013 advising him that he was terminated from his employment.

Petitioner testified that he did provide such a note from Dr. Singla dated January 25, 2013. The note itself indicates that petitioner was being treated for left shoulder pain and pain at the scapula, secondary to work injury. The indication was he was off work until a re-evaluation in four weeks' time. On February 12, 2013, petitioner received another off-work slip from Dr. Singla.

Petitioner saw Dr. Singla on March 1, 2013. Dr. Singla's records on that date contain a handwritten notation, in handwriting that differs from Dr. Singla's below, quite possibly a nurse's intake note, which states: "release to go back to work but was terminated." (PX2). However, a separate off work slip dated March 1, 2013, Dr. Singla indicated that Petitioner "remains off work d/t work injury ..." (PX2).

Petitioner failed to appear for a §12 examination scheduled at the request of Respondent with Dr. David Fletcher on April 20, 2013. Petitioner was eventually seen by Dr. Fletcher on June 28, 2013.

Petitioner returned to Dr. Singla on May 17, 2013, complaining of left shoulder pain, left neck pain, occipital headaches. There was no off-work slip given.

Petitioner returned to Dr. Singla on June 14, 2013. Again, it was left shoulder pain, neck pain, occipital headaches. There was a question of thoracic nerve palsy injury, needs MRI. There was no off-work slip given.

Petitioner returned to Dr. Singla on July 12, 2013, complaining of left shoulder pain, neck pain and headaches. There was no off-work slip given.

Petitioner was evaluated by Dr. David Fletcher on June 28, 2013. Dr. Fletcher's working diagnosis was brachial plexus injury, indicating that he would benefit from physical therapy and neuropathic pain medication. Dr. Fletcher opined that petitioner could return to work, no lifting more than 20 pounds, and limited overhead work. After reviewing petitioner's job descriptions, Dr. Fletcher felt that petitioner could return to work as of January, 2013.

Petitioner was evaluated at his attorney's request by Dr. Samuel Chmell on July 27, 2013. Dr. Chmell reviewed the medical records from Physicians Immediate Care and from Dr. Singla. Dr. Chmell examined petitioner's cervical spine and did find some tenderness, indicating that the range of motion of the cervical spine was moderately diminished. He found scapular winging on the left side with the arms extended. The diagnosis was traumatic internal derangement, left shoulder, traumatic winging, left shoulder, derangement of cervical spine. He felt that the petitioner needed an MRI of the cervical spine and left shoulder as well as an EMG. He felt that the petitioner was unable to return to work at this time.

Petitioner saw Dr. Singla on August 9, 2013 for his headaches, cervical pain and shoulder pain. Again, there was a question of thoracic nerve injury. Dr. Singla wanted to know what MRI's were ordered. There was no off-work slip given.

An MRI of the cervical spine was performed August 14, 2013 and found to be unremarkable. An MRI of the left shoulder was performed on August 14, 2013 and it was otherwise unremarkable except for mild fibrosis

hypotrophy of the acromioclavicular joint. An MRI of the brain was performed on August 20, 2013 and that was normal. Those MRI's were offered into evidence as RX7 and PX4.

Petitioner returned to Dr. Singla's office on September 10, 2013 complaining of limited rotation in the neck, left shoulder and left occipital headaches but no radiation, constant dull ache in nature. Petitioner was referred to Dr. Puppala. There was no off-work slip.

Petitioner was scheduled for an EMG by the Respondent for December 13, 2013. Petitioner's attorney cancelled that EMG and arranged his own EMG with St. Joseph Medical Center.

Petitioner continued under the care of Dr. Singla and saw him again on January 7, 2014. Cervical spine was within normal limits, left shoulder revealed hypotrophy, he had headaches and neck was limited in range of motion, as to left rotation. Again, there was no off-work slip.

On January 16, 2014 an EMG was performed for complaints of left shoulder blade pain, pain radiating into the neck and intermittent numbness, digits four and five. On examination of the left arm, maneuvers were reduced due to pain, however, strength in the biceps, triceps, deltoid, appeared normal on the left side, with normal reflexes and sensory examine. The EMG was diagnostic for evidence of ulnar neuropathy of the left elbow. There was no electrodiagnostic evidence of cervical radiculopathy or brachial plexopathy in the left upper extremity. (RX18).

In a supplemental report dated March 20, 2014, Dr. Chmell indicated that the EMG was not properly performed. He did not indicate in his report whether petitioner was disabled or needed to be off work.

On March 24, 2014, Dr. Fletcher issued a supplemental report wherein he indicated that since his examination petitioner had undergone MRIs of the cervical spine and left shoulder. Dr. Fletcher indicated that in his opinion these results were not significant and that petitioner was capable of working as of December 27, 2012. He indicated in his report that his working diagnosis was brachial plexus injury which needed to be confirmed or refuted by electrodiagnostic studies. He indicated that on physical examination, he had full range of motion of the left shoulder, and no impingement sign. He indicated that the electrodiagnostic studies did not support his tentative diagnosis of brachial plexus (stinger) injury. He indicated that the EMG revealed left medial to left ulnar nerves were normal, with the impression being ulnar neuropathy of the left side. He indicated in his report that there was no electrodiagnostic evidence of a brachial plexus injury. He indicated that the mechanism of injury would not cause a left ulnar problem and that the current condition is not work related. He felt that based on the EMG report, that the brachial plexus injury was ruled out and the petitioner was fully capable of working. (RX19).

Petitioner was seen by Dr. Singla on April 8, 2014. His evaluation revealed limited range of motion in the neck, numbness left arm, left shoulder fibrosis, hypotrophy and headaches. Petitioner was referred to Dr. Puppalou. There was no off-work slip.

Petitioner testified that he currently notices that his shoulder is still elevated and he cannot turn his neck as far to the left as he can to right, and that he still has pain from his left shoulder blade to his neck and head, causing migraines. At the hearing held on April 21, 2014, petitioner testified that he has not looked for work elsewhere she he was terminated by Respondent.

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

At the request of his attorney, Petitioner was examined by orthopedic surgeon Dr. Samuel Chmell on July 27, 2013. Dr. Chmell testified that at the time of his examination Petitioner had complaints of left shoulder pain extending up the left side of the neck and down his left arm. (PX7, p.7). Upon examination Dr. Chmell noted marked tenderness around the left scapula, especially around the medial and inferior borders, marginally diminished range of motion of the left shoulder, diminished strength and a positive Tinel's sign in the super clavicular fassa as well as winging of the left shoulder. (PX7, pp.8-9). With respect to the cervical spine, Dr. Chmell noted some diminished range of motion, a positive Tinel's sign at the base of the neck on the left side. (PX7, p.8). However, Dr. Chmell indicated while Petitioner had some pain limitation on the left side he did not have true radiating pain all the way down the arm, "... indicating there is probably some nerve irritation, but it is not a radicular pain. It is not a pain coming from the cervical spine." (PX7, p.10). Dr. Chmell's diagnosis was traumatic internal derangement left shoulder, traumatic winging left shoulder and derangement of cervical spine. (PX7, p.11). Based on the history given, Petitioner's continued complaints, the physical examination and a review of the medical records, Dr. Chmell was of the opinion that the left shoulder problems were causally related to the December 6, 2012 occurrence. (PX7, p.12). Dr. Chmell was also of the opinion that at the time of his examination Petitioner could not "really use his arm in a meaningful fashion" and therefore could not return to his regular job. (PX7, p.15). In addition, Dr. Chmell believed that Petitioner was in need of further evaluation and treatment, including "calmed EMG/NCV studies" as well as MRI scans of the cervical spine and left shoulder to rule out other conditions such as a herniated disc. (PX7, p.15).

On cross examination, Dr. Chmell agreed that the records of Dr. Singla dated July 31, 2012 show that prior to the work incident Petitioner had a possible diagnosis of cervical herniation. (PX7, p.28). Furthermore, Dr. Chmell conceded that there was no way to know whether the findings he made with respect to the cervical spine at the time of his examination related to the incident in question or Mr. Utter's prior cervical treatment. (PX7, p.37).

At the request of the Respondent, Petitioner was seen by Dr. David Fletcher on June 28, 2013. Dr. Fletcher is board certified in occupational and preventative medicine. (RX14, p.6). At the time of his examination, Dr. Fletcher noted complaints of pain in the left upper extremity shoulder girdle, from the neck around his shoulder and scapula, which was no longer radiating down his arm. (RX14, p.10). Upon examination, Dr. Fletcher noted atrophy, weakness and restricted range of motion of the left shoulder girdle as well the presence of a winged left scapula. (RX14, pp.13-14). On cross examination, Dr. Fletcher agreed that the cause of the winged scapula as well as the brachial plexus injury was the December 6, 2012 accident. (RX14, pp.29,39). In addition, Dr. Fletcher agreed that the atrophy he noted in the left shoulder was secondary to the brachial plexus injury. (RX14, pp.34-35). With respect to the cervical spine, Dr. Fletcher referred to a possible Spurling's maneuver; but otherwise noted that the rest of the examination was unremarkable. (RX14, p.14). As a result, Dr. Fletcher was of the opinion that Petitioner had a brachial plexus injury, and recommended electric diagnostic studies (EMG) to confirm or refute such an impression. (RX14, p.15). However, Dr. Fletcher would not recommend a cervical MRI "because that was not really in my differential" and "would not yield much information that would change the direction of [his] recommendation ..." (RX14, pp.18,21). Dr. Fletcher was also of the opinion that "[u]sually these type of injuries resolve on their own within a year to 18 months, but this type of treatment that I outlined [including TENS unit, physical therapy and neuropathic pain medication] helps speed the process up." (RX14, pp.18-19). Furthermore, Dr. Fletcher opined that at the time of his examination he felt Petitioner could perform at least the light to maybe light-medium work level, which he noted "exceeded the essential functions of his job." (RX14, p.19). Dr. Fletcher went on to state that he would have released Petitioner back to his job at

the time of his examination, or at least by January of 2013 "after the initial evaluation and ruling out stuff was done ..." (RX14, pp.19-20).

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner's current condition of ill-being with respect to his left shoulder is causally related to the undisputed accident on December 6, 2012, but that Petitioner failed to prove by a preponderance of the credible evidence that his cervical, left elbow or migraine headache conditions are causally related to said accident. Along these lines, the Arbitrator notes that even Petitioner's examining physician, Dr. Chmell, was unable to causally relate any condition of ill-being other than the left shoulder injury, and specifically stated that there was no way to know whether the findings he made with respect to the cervical spine related to the incident in question or whether it was due to Petitioner's prior cervical treatment. (PX7, p.37). Furthermore, a review of the initial treating records, as well as the accident report, reveals absolutely no complaints relative to the left elbow immediately following the accident in question. The records likewise reveal that in addition to prior lumbar and cervical complaints, Petitioner had complaints of migraine headaches prior to the accident. More importantly, no medical opinion was offered into evidence that would causally relate the cervical, left elbow or migraine headache conditions to the accident in question. Accordingly, Petitioner's claim relative to said conditions is hereby denied.

However, the Arbitrator finds that Petitioner is entitled to ongoing care and treatment relative to his undisputed left shoulder injury, based on the records of Dr. Singla as well as the opinion of Dr. Chmell. Along these lines, it appears Petitioner continues to experience pain and difficulties using his left arm and shoulder, based on the findings contained in the medical records as well as Petitioner's credible testimony as to his current complaints. While Respondent's §12 examining physician, Dr. Fletcher, noted in his supplemental report that the EMG did not support his earlier tentative diagnosis of brachial plexus injury, and that as a result Petitioner was capable of "full employment as it relates to this work injury," such a statement would seem to go more to the question of diagnosis and one's ability to return to work and not necessarily whether or not Petitioner's condition, whatever it may be, has reached MMI. As a result, the Arbitrator finds that Petitioner's condition relative to his left shoulder has not yet reached maximum medical improvement and that he is in need of ongoing medical treatment relative to same.

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

The parties submitted into evidence an agreed stipulation setting forth the amounts that would be due and owing pursuant to the fee schedule in the event this matter was found to be compensable, with Respondent maintaining its objection to said bills on the basis of liability, reasonableness and necessity. (Arb.Ex.#2).

At the commencement of trial, Respondent represented that there was no dispute that Petitioner injured his left shoulder injury as a result of the accident, and that the EMG recommended and performed on January 16, 2014 with respect to said injury would be paid by the Respondent.

In addition, the Arbitrator finds that the MRI of the cervical spine performed at Chicago Ridge Radiology on August 14, 2013 and the MRI of the left shoulder on August 14, 2013 were both reasonable and necessary under the circumstances in order to properly diagnose and treat Petitioner's compensable left shoulder injury. As a result, Respondent shall be liable for same. However, based on the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Respondent is not liable for the MRI of the brain performed at Chicago Ridge Radiology on August 20, 2013. Therefore, Petitioner claim for same is denied.

As to the medical charges of Dr. Chmell, it would appear that those services were outside the chain of referrals and conducted at the request of Petitioner's attorney. As such, Respondent is not liable for the expenses incurred as a result of Dr. Chmell's services.

Finally, with respect to the charges of treating physician Dr. Singla, the Arbitrator notes that Respondent would obviously not be liable for charges incurred prior to the date of the accident, December 6, 2012. Thereafter, Dr. Singla has continued to treat Petitioner not only for his related left shoulder complaints, but also for his complaints relative to his unrelated cervical and migraine headache conditions. Since it would be impossible to distinguish between the various conditions and given that the left shoulder was examined at all of these visits, the Arbitrator finds that Petitioner is entitled to the entirety of Dr. Singla's bills for office visits subsequent to the date of accident and up through the date of arbitration.

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation (issue "F", supra), the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses in the amount of $5,117.43 pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act. The Arbitrator notes that Respondent submitted into evidence a statement purporting to show that $1,445.31 had been paid on account of this injury for services provided by Presence Saint Joseph Medical Center and Physicians Immediate Care. (RX16). The Arbitrator finds that Respondent is entitled to a credit for this and any amounts paid on account of this injury, and that 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.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to causation, including Petitioner's need for ongoing medical care and treatment relative to his left shoulder (see issue "F", supra), the Arbitrator finds that Petitioner is entitled to prospective medical treatment in the form of a referral by treating physician Dr. Singla to Dr. Puppalou for further evaluation of the left shoulder. The Arbitrator declines to award another EMG of the left shoulder at this point, as Petitioner is apparently requesting, based on the recommendation of Dr. Chmell, given that one was only recently performed in January of 2014. However, this denial would not preclude Dr. Puppalou from ordering any reasonable and necessary tests and/or treatment at his discretion once he has had an opportunity to evaluate Petitioner, including the possibility of another EMG if such a need exists.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, THE ARBITRATOR FINDS AS FOLLOWS:

The record shows that Petitioner first sought treatment on the date of the accident, December 6, 2012, at Physicians Immediate Care and that he was released to modified duty at that time. Petitioner did not return to work at that time. Beth Rehm, Respondent's warehouse administrator, testified that Parsec had modified duty available for their employees at that time.

Physicians Immediate Care records show that Petitioner was subsequently released to full duty on December 11, 2013. Petitioner testified that he returned to work on that date and continued to work for Respondent, albeit in pain, for three or four days. He was subsequently taken off work on December 19, 2013 upon his return to Physicians Immediate Care.

Petitioner was then seen by Dr. Singla on December 21, 2012 at which time Mr. Utter was taken off work. Petitioner testified that Dr. Singla never released him to return to work thereafter. Dr. Singla's records contain off work slips dated March 1, 2013 and August 22, 2013.

At the request of Respondent, Petitioner was seen by Dr. David Fletcher on June 28, 2013 for purposes of a §12 examination. Dr. Fletcher opined that at the time of his examination he felt Petitioner could perform at least the light to maybe light-medium work level, which he noted "exceeded the essential functions of his job." (RX14, p.19). Dr. Fletcher went on to state that he would have released Petitioner back to his job at the time of his examination, or at least by January of 2013 "after the initial evaluation and ruling out stuff was done ..." (RX14, pp.19-20).

At the request of his attorney, Petitioner visited Dr. Chmell on July 27, 2013. Dr. Chmell testified by way of evidence deposition on December 19, 2013. Dr. Chmell was also of the opinion that at the time of his examination Petitioner could not "really use his arm in a meaningful fashion" and therefore could not return to his regular job. (PX7, p.15).

In a supplemental report dated March 20, 2014, Dr. Chmell noted that the EMG/NCV performed on January 16, 2014 did not test the serratus anterior muscle or the thoracic nerve of bell, as he had recommended, and that as a result Petitioner's needs as outlined in his deposition "ha[ve] not been yet accomplished." (PX8).

In a supplemental report dated March 24, 2014, Dr. Fletcher noted that he believed the EMG "rules out any brachial plexopathy injury and that Mr. Utter is capable of full employment as it relates to this work injury." (RX19).

Petitioner testified that he has not sought work since his termination in February of 2013.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner was temporarily totally disabled from December 20, 2012 through April 21, 2014, or the close of proofs, for a period of 69-5/7 weeks. As previously noted, the Arbitrator finds that Petitioner is still in need of treatment relative to his left shoulder, specifically in the form of a referral to Dr. Puppalou for further evaluation. Furthermore, the record shows that both Dr. Singla and Dr. Chmell have not yet released Petitioner to return to work, while Dr. Fletcher's release would appear to be based more or less on his opinion that Mr. Utter does not have a brachial plexus injury, as he had originally suspected. Along these lines, the Arbitrator finds the opinions of Drs. Singla and Chmell to be more persuasive.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Based on the above, and the record taken as a whole, the Arbitrator finds that legitimate questions of law and fact existed between the parties in this case, particularly with respect to the questions of causation and Petitioner's ability return to work. As a result, the Arbitrator finds that Respondent's conduct in the defense of this claim was neither unreasonable nor vexatious so as to warrant the imposition of penalties. Therefore, Petitioner's claim for additional compensation pursuant to §19(k) and §19(l) and/or attorneys' fees pursuant to §16 of the Act is hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VIRGILIO CARRENO,

Petitioner,

vs.

NO: 96 WC 50889
96 WC 50890
96 WC 56337

CAMBRIDGE HOMES,

15IWCC0509

Respondent.

DECISION AND OPINION UNDER SECTIONS 19(H) AND 8(A)

This cause comes before the Commission on Petitioner's Sections 19(h) and 8(a) Petition, filed on February 11, 2005. A hearing on Petitioner's Petition was held by Commissioner Tyrrell on July 10, 2014. The issues under the Sections 19(h) and 8(a) Petition are whether Petitioner has established a material increase in his condition of ill being that is causally related to the work accident and whether Petitioner is entitled to additional medical expenses and additional permanent partial disability benefits as a result of the alleged material increase. The Commission, after having considered the entire record, hereby finds that Petitioner failed to prove a material increase in his condition that is causally connected to the work accidents he sustained on March 1, 1995, April 25, 1996 and September 25, 1996, and that Petitioner is not entitled to any additional compensation. Petitioner's Sections 19(h) and 8(a) Petition is hereby denied.

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FINDINGS OF FACT

Arbitrator Galacia originally heard the three cases on December 12, 2001. For case 96 WC 50890, Petitioner alleged he injured his low back on March 1, 1995 when he slipped and fell on ice while traveling between two work sites. The Arbitrator found causation and awarded 2.5% loss of the person as a whole. For case 96 WC 50889, Petitioner alleged he injured his low back and right knee on April 25, 1996 while carrying a heavy oak handrail in strong winds. The Arbitrator found causation for Petitioner's low back but no causation for Petitioner's right knee. For case 96 WC 56337, Petitioner again injured his low back on September 25, 1996 while lifting a box weighing about 75 pounds. The Arbitrator found causation, awarded temporary total disability benefits for 165 weeks and permanent partial disability benefits of 50% loss of the person as a whole.

On September 13, 2002, the Commission affirmed and adopted all three opinions. For 96 WC 50889, the Commission recalculated the medical expenses awarded but otherwise affirmed and adopted the decision. On August 31, 2004, the Circuit Court of Cook Country confirmed the Commission's decisions.

On February 11, 2005, Petitioner filed his Sections 19(h) and 8(a) Petition.

On July 10, 2014, Commissioner Tyrrell held a hearing on the Petition. Since Petitioner last testified in April 2001, Petitioner testified he has not re-injured his low back, left leg or left foot but he has had problems with his back and left leg. Transcript ["T"] at 7, 26.

Petitioner is not employed and has not worked since 1996. T at 6. Petitioner testified he is not able to work but would like to get a job. T at 50. In 2001, Petitioner began collecting Social Security Disability benefits and is still collecting those. T at 50.

After the arbitration hearings and award, Petitioner sought medical treatment on March 14, 2002 with Dr. Lopez. Transcript at 7, PX2. Petitioner said his lower back and left leg were numb. T at 8. Per Dr. Lopez's note, Petitioner complained he had low back pain with shooting paresthesias down the lateral aspect of his thigh to his calf. PX2. On physical exam, Petitioner had a positive straight leg raise on the left. PX2. Dr. Lopez noted an MRI showed an old laminectomy with early degenerative disc disease. PX2. On March 20, 2002, Petitioner had an MRI of his lumbar spine. PX2. The impression was post surgical changes at L4-5 and L5-S1 and no evidence of any disc re-herniation. PX2.

Petitioner began another course of physical therapy on March 27, 2002. PX2. Subjectively, Petitioner reported right radicular symptoms for past three months and complained of low back pain about L4-S1 that is worse in mornings and decreased after some stretching exercises. PX2. The assessment was signs and symptoms consistent with lumbar radiculopathy

with right lower extremity symptoms, decreased lumbar range of motion, and difficulty performing activities of daily life due to pain. PX2.

On May 8, 2002, during Petitioner's physical therapy re-evaluation, he reported his back feels much better, rated his pain at 0/10, stated he only had minimal discomfort if he stood for more than 20 minutes. PX2. The assessment noted Petitioner no longer exhibits significant deficits in his lumbar spine. PX2.

On August 9, 2002, Petitioner went to the Elmhurst Hospital emergency department with complaints of severe low back pain and blood in his urine, and was hospitalized for two days. T at 8, PX4. Petitioner's hospital course focused on treating the blood in his urine. PX4. He had an x-ray and it noted degenerative osteophytosis in his lumbar spine and mild levoscoliosis. PX4.

Petitioner continued to see Dr. Kalsi, his primary care physician, several times between 2001 and 2004 but the records do not reflect complaints of back or leg pain. PX1. Yet, Petitioner testified he continued to experience back and left leg pain in 2003 and 2004. T at 8. On February 13, 2004, Petitioner saw Dr. Kalsi complaining of the same pain. T at 9, PX1. On February 23, 2004, Dr. Kalsi diagnosed Petitioner with chronic back pain. PX1. Dr. Kalsi referred Petitioner to Dr. Frank at CINN Institute. T10.

On May 16, 2004, Petitioner again went to the Elmhurst Hospital emergency department complaining he woke up with pain in his low back that radiated down his left leg and had numbness form his knee to his ankle. PX4. He had a x-ray and the impression was degenerative arthritis of the lumbar spine. PX4.

On May 27, 2004, Petitioner began treating with Dr. Frank. PX1. Petitioner complained of left leg pain and low back pain for the past two weeks. PX1. On physical exam, Petitioner had some weakness over his ankle and some numbness over the great toe, his left leg straight leg raise was positive, and his lumbar range of motion was more painful with forward flexion than extension, but he had pain in both directions. PX1. The impression was to rule out recurrent disc herniation, and the plan was to get an MRI and physical therapy. PX1. On June 8, 2004, Petitioner had an MRI of his lumbar spine. PX1. The impression was: L2-3 disc degeneration, mild central narrowing; L3-4 disc degeneration, tiny left posterolateral outer annual fissure, mild central and foraminal narrowing; L4-5 inferiorly directed left paracentral disc hernation impinging on left L5 nerve root in lateral recess, post laminectomy with mild central narrowing, and mild-to-moderate bilateral foraminal narrowing related to discogenic disease and facet arthrosis; L5-S1 mild disc and facet degeneration, mild-to-moderate left foramen entry zone narrowing, mild right foramen entry zone, and mild development central narrowing of lumbar canal. PX1.

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On June 10, 2004, Dr. Frank gave Petitioner a prednisone taper but he did not experience left leg pain relief. PX1. Dr. Frank noted an MRI showed a left sided L4-5 disc herniation at the site of previous surgery. PX1. On physical exam, Petitioner continued to exhibit signs of L5 radiculopathy. PX1. Dr. Frank recommended a left L5 steroid injection. PX1. Petitioner had the injection on June 14, 2004. PX6. On July 8, 2004, Petitioner told Dr. Frank the injection resulted in 80% improvement in his left leg pain but he still had some numbness in the foot and a bit of weakness in the toe extensors. PX1. The plan was to continue with Petitioner's current medication and start physical therapy again. PX1.

On July 29, 2004, Petitioner told Dr. Frank he had exacerbations of discomfort and on physical exam Petitioner's toe and ankle dorsiflexors were slightly weak and he has numbness over the L5 distribution. PX6. The impression was L5 radiculopathy, slowly resolving, and Dr. Frank recommended an injection and to continue physical therapy. PX6. On August 5, 2004, Petitioner had a second left L5 transforaminal epidural steroid injection. PX6. On August 23, 2004, Petitioner told Dr. Frank he still had intermittent cramping and numbness in his foot but no back pain. PX6. On September 20, 2004, Petitioner saw Dr. Frank and reported improvement to about 80% of normal. PX6. On physical exam the straight leg raise was negative for back or buttock pain but positive for some stretching in the calf region; the impression was L5 radiculopathy. PX6.

On December 2, 2004, Dr. Frank saw Petitioner who complained of persistent numbness in his left leg and toes. PX6. However, Petitioner did not regularly perform exercises, take medication and declined surgery. PX6. Dr. Frank noted Petitioner did not seem to be improving and recommended an EMG. PX6. On December 20, 2004 the EMG impression was evidence consistent with chronic left lumbar radiculopathy possibly affecting L5 and S1 nerve roots. PX6.

On January 17, 2005 Petitioner saw Dr. Frank complaining of persistent left foot numbness and discomfort down the leg in the L5 distribution but much less burning and tingling than previously. PX6. On January 27, 2005 Petitioner had a left L5 transforaminal epidural steroid injection. PX6. Petitioner testified it relieved his pain a little. T at 11.

On February 15, 2005, Petitioner began treating with Dr. Brown. PX6. Dr. Brown recorded that Petitioner had a back injury 10 to 11 years ago and his condition remained unchanged until mid-May of last year when without injury he simply awoke in bed with left-sided low back pain going into the left buttock and down the left leg to the ankle. PX6. Petitioner also reported that after his steroid injection in June 2004, his overall pain improved 75-80% but his two injections in August 2004 and January 2005 were not as helpful. PX6. Petitioner reported continued left-sided low back and left lateral calf pain that was intermittent and mainly associated with walking, which can cause diffuse tingling and a hot feeling in his left leg. PX6. He also reported that since May, he has numbness and tingling in his foot and toes, which was constant and worse with walking. PX6. Petitioner no longer had numbness in his left leg but still

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has diffuse tingling with walking. PX6. On physical exam, Dr. Brown noted Petitioner changed positions and walked fluidly and walked well on his heels and toes; his back range of motion was without pain except for right tilting that was 50% of normal and had increased pain, and he had no lumbosacral tenderness. PX6. On sensory exam, he had decreased sensation in the left L5 dermatome and some decreased reflexes, and his straight leg raise was negative. PX6. Dr. Brown's impression was Petitioner had a chronic left L5 radiculopathy that improved though he continues to have some significant symptoms. PX6. On February 17, 2005, Petitioner had another lumbar spine MRI. PX1. The impression was L2-3 same as previous exam plus minimal foraminal narrowing; L3-4 same as previous exam; L4-5 decreased size of disc herniation relative to previous exam, mild right lateral recess narrowing with disc approaching, but probably not impinging right L5 nerve root in lateral recess; L5-S1 no change. PX1.

On April 11, 2005, Dr. Brown performed surgery on Petitioner's back. T at 13. The diagnosis was chronic left lumbar radiculopathy due to recurrent herniated disc at L4-5 on left. PX1. The operation was left L4-5 laminoforaminotomy and excision of recurrent herniated disk. PX1. The surgical history notes after Petitioner's surgery, his condition was unchanged until mid May 2004 when without injury he woke in bed one day with left sided back pain going into the buttock and down the leg medially and laterally to the ankle. PX1. Petitioner reported numbness and tingling and pain in his leg since then. PX1. Dr. Brown noted multiple MRIs showed disk degenerative changes at L4-5, more so than L5-S1 but no other significant findings were noted except for a developmentally narrow canal. PX1.

On May 23, 2005, Petitioner saw Dr. Brown and reported his bilateral low back pain worsened after walking two to three blocks and he could only stand for about 10 minutes before needing to sit. PX1. Petitioner complained of current left lateral leg pain down to his ankle and though he had no left leg pain in the hospital, Petitioner is unable to say when it recurred; the pain was constant, variable and made worse by walking and standing. PX1. Overall Petitioner reported his left leg pain was improved compared to before the surgery. PX1. On physical exam, Dr. Brown noted Petitioner changed positions and walked in a fluid, nonantalgic fashion except for a very subtle limp on the left. PX1. Dr. Brown's impression was that Petitioner is only slightly better compared to before surgery and did not seem to be doing as well now as in the hospital. PX1.

By November 11, 2005, Dr. Brown noted Petitioner was much improved compared to before the surgery and his pain continued to be activity related and mainly caused by standing and walking. PX1. Petitioner reported he had occasional incisional pain mainly with prolonged walking and standing and occasional pain he described as muscular-type pain in the left thigh, calf and foot. PX1. Petitioner denied true radicular left leg pain and only had numbness and tingling in the first two toes of his left foot, which were precipitated by prolonged walking and standing. PX1. He also reported bilateral low back pain going down his legs to his ankles, left greater than right, with a burning pain. PX1. On physical exam, his range of motion was one-

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third normal in areas except for flexion which was two-thirds normal. PX1. Dr. Brown's impression was that Petitioner has plateaued in the past two months. PX1. Petitioner testified that after surgery, the numbness and pain in his left leg and foot was a little better but still present and his low back was a little better. T at 15. Petitioner said he continued to experience numbness and a sharp pain but to a lesser extent than before surgery. T at 15.

In 2006, Dr. Kalsi referred Petitioner to Dr. Koutsky at Elmhurst Orthopedic. T16. On January 27, 2006, Petitioner saw Dr. Koutsky for mid-thoracic pain with some radiation around the right chest area. PX5. Petitioner reported his symptoms began about three weeks ago without any specific trauma. PX5. On physical exam, Dr. Koutsky found some mildly decreased pinprick sensation in Petitioner's left foot. PX5. The assessment was the thoracic spine and right shoulder pain. PX5. Petitioner then had additional physical therapy for his low back. PX5.

Petitioner testified he continued to have low back and left leg pain in 2007 and 2008. T at 16-17. From March through July 2008 Petitioner saw counselor Anne Benson-Wleklinski for depression due to his pain and inability to work. T at 17. During the first visit on March 12, 2008, Petitioner voiced frustration and questioned his worth due to not working and he was anxious to get back to work in some capacity. PX9. She eventually referred Petitioner to a psychiatrist for depression. T at 17. During the last visit on July 28, 2008, Ms. Benson-Wleklinski noted Petitioner was smiling more, seemed happier and was improved. PX9. From March through July 2008 Petitioner sought psychiatric treatment at West Suburban Multi Specialty. T at 18. He was prescribed medication and continues to take his prescription. T at 18.

Throughout 2008, Petitioner continued to see Dr. Kalsi for his low back and depression. T at 18.

On March 16, 2009, Petitioner saw Dr. Kanter and reported he was without significant low back pain and doing really well, but recently started developing low back pain with some discomfort into the left leg in non-sciatic distribution. PX11. Petitioner detailed that if he walked for more than four blocks, his left leg felt numb and his leg and low back began to hurt him and if he sat for more than 20 to 30 minutes, he had to get up and stretch. PX11. On physical exam, Petitioner could walk heel-toe and on both heels and toes and had some diminished sensation in the L5 distribution to the left. PX11. He had no ankle reflex and the straight leg raise test was negative. PX11. Dr. Kanter wrote Petitioner had degenerative disc disease at L4-5 and L5-S1 and slight degenerative scoliosis on the AP but the back appeared generally stable with flexion-extension. PX11. Dr. Kanter opined this simply represented degenerative disc disease with a referred non-nerve root type of pain. PX11. On March 17, 2009, Petitioner had an MRI of his lumbar spine with the impression of multilevel degenerative changes with foraminal narrowing, disk bulging and degenerative spurring with a superimposed left lateral/foraminal disk herniation at L4-5 not excluded. PX11.

In 2009, Petitioner testified he continued to have low back and left leg pain and went to physical therapy in the spring for his complaints. T at 19.

On January 18, 2010, Petitioner went to the Alexian Brothers Medical Center emergency department where he reported he has a history of a sprained neck and his pain was worse and hurt his shoulders and back with movement. PX12. Petitioner reported his pain at 8/10. PX12. The history notes Petitioner woke up with mild back pain, then turned his neck and the pain became worse, like prior pain but no radicular symptoms or other complaints. PX12. On physical exam, he had tenderness to the left paraspinal muscle. PX12. He was diagnosed with a strain to his thoracic spine. PX12.

On September 13, 2010, Petitioner saw Dr. Kalsi complaining of pain all over his body, being very stiff in the morning, inability to sleep, fibromyalgia and depression. PX1. From 2010 to 2013, Petitioner continued to see Dr. Kalsi for low back and left leg pain. T at 19-20.

In 2012 Petitioner was in Texas when a tree fell on him; he agreed that he had some fractures in his low back from the incident. T at 39. Petitioner testified the tree branch hit his face and he injured his cervical spine, face and head – his lumbar spine was not involved. T at 62. Petitioner testified the doctors in Texas said he was fine and further treatment beyond pain medication was not necessary. T at 39.

On August 23, 2012, Petitioner visited Dr. Kinzler and reported several weeks ago a tree fell on him and he had some low back fractures, but received treatment in Texas and was told nothing further needed to be done and he should recover without incident. PX1. Petitioner reported feeling better and being fully active. PX1.

On August 24, 2012 Petitioner treated with Dr. Davalle. PX1. The history recorded Petitioner suffered some trauma while in Texas about three weeks ago when a tree branch hit his head. PX1. He lost consciousness and had some facial fractures. PX1. It notes Petitioner had very little memory of the accident and has some associated spinal fractures. PX1.

On May 27, 2013 Petitioner fell off a ladder. T at 39, PX1. Petitioner testified he was only on the fourth step and just fell two feet. T at 40. Petitioner agreed he was cleaning gutters and the Addison Fire Department came and provided him emergency treatment. T at 40. Petitioner testified he did not receive treatment for that incident. T at 63. Yet records from Elmhurst Memorial Hospital show Petitioner sought treatment the same day. PX1. X-rays were taken of his left foot, left shoulder and ankle that were in pain after the fall. PX1.

In April, May and June of 2014, Petitioner received injections. T at 20. He testified experiencing very little relief from the injections. T at 22. Petitioner was taking Hydrocodone and Gabapentin at the time of the hearing for his low back and left leg pain. T at 22-23.

On September 9, 2013, Dr. Kornblatt performed a Section 12 exam of Petitioner. RXA. Petitioner complained of constant low back pain that was worse with activity and intermittent left leg pain with left leg numbness. RXA. He said his pain was worse with sitting or standing for more than 30 minutes and walking more than 20 minutes but he did not partake in significant exercise. RXA. On physical exam, Petitioner had tenderness with palpation of all lumbar spinous processes, bilateral lumbar paraspinal muscles and bilateral posterior superior iliac spines. RXA. His gait was slow but functional and he was able to walk on his heels and toes. RXA. Petitioner's sensory exam was diminished in the dorsum of his left foot, and FABER and Patrick tests caused subjective complaints of pain to his low back bilaterally. RXA. Dr. Kornblatt took an x-ray that showed degenerative disc disease at all levels, but mostly at L4-5, which was secondary, in part, to the multiple surgeries he had at that level. RXA.

Dr. Kornblatt opined Petitioner's current complaints are not related to his work injury and Petitioner's disability from his work injury ceased a year after the first surgery, which was performed in March 1997. RXA. Dr. Kornblatt stressed Petitioner presented with subjective complaints of mechanical low back pain, referred left leg pain, possible nerve root scarring with radiculopathy, with sciatic symptomatology but his physical exam failed to reveal abnormal objective findings, except for slight atrophy of the left leg. Dr. Kornblatt added that Petitioner's medical treatment after the arbitration was unrelated to the work incidents. RXA. Since 2001, Petitioner's lumbar condition is consistent with multi level degenerative disc disease and while it is possible that the degenerative disc disease has worsened over the past 12 years, that it would be related to the natural course of his lumbar degenerative disc disease and not related to previous trauma or treatment. RXA.

Dr. Kornblatt further opined Petitioner is not permanently disabled as he presents with minimal abnormal objective findings on physical exam. RXA. He testified Petitioner could work within the light to medium physical demand level, frequently lifting 15 pounds and occasionally lifting 30 pounds due to his diagnosis of longevity of inactivity, de-conditioned state and lumbar degenerative disc disease after several surgeries. RXA. Dr. Kornblatt explained Petitioner's alleged unemployment is related to his subjective complaints and history of multiple medical conditions including cardiac disease, prostate cancer, multiple lumbar spine surgeries and prolonged inactivity. Finally, he opined Petitioner's disability has not increased since 2001. RXA.

Petitioner testified that at the time of the hearing, he had a lot of pain in his low back that feels hot and numb, which has been constant since April 2001 and has worsened. T at 26-27. Petitioner said he can walk for 15 minutes before his back gets hot and he gets a sharp pain and numbness, and he can walk about three or four blocks. T at 28. Petitioner said he can stand for 10 to 15 minutes before he gets pain in his low back in the area where he had surgery. T at 28. Petitioner also testified he can sit for about 20 minutes before he gets the same hot, sharp and

numb pain. T at 29. Petitioner testified he can drive for an hour and a half but has to move every five minutes or so. T at 57. He also has trouble lifting and he can pick up 15 to 20 pounds; if he tries to lift more than that, his back burns and he gets pain and numbness in his left leg. T at 29.

Petitioner also testified to the problems he experienced in his left leg at the time of the hearing. He said he has problems in his left leg when he stands for more than 15 to 20 minutes; he experiences numbness and pain from his lower back all the way down his leg to his toes when he stands for that long. T at 30. Petitioner said he does not experience difficulty sitting with respect to his left leg. T at 31. Petitioner testified that overall his left leg pain is better, but it still hurts a lot and is not 100%. T at 32.

Overall, Petitioner testified his pain improved about 40% following surgery. T at 32. Petitioner described difficulties he has in his activities of daily living, including using the bathroom, sneezing, bending, walking and driving for an extended time. T at 33. He said he has difficulty mowing the lawn and performing yard work, which he can force himself to work for about 30 minutes. T at 33. Petitioner also testified that he is unable to wash the dishes because he cannot stand in one position for too long and cannot bend down to mop the floors. T at 34. Petitioner testified there are many activities he is unable to perform or has trouble with because it bothers his back and leg but he was unable to go into greater detail. T at 35.

Petitioner continues to take medication, he also performs stretching and exerices at his home. T at 35. He said he stretches and exercises every morning when he wakes up, in the afternoon about 2:00 p.m. and before he goes to bed. T at 36 Petitioner testified the exercises calm the pain for a bit. T at 36.

CONCLUSIONS OF LAW

The Commission denies Petitioner's Sections 19(h) and 8(a) Petition. We hold that Petitioner failed to establish that his current condition is causally related to the original accident and failed prove an increase in disability, as required per the Act. While Petitioner continued to seek treatment, it appeared to be in the same manner as before the arbitration hearing. The records from 2002 specifically state there is no evidence of a new or recurrent herniation and he was diagnosed with post surgical changes to his lumbar spine.

Petitioner's medical records do not reflect a steady course of treatment and are inconsistent with Petitioner's testimony of continued and extreme low back and leg pain. Petitioner voiced no low back complaints in 2003. Then in May 2004 Petitioner's low back complaints spontaneously returned when he woke up in the middle of the night. The records specifically noted that no accident or incident occurred, but that the pain was spontaneous. This occurred about nine years after the original injury and several years since his last back surgery. When Petitioner was initially released in 2005 his condition had clearly improved. Then from 2005 until 2012, Petitioner's treatment was sporadic with large gaps of time between visits for

non-specific pain complaints. The records show a pattern of Petitioner complained of terrible and dramatically increased pain, received treatment and reported significant improvement. Overall his medical records reflect he was doing well. The medical records show that Petitioner was drastically improved to about 80% of his normal and his physical therapy records reflect that he can perform his activities of daily living with only some minor issues. But at the same time, Petitioner testified that he continued to experience "extreme pain." During this time Petitioner was also receiving extensive treatment for other health issues – namely prostate cancer and some complaints of abdominal pain. His several records focus on his cancer and abdominal pain; they also consistently state he has a history of back surgery but fail to record that Petitioner continued to experience "extreme" issues form his back and left leg. The medical records reflect that Petitioner suffers from extensive degenerative disc disease, which would be part of the aging process and the result of surgical changes to his spine – they do not show that Petitioner's disability changed or increased.

Petitioner alleges he is severely disabled and extensively explains how his activity is limited to 15 to 30 minute intervals before he must take a break or change positions. However, several records have demonstrated that Petitioner is capable of performing beyond the limits he claims to have, which calls Petitioner's credibility into question. Petitioner claims he cannot sit for more than 20 minutes but he was able to either drive or fly to Texas in 2012. A tree branch fell and struck Petitioner on the head, neck and shoulders while in Texas that caused fractures in his low back. Additionally, in 2013 Petitioner was cleaning the gutters when he fell from a ladder that resulted in possible loss of consciousness and low back injury. Even if Petitioner did not injure his back in this incident, it shows that Petitioner is capable of performing physical activity to a greater extent than he claims. Petitioner would not have been physically capable of cleaning the gutters if he were in as much pain and as limited as he claims. Petitioner's testimony about his terribly worsened physical condition occurred after the 2012 and 2013 incidents, which cut off causation. Further, no doctor limited Petitioner's physical capabilities during treatment per the medical records. Again, Petitioner failed to meet his burden to prove his disability changed or increased as required in the Act.

Petitioner failed to prove that his current low back and leg issues remain causally connected to his work accidents. None of Petitioner's treating physicians offered the opinion that Petitioner's current back and leg issues are related to or a direct result from his work injury, or have worsened since 2001. Petitioner's work injuries occurred almost 20 years ago and many of the changes seen in his low back are the result of the natural aging process from having a previous back injury, as demonstrated in Petitioner's multiple x-rays and MRIs that describe extensive degenerative disc disease. While Dr. Brown described Petitioner's disk herniation as "recurrent," he failed explain how Petitioner's disc herniation recurred and did not opine that the condition was related to the work injury. Instead, Dr. Kornblatt opined that Petitioner's current condition is not causally connected. Dr. Kornblatt testified that he believes Petitioner's 2005 disk hernation is not related to his work injuries but instead likely due to his lumbar degenerative disk

15IWCC0509

disease. Simply, no treating physician over the past 13 years has causally related any of Petitioner's medical treatment with respect to his lower back to his prior work injuries. Petitioner did not prove a causal connection.

After reviewing the entire record, the Commission finds that Petitioner did not prove his current condition of ill being is causally connected to his work accident, his condition has recurred or increased, and did not prove that he is entitled to additional medical expenses or treatment. Therefore, Petitioner's Sections 19(h) and 8(a) Petitions are denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Sections 19(h) and 8(a) Petitions are denied.

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: JUL 6 - 2015
TJT: kgg
R: 5/5/15
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Emilio Corripio,

Petitioner,

15IWCC0522

vs.

NO: 11 WC 22366

Downey Investments, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 9, 2015 is hereby affirmed and adopted.

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

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

15IWCC0522

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUL 8 - 2015

David L. Gore

DLG/gaf
O: 6/25/15
45

Stephen Mathis

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0522

CORRIPIO, EMILIO
Employee/Petitioner

Case# **11WC022366**

DOWNEY INVESTMENTS INC
Employer/Respondent

On 1/9/2015, 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 0.11% 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:

0346 WARREN W MARK PC
205 W RANDOLPH ST
SUITE 840
CHICAGO, IL 60606

1596 MEACHUM STARCK & BOYLE
STEVEN SCHUETZ
225 W WASHINGTON ST SUITE 1400
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

15IWCC0522

EMILIO CORRIPIO
Employee/Petitioner

v.

DOWNEY INVESTMENTS, INC.
Employer/Respondent

Case # 11 WC 22366

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Steven Fruth**, Arbitrator of the Commission, in the city of **Chicago**, on **11/14/2014**. By stipulation, the parties agree:

On the date of accident, **05/12/2011**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**22,146.75**, and the average weekly wage was $**434.25**.

At the time of injury, Petitioner was **46** years of age, ***married*** with **1** dependent child.

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

Respondent shall be given a credit of $**2,853.66** for TTD, $**0** for TPD, $**0** for maintenance, and $**73,362.12** for other benefits, for a total credit of $**76,215.78**.

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

ORDER

Respondent shall pay Petitioner the sum of **$260.55**/week for a further period of **84.24** weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused **52% loss of use of the left eye..**

Respondent shall pay Petitioner compensation that has accrued from **05/12/2011** through **11/14/2014**, and shall pay the remainder of the award, if any, in weekly payments.

The parties stipulated that all medical bills have been paid pursuant to the fee schedule at a negotiated rate, and if any bills are not paid, they will be paid by the Respondent.

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

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

Signature of Arbitrator

JAN 6, 2015
Date

JAN 9 - 2015

Emilio Corripio v. Downey Investments, Inc.
11 WC 22366

15IWCC0522

Introduction

This matter proceeded to trial before Arbitrator Steven Fruth on November 14, 2014. The only issue in dispute was the nature and extent to Petitioner's injury. Evidence was presented at trial by sworn testimony of Petitioner. Documentary evidence was presented by the parties as exhibits: Chicago Ophthalmology, P.C. (PX 1), evidence deposition of Gregory Doren, M. D. (PX 2), Wheaton Eye Clinic (PX 3), Central DuPage Hospital (PX 4), evidence deposition of Carrie Golden-Brenner, M.D. (RX 1), and Dr. Jeffrey R. Haag (RX 2).

Findings of Fact

At trial Petitioner testified that on May 12, 2011, he was employed by Respondent as a mechanic helper. While working on May 12, 20111, something went into his left eye. He was initially treated at Loyola Hospital but then came under the care of Dr. Mark J. Daily at Wheaton Eye Clinic. Petitioner later came under the care of Dr. Gregory Doren.

At present Petitioner has vision problems. He did not have vision problems before his injury. He has blurry vision in his left eye. He has tearing and discomfort in his left eye every morning. He has double vision when trying to see with both eyes. He cannot drive because of the double vision. He returned to work without restrictions in July 2011.

Petitioner was admitted to Central DuPage Hospital under the care of Dr. Mark J. Daily on May 14, 2011. Petitioner presented with a history of a work related foreign body in his left eye. Dr. Daily operated on May 15, at which time he removed the foreign body, removed the lens and did an air-fluid-gas exchange of the vitreous fluid.

Dr. Daily operated on Petitioner again on May 27, 2011, at Central DuPage Hospital for repair of a retinal detachment in the left eye.

Petitioner saw Dr. Daily again on June 14, 2011. Petitioner's visual acuity then was 20/200. Dr. Daily found a retinal tear in the left eye which he successfully repaired with laser photocoagulation on June 16.

In post-surgical follow-up Petitioner's visual acuity varied from 20/50 to 20/200, settling in at 20/80 corrected with contact lens by November 29, 2011.

Dr. Daily forwarded a narrative letter to Petitioner's attorney on November 1, 2012. He noted that Petitioner had returned on May 29, 2012. Petitioner's visual acuity then was "2/200". On his last visit Petitioner's visual acuity was still "2/200". Dr. Daily stated that he did not understand why Petitioner's acuity had deteriorated. He went to state that Petitioner had a very severe injury consistent with his history. Petitioner has a "permanent loss of vision in his left eye, which is uncorrectable."

Dr. Doren saw Petitioner November 2, 2011, on referral from Dr. Green. Petitioner consulted with Dr. Doren through June 19, 2013. His records consisted of clinical chart notes and his narrative letter addressed to Petitioner's attorney. The clinical chart notes are handwritten and are difficult to decipher. In the letter to Petitioner's attorney Dr. Doren recited Petitioner's history of injury and treatment. On exam he found that Petitioner could see counting fingers with the left eye without

correction from 1 to 3 feet. Petitioner's visual acuity varied widely, 20/60 to 20/200 (although the clinical notes documented 20/800), over the course of Dr. Doren's consultations. Petitioner requires unusually strong lenses for the left eye to account for the loss of his natural lens. Due to the extreme difference in acuity of the eyes eyeglasses are not a viable option for correction of Petitioner's eyesight. Alternative treatment would implantation of a secondary lens. He also noted Petitioner's dry eye. Dr. Doren did not document any complaint of double vision, but noted in his letter that he would not be surprised of such a complaint due to the nature of the injury.

In his letter Dr. Doren stated he believed that all of Petitioner's symptoms were related to his eye injury. Petitioner is at increased risk of developing glaucoma, retinal detachment and infection due to dry complications with contact lens use. In the end Petitioner deferred a decision on his follow-up care.

Dr. Doren went further in his letter to offer his opinion that a settlement offer to Petitioner was inadequate at 25% due the need for lifelong eye care and a clinical presentation at times amounting to legal blindness.

Petitioner saw Dr. Jeffrey Haag on referral by "MJD" (presumably Dr. Daily). The chart notes for consultations on January 16, 2013 and March 21, 2013 are handwritten and difficult to decipher.

On the January 16 visit Petitioner presented with complaints of reduced visual acuity in the right eye for 6 months. Dr. Haag found no reason for the vision loss complained of. Petitioner was seen again on March 21, 2013. He again complained of right eye vision loss. Again Dr. Haag found no reason for the vision loss complained of. He suspected a "non-organic (*undecipherable*) visual loss".

On each visit Dr. Haag wrote that he sent a note to MJD. Dr. Haag's notes to MJD were not incorporated in PX 3, Wheaton Eye Clinic records.

Dr. Gregory Doren evidence deposition, February 4, 2014 (PX 2)

Dr. Doren's testimony was largely consistent with Petitioner's records, see above. He saw petitioner on referral from Dr. Green. Dr. Green forwarded Petitioner's records but those records were not admitted in evidence nor referred to at deposition.

Dr. Doren first saw petitioner on November 2, 2011. Petitioner's history included the injury sustained by a foreign body in the left eye which required surgical removal and which involved surgical removal of the left eye lens. Petitioner also had a retinal detachment which also required surgical repair. Petitioner also had a healed corneal scar as a result of the injury and surgeries. Over time Petitioner also complained of right eye double vision.

Dr. Doren treated Petitioner through 2013. Through a variety of testing tools he noted that Petitioner's visual acuity in both eyes varied from one consultation to another. Left eye acuity ranged, depending on the test, from 20/60 to 20/400; right eye acuity ranged from 20/25 to 20/100. Over time Petitioner's ability to count fingers without correction ranged from 1 foot to 4 feet. Dr. Doren had no specific opinion as why there was such variation but did note it may be explained by the patients' lack of cooperation of full effort or from differences in the examining room environment. He reviewed Dr. Haag's chart notes but did not assess Petitioner for malingering himself.

Over the course of care Petitioner complained of double vision in his right eye. Dr. Doren found no clinical reason for that complaint. On April 4, 2012, Petitioner

presented with a corneal abrasion that had not been previously noted. Dr. Doren did not comment on whether that was related to Petitioner's original injury. Petitioner also developed corneal erosion, but Dr. Doren did not believe that was related to the original injury.

Petitioner's prognoses include increased risk of developing glaucoma or sustain another retinal detachment. Also, Petitioner is at greater risk of cells at the back of the cornea deteriorating. Petitioner has corrective treatment options of use of a contact lens or a lens implant. Petitioner had not had success with contact lenses in the past. As of his last consult with Dr. Doren Petitioner stated he did not want the implant surgery. Dr. Doren did not put any work or driving restrictions on Petitioner.

Dr. Carrie Golden-Brenner evidence deposition, June 4, 2014 (RX 1)

Dr. Golden-Brenner examined Petitioner June 3, 2013, at Respondent's request pursuant to § 12 of the Act. Her report, dated June 17, 2013, was admitted into evidence on Petitioner's waiver of hearsay. Petitioner did not waive any objections to facts or conclusions set forth in the report. She acknowledged that her exam was somewhat limited due to the absence of an interpreter, although she stated her own command of Spanish was good.

Prior to her examination of Petitioner Dr. Golden-Brenner reviewed Petitioner's records from Dr. Mark Dailey, Dr. Gregory Fenton, CT scan report, Dr. de Alba progress note, operative reported from Central DuPage Hospital and DuPage Eye Surgery Center, Mercy Hospital Ambulatory Services, and Dr. Haag. She also reviewed a letter from Dr. Doren, handwritten notes for Dr. Haag, and a settlement offer letter from Liberty Mutual Group. During the § 12 exam, which lasted 5 ½ hours, she performed visual vision testing, including: measurement of corneal curvature, eye muscle movement, Worth 4 Dot Test, depth perception, visual field tests, color vision testing, Amsler grid, tear film stability, interocular pressure, and slit lamp examination. She noted eye position in the orbits. Dr. Golden-Brenner also assessed Petitioner for malingering.

At the examination Petitioner complained that he had double vision in his right eye for the previous 6–8 months and that he could only see light with his left eye. Dr. Golden-Brenner's diagnoses were: right eye – early cataract, blepharitis, and keratoconjunctivitis; left eye – healed corneal laceration, surgically removed interocular foreign body, removed traumatic cataract, detached retina with surgical repair by scleral buckle and vitrectomy resulting in retinal scarring, and incidental blepharitis and keratoconjunctivitis. Petitioner was also aphakic (having no lens) in the left eye.

Dr. Golden-Brenner opined that Petitioner did not sustain any injury to his right eye due to the work-related accident. She found no objective evidence that Petitioner had double vision or loss of vision in his right eye. The blepharitis and keratoconjunctivitis (inflammatory processes) were bilateral and therefore were incidental and not caused by the work-related accident.

Based on the entirety of her exam of Petitioner Dr. Golden-Brenner came to a clinical impression that Petitioner's eyesight was better than what he reported. She emphasized the reliance on subjective responses from the patient in any eye exam. Her impression, not stated within a reasonable degree of certainty, was due to inconsistencies between Petitioner's subjective reports about his eyesight and certain objective findings such as normal curvature of the corneas. She particularly took note of

Petitioner's current ability to work and his ability to move about her office at the time of the exam. Even so, Petitioner sustained an interocular foreign body which caused a traumatic cataract, a corneal scar which was healed, and a retinal detachment requiring surgery but with residual retinal scarring. Also, Petitioner is without a lens in his left eye. In her opinion all were causally related to his workplace injury.

Dr. Golden-Brenner opined that with correction Petitioner would have 20/20 vision in his right eye. Without correction his vision is between 20/25 and 20/40. Petitioner's left eye could be corrected with contact lenses or a lens implant. She opined that Petitioner's left eye corrected vision would be 20/40 to 20/50. According to Dr. Golden-Brenner Petitioner was not legally blind.

Dr. Golden-Brenner came to a 19.8 AMA impairment rating. She further found that Petitioner had achieved MMI by the time of her § 12 examination.

Conclusions

It is not disputed that Petitioner sustained a serious and permanent injury to his left eye. That injury required 3 separate surgical interventions. Follow up care demonstrated variable findings with regard to Petitioner's eyesight and visual acuity. The Arbitrator takes note of the subjective nature of eye examinations. The examiner must necessarily rely on the accuracy of the patient's report "I can see that line of the chart but not the lower line." In that vein the Arbitrator gave greater weight to the questions of a non-organic basis of the Petitioner's presentation noted by Dr. Haag and also to the exhaustive IME conducted by Dr. Golden-Brenner than to the opinions of Petitioner's treating physicians.

The Arbitrator takes note that treating physicians must necessarily rely on their patient to accurately and truthfully report their history and subjective complaints. In the normal course the treating physician takes these reports at face value. To do otherwise would impede the care of the patient, unless inaccuracies or inconsistencies become apparent as they did here. Dr. Haag noted inconsistencies that Dr. Doren and Dr. Daily either did not notice or comment on. Dr. Doren did state he did not understand the deterioration of Petitioner's right eye eyesight but apparently did not suspect the non-organic basis suspected by Dr. Haag. Dr. Doren did note that the variability of Petitioner's visual acuity could be explained by lack of cooperation or lack of best efforts in testing. Dr. Doren's opined that Petitioner's vision loss could be improved with the implantation of an artificial lens.

The Arbitrator takes note of the bias of Dr. Golden-Brenner as an expert retained by Respondent. Even so, the thoroughness of her examination and the cross checking components of her exam lend greater weight to her opinion that Petitioner's eyesight was better than reported. This finding is further supported by the fact that Petitioner returned full time to his previous job in July 2011, which belies any opinion of "legal blindness". Dr. Doren gave no restrictions for work or for driving. The Arbitrator gave no weight to Dr. Golden-Brenner's AMA impairment rating inasmuch as Public Act 97-18 was not in effect at time of Petitioner's injury.

The Arbitrator further finds that Petitioner was not entirely credible. There is a clear record of his embellishment of complaints. The Arbitrator further finds that Petitioner returned to work about 3 months after his injury and continues to function in the job he held before his injury.

In light of the foregoing the Arbitrator finds that Petitioner sustained 52% loss of an eye as a result of the permanent partial disability of his left eye causally related to his workplace injury on May 12, 2011. The Arbitrator finds that Petitioner did not sustain his burden of proof that he sustained any injury or condition of ill-being to his right eye as a result of his May 12, 2011 work-related injury.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

REGINA JOHNSON,

Petitioner,

vs.

NO: 84 WC 18220

15IWCC0526

HANES DSD, & THE TREASURER OF THE STATE OF ILLINOIS, AS EX-OFFICIO CUSTODIAN OF THE RATE ADJUSTMENT FUND,

Respondent.

DECISION AND OPINION ON REMAND
FROM THE CIRCUIT COURT OF COOK COUNTY

The Commission is in receipt of an Order and Opinion from the Circuit Court of Cook County, relative to the above captioned matter, under its case number 12 L 050309, by which it remanded the Decision of the Commission under its case number 10 IWCC 1058, reversing and remanding the Commission's decision with respect to rate adjustment fund ["RAF"] benefits and instructing the Commission to authorize the continued payment of RAF benefits to Petitioner backdated to May 18, 2010, the date Petitioner stopped receiving RAF benefits.

On October 25, 1989, the Arbitrator awarded Petitioner permanent and total disability benefits of $184.53 per week for life, which triggered RAF benefits. On March 10, 1992, the Commission entered a corrected decision and denied reimbursement for certain unpaid and self-paid medical expenses. It otherwise affirmed and adopted the decision. On April 5, 1993, the Circuit Court affirmed the decision.

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On July 15, 1993, Petitioner became eligible for annual cost of living adjustments to be paid by RAF. On December 14, 1993, the Appellate Court affirmed the previous decisions and denied Petitioner's argument that her chiropractic expenses were compensable.

On May 23, 2001, the parties executed a lump sum settlement agreement. The Commission approved the contract for $95,000.00 plus structural payments over 25 years on June 5, 2001. The contract provided the structural annual payments "represent reimbursement for the anticipated future cost of prescription medication, annual health club memberships, physical therapy in a health club setting, massage therapy, acupuncture, vocational counseling, vocational evaluation and vocational rehabilitation ..." On May 18, 2010, the Deputy General Counsel sent Petitioner a letter stating that since she entered into a settlement contract, her RAF payments were to be suspended effectively immediately.

On September 16, 2010, Petitioner filed a Petition for Penalties and Attorneys' Fees. On March 16, 2011, Petitioner filed a Motion to Reinstate her RAF Benefit Payments.

Commissioner Gore held a hearing on the matter on June 28, 2011. A panel of Commissioners Tyrrell, Donohoo and Lamborn issued a decision on February 10, 2012, denying both of Petitioner's Motions. The Commission found the structural annual payments are not paid for permanent disability and found Petitioner was not entitled to RAF benefits under §8(g) because both conditions of disputed liability and compromise lump sum settlement were satisfied.

On October 16, 2014, Judge McGing reversed and remanded the Commission's Decision. The Court noted this was a case of first impression and applied the *de novo* standard of review. The first prong of §8(g) requires the determination of whether there is disputed liability at the time the settlement is entered; the second prong terminates RAF benefits only if there is a compromise lump sum settlement between the employer and injured employee. The Court found there was no dispute as to liability at the time the Settlement Agreement was entered into on June 5, 2011. The Court found the Commission erred as a matter of law and fact when it found that because the claim was disputed when the Arbitrator's decision was filed, this satisfied the first prong. The Court also found the Commission's decision was clearly erroneous with respect to the second prong. The Court found that before the prohibitory language of §8(g) triggers, there must be a compromise single payment in lieu of future installments, however, that was not the case in the instant matter. The Settlement Agreement at issue did not contemplate a single payment in lieu of future installments. The Court held that the title of the document does not automatically make the agreement a compromise lump sum but the Court is to look at the language and effect of the Agreement to determine if it is a really a lump sum settlement. It ordered the Commission to reinstate Petitioner's RAF payments backed dated to May 18, 2010.

Therefore, the Commission reinstates Petitioner's RAF payments dating back to May 18, 2010, as ordered by the Circuit Court.

15IWCC0526

Further, the Commission denies Petitioner's Petition for penalties under §19(k) and §19(*l*) and attorneys' fees under §16. The Commission is not the employer in this matter. Penalties and attorneys' fees as contemplated in the Act are generally assessed against the employer and target the employer's conduct for deliberately and vexatiously refusing to pay the claimant the compensation due and owing. Additionally, penalties under §19(k) and §19(*l*) are specifically awarded when the employer fails to pay compensation according to provisions of §8(a) or §8(b). Section 8(a) determines medical expenses the employer shall pay and §8(b) determines temporary total disability benefits. RAF benefits do not fall under the purview of either §8(a) or §8(b). Thus, there is no statutory ability for the Commission to assess penalties under §19(k) or §19(*l*).

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to RAF payments dating back to May 18, 2010.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is not entitled to penalties under §19(k) and §19(*l*) or attorneys' fees under §16.

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.

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: JUL 9 - 2015
TJT: kgg
R: 5/11/15
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

☒ 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

Lance D. Champlain,

Petitioner,

vs.

NO: 09 WC 28817

15IWCC0527

Pontiac Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 22, 2014 is hereby affirmed and adopted.

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

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

DATED: JUL 9 – 2015
MJB:ell
o-03/10/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CHAMPLAIN, LANCE
Employee/Petitioner

Case# **09WC028817**
09WC028816

PONTIAC CORRECTIONAL CENTER
Employer/Respondent

15IWCC0527

On 7/22/2014, 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 0.05% 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:

0190 LAW OFFICES OFPETER F FERRACUTI
THOMAS M STROW
110 E MAIN ST
OTTAWA, IL 61350

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

5300 ASSISTANT ATTORNEY GENERAL
CODY KAY
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JUL 22 2014

DONALD A. TABERA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

☐ 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

Lance Champlain
Employee/Petitioner

15IWCC0527

Case # 09 WC 28817

v.

Consolidated cases: 09 WC 28816

Pontiac Correctional Center
Employer/Respondent

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 **Gregory Dollison**, Arbitrator of the Commission, in the city of **Bloomington, Illinois**, on **May 30, 2014**. 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 **March 20, 2009**, 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 his employment.

Petitioner's current condition of ill-being *is* causally related to the accident of March 20, 2009.

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

In the year preceding the injury, Petitioner earned $**52,000**; the average weekly wage was $**1000**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **0** dependent children.

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

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

ORDER

Respondent shall pay reasonable and necessary unpaid medical services of $14,401.00, as provided in Sections 8(a) and 8.2 of the Act, as well as reimbursement to Petitioner of $65.00 for Petitioner's out-of-pocket expenses. Respondent shall be given a credit of $3,995.12/$5,406.88 adj. for medical benefits that have been paid by both its workers' compensation, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $664.72/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.

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

7/22/14
Date

ICArbDec p. 2

JUL 22 2014

FINDINGS OF FACT:

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Petitioner, Lance Champlain, has been employed by Pontiac Correctional Center since May 7, 1984. He had been employed as a correctional officer for 20 years. Petitioner testified that he was temporarily assigned to the supply department sometime in the first half of the decade in the 2000's.

Petitioner testified that he also worked in the commissary where residents and inmates could shop. He said that inmates would come to a window with a box of items they would like to buy. In the past, Petitioner would determine how much money each inmate had, add it on the computer, and take it off the books. After some time, this process was changed to where Petitioner would use a scanner ID.

Petitioner testified that he would sometimes use a handheld scanner, but there was also a bar on the desk that he could utilize to scan items as well. If holding the item, Petitioner described that he would use both hands to pick up an item and swipe it over the scanner. Petitioner testified that he is right hand dominant, and he demonstrated that he would scan items using a left to right swiping motion.

Petitioner testified that he typically worked 8 hours per day. He testified that a good portion of his day would be spent typing, as that was really his only job in the commissary. Sometimes he would also fill boxes, staple them, and deliver them. Such orders were made and delivered throughout the week.

On March 20, 2009, Petitioner was working on the receiving dock. He testified that he had been reassigned to the receiving dock because a coworker had recently retired. Petitioner testified that typically, he would work at the receiving dock from 12 p.m. until 2 p.m., and then he would continue to work until 4 p.m. in the commissary.

Petitioner testified that at the receiving dock, he would use a forklift to unload and distribute the goods to wherever they needed to go throughout the prison. Petitioner provided that this particular forklift is propane operated with 12 tanks. On this day, he loaded them and took them to be filled so they would have some gas. Petitioner testified that the propane tank weighed between 75-100 pounds. Petitioner stated that as he lifted same, he pulled a muscle on his right shoulder.

Petitioner testified that he had no pain in his right shoulder or neck prior to this incident. He stated that he did not immediately report this to his supervisor because he didn't think it was that bad of an injury initially. Ultimately, Petitioner filled out an incident report with his employer on April 21, 2009, which states that the pain had gotten worse since the accident and his right hand was going numb. (PX 16)

Petitioner testified that between March 20, 2009 and April 21, 2009, he was never completely symptom free and had no incidents or accidents at home. He described the pain as excruciating and said it felt like a lump formed and came on. He said the pain came on while he was at work, and the location of the pain was exactly the same as it was on the date of the accident.

Petitioner saw his family physician, Dr. John Purnell, on April 21, 2009 with regards to this condition. Petitioner reported that he had been feeling severe pain and "can't really stand it." (PX 7 at 24) On April 27, 2009 Petitioner returned with numbness in his right arm that seems a little worse than the last visit, and he still had pain in the right shoulder and right scapular area. The doctor noted Petitioner got hurt at work injury. A

MRI was ordered. On May 1, 2009, Dr. Purnell noted that a C spine MRI showed that Petitioner did not require surgery, but he did have problems that would need to be solved with medication and physical therapy. (PX 7 at 24)

On May 12, 2009, Petitioner informed Dr. Purnell that he was still having problems with his right arm as well as some in the left, in that he felt numbness. Petitioner reported that whenever he worked on the computer it got a lot worse. (PX 7 at 24) Petitioner confirmed in his testimony that this was an accurate statement. He still had a problem with his neck as well, for which physical therapy seems to be helping. An EMG was ordered. (PX 7 at 24)

Petitioner underwent an EMG on May 19, 2009, and the findings were consistent with an acute C7 radiculopathy on the right and chronic C6, C7 radiculopathies on the left. It also showed bilateral carpal tunnel syndrome and an ulnar neuropathy at the left elbow. (PX 9) On May 29, 2009, Dr. Purnell diagnosed Petitioner with bilateral carpal tunnel plus nerve problem on the left arm. (PX 7 at 25)

Petitioner attended 6 physical therapy sessions at OSF St. James Medical Center between May 4, 2009 and May 28, 2009 to treat his symptoms in his right arm. OSF St. James records from June 18, 2009, show Petitioner self-discharged after completing six treatments from May 4-28, 2009. The first record from May 4, 2009 described a current pain level of 1/10 that would increase during day until reaching 10/10 pain level at night. The record from May 22, 2009 listed pain levels at 1/10 before treatment and 0/10 after. It stated he wakes up and doesn't feel pain until he gets on the computer. His June 18, 2009 discharge record reported he achieved his only long term goal, while meeting and missing one short term goal. The current status explained those achievements as gaining range of motion, with the only limitation being pain. Finally, the discharge told him to return to doctor if symptoms progressed. (PX 15, RX 5)

Petitioner saw Dr. Purnell again on July 13, 2009, and reported that his right arm was still going numb to the point where he turned around and stopped driving on his vacation because of the numbness. He returned on August 26, 2009 still complaining of numbness. On September 1, 2009, Dr. Purnell determined that Petitioner had mild carpal tunnel and bilateral C7 issues. He referred Petitioner to Dr. Nord at that time. (PX 7 at 25-26)

Petitioner saw Dr. Nord on September 3, 2009 for orthopedic consultation and case management of upper discomfort with neuropathy symptoms. Dr. Nord diagnosed cervical spine stenosis, bilateral cervical radiculopathy, and bilateral carpal tunnel syndrome. Dr. Nord referred Petitioner to Dr. Nardone for a neurosurgical consultation to determine whether surgery would be a viable option on the cervical spine. (PX 2)

On September 16, 2009, Petitioner saw Dr. Nardone for the first time and reported pain on his right side in his shoulder, elbow, wrist, and finger knuckles associated with numbness in the arm and hand. He noted that his symptoms began as a work injury when he was lifting heavy propane tanks. Petitioner also reported a history that approximately five years before he had developed pain and numbness that went into his left arm. He continued that those symptoms improved with conservative treatment. Dr. Nardone recommended a myelo CT of the cervical spine and a repeat EMG/NCV. (PX 3)

With respect to the prior history, medical records from OSF St. James confirm previous left upper extremity issues, showing that on July 15, 2003, Petitioner was diagnosed with left shoulder muscle strain. On that July 2003 visit, Petitioner's chief complaint was left cervical and shoulder pain with numbness in left upper extremity. Petitioner's pain was reported as constant, with a current level of 5/10, with it ranging from 1-10/10 at times. Petitioner's pertinent medical history stated the original injury was from lifting weights. Further, it was reported he had 6-10 previous episodes, with the first occurring in 1996, and his past history stated his

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index finger had been numb for years. On a July 30, 2003 follow-up, the assessment by physical therapist, Jane Wright, was that Petitioner's complaints were consistent with neurological pain at left C6, C7 region. (RX 5)

Petitioner underwent an EMG on September 29, 2009. The findings were consistent with bilateral chronic C7 and left C6 radiculopathies, as well as moderate left carpal tunnel and mild right carpal tunnel. It also showed a possible ulnar neuropathy at the left elbow. (PX 9)

On October 28, 2009, Petitioner presented to Diagnostic Neuro Technologies for a cervical myelography procedure and interpretation. A spiral CT of the cervical spine was performed followed by multiplanar reformations. The tests showed significant loss of disc height and a moderate size broad-base central disc herniation at the C6-7 level. There was also prominent uncovertebral osteophyte formation significantly encroaching upon the neural foramina bilaterally, but seemed to be more pronounced on the left side. Clinically, it was felt that this may produce C7 radiculopathy. Dr. Naveed Yousuf who interpreted the studies concluded there was a mild developmental spinal stenosis of the cervical spinal canal due to shortened pedicles; mild to moderate broad base central disc herniation associated with degenerative disc disease at C6-7. There was also significant uncovertebral osteophyte formation, bilaterally, left greater than right, at C6-7 level encroaching upon the existing respective C7 nerve roots. Finally, Dr. Yousuf found minor cervical spondylolytic change otherwise, as there was also minimal degree of focal ossification of the posterior longitudal ligament at the C5 level. (PX 6)

Petitioner returned to Dr. Nardone on November 4, 2009 complaining of right-sided neck pain, shoulder pain, arm numbness, and left hand grip weakness. The doctor indicated that Petitioner's EMG was compatible with C7 chronic irritation and mild left carpal tunnel syndrome. He noted the myelo CT showed significant degenerative disc disease at C6-7 with a remarkable left-sided C6-7 foraminal stenosis and mild right one. Dr. Nardone commented that all of Petitioner's symptoms did not match. He felt the symptoms were behaving like a C8 irritation. Dr. Nardone gave Lance the option to undergo an anterior cervical decompression and fusion at C6-7 and opening of the foramen, but only gave him a 50% chance of improvement. Dr. Nardone noted that most of Petitioner's symptoms could be related to the work injury reported by Petitioner. (PX 3)

On June 29, 2010, Respondent authorized further treatment with Dr. Nardone. (PX 17)

On August 4, 2010, Petitioner presented to Diagnostic Neuro Technologies for an MRI of the cervical spine and an MR 3D rendering. The tests show a mild broad-base central disc herniation with mild stenosis and bilateral neural foraminal stenosis at the C5-6 level. At the C6-7 level, it shows another mild to moderate broad-base central disc herniation and a moderate degree of central stenosis without cord impingement or alteration of the cord signal. (PX 6)

On August 9, 2010, Petitioner presented to Dr. Nardone and reported that he continued to experience neck pain, shoulder pain, and bilateral hand numbness that woke him at night. Dr. Nardone diagnosed carpal tunnel syndrome. At that time it was determined to proceed with left carpal tunnel release. (PX 3)

Petitioner underwent a left carpal tunnel release procedure on September 16, 2010 at OSF St. Joseph Medical Center. (PX11 at 147) On October 4, 2010, Petitioner followed with Dr. Nardone. Records show Petitioner had been recovering well and that Petitioner preferred to proceed with a right sided carpal tunnel release in November 2010, which was to be arranged by Dr. Nardone. (PX4 at 46) Petitioner testified this did not initially occur because another doctor told him he did not have carpal tunnel symptoms in his right hand.

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On November 11, 2010, Petitioner was seen at OSF St. Joseph Medical Center. Petitioner complained of mostly right arm pain after pulling something at work. Petitioner also reported that his left arm felt better after the carpal tunnel release. (PX11 at 7) Petitioner was diagnosed with right carpal tunnel syndrome, and the plan was to undergo a right carpal tunnel release. (PX11 at 9) The symptoms were then reviewed with Petitioner and Dr. Nardone. The doctor noted that Petitioner's symptoms were not indicative of carpal tunnel syndrome, but rather 4th and 5th finger numbness and pain in his shoulder. As a result, the carpal tunnel release surgery was cancelled at that time. (PX11 at 16)

Petitioner returned to Dr. Nardone on November 22, 2010. Petitioner was still complaining of pain and numbness from the shoulder down the inside portion of the right arm involving the 4th and 5th finger. Dr. Nardone did not believe this was carpal tunnel related and referred Petitioner to Dr. Fang Li for an EMG/NCV of his upper extremities. (PX4 at 45)

On December 7, 2010, Petitioner presented two months status post left carpal tunnel release. He continued to complain of problems with his right arm and hand which the doctor indicated did not appear totally compatible with carpal tunnel syndrome. Petitioner insisted that his similar symptoms on the left had been relieved with the carpal tunnel surgery. Dr. Nardone reviewed the MRI of the cervical spine which he felt showed no etiology to justify his symptoms on the right. Dr. Nardone wanted to wait for the EMG/NCV results before giving a final recommendation. (PX4 at 44)

Petitioner underwent the EMG on December 21, 2010. Dr. Li noted the moderate neuropathy at left wrist was no longer present. He also noted the EMG findings were most consistent with chronic C5, 6, 7 cervical radiculopathis on both sides with a minimal to mild superimposed median neuopathy at the right wrist. (PX 4 at 52)

On December 28, 2010, Dr. Nardone explained to Petitioner that his EMG/NCV results were compatible with right carpal tunnel syndrome, but with no ulnar neuropathy and chronic cervical radiculopathy. The doctor felt there was no urgency to perform a right carpal tunnel release at that time. (PX4 at 43)

On January 20, 2011, Petitioner returned to OSF St. Joseph Medical Center complaining of carpal tunnel syndrome in the right hand for several years. (PX11 at 59) Petitioner underwent a right carpal tunnel release at that time. (PX11 at 63)

On February 7, 2011, Petitioner presented post right carpal tunnel release. He reported complete improvement of the numbness in his right hand. He continued to complain of right shoulder pain, as well as foraminal stenosis on both the right and left side, worse on the left. Dr. Nardone explained that he could attempt C6-C7 anterior decompression allograft fusion and plating, but he was not sure it would improve his symptoms that could be related to his previous injury. (PX4 at 41)

At the request of Respondent, Petitioner attended a Section 12 examination with Dr. Daniel Troy on April 11, 2012. Petitioner presented with complaints of posterior neck and posterior right shoulder pain with numbness in the shoulder area. Petitioner also informed Dr. Troy that he had not treated since February 2011. On physical examination, Petitioner had a 25 percent limitation with flexion, extension, lateral rotation, and lateral bending of cervical spine. Petitioner reported pain with palpation of cervical spine on the right side greater than the left with no pain radiating to upper extremities. Dr. Troy had AP, lateral, flexion, and extension views of cervical spine performed in his office with them demonstrating loss of lordosis in the lateral view secondary to moderately advanced degenerative disc disease greatest at C5-6 and C6-7 levels. No gross instability was noted with flexion and extension. Dr. Troy also reviewed previous diagnostic testing dating

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back to October 2009. Dr. Troy assessed Petitioner with advanced degenerative disc disease of the cervical spine, specifically at C5-6 and C6-7 levels, with secondary posterior neck pain. Dr. Troy felt Petitioner's complaints of pain, numbness and tingling were due to his pre-existing congenital spinal stenosis and advanced arthritic changes of the cervical spine. Dr. Troy noted that at the time of injury, Petitioner reported symptoms in his right shoulder but yet when it came to intervention, Petitioner elected to undergo a left carpal tunnel release first. He felt that this strongly suggested Petitioner had greater symptoms on the left side than on the right. Dr. Troy opined that it did not appear that either carpal tunnel surgery was related to the March 20, 2009 injury. Dr. Troy also questioned the causality of Petitioner's symptoms regarding his neck and shoulder indicating Petitioner took four weeks to report neck and shoulder injury. Dr. Troy stated that "At most, I feel that the claimant may have had a short-term aggravation of pre-existing degenerative changes in his cervical spine on the March 20, 2009." The doctor further stated that based on the arthritic changes present in the myelogram and other diagnostics, Petitioner was at high risk for having chronic symptoms in his neck and upper extremities. (RX 3 dep. 2)

With respect to the proposed cervical surgery, Dr. Troy opined that the need for the surgery would be based only on Petitioner's subjective complaints. The doctor stated, "...the basis for cervical surgery would be based on the claimant's inability to live with his chronic neck pain." The doctor opined Petitioner reached maximum medical improvement following physical therapy in May 2009. (RX 3 dep. 2)

On April 30, 2012, Petitioner presented to OSF Medical Group complaining of neck pain. Petitioner provided he was experiencing numbness in the shoulder area and pain in the posterior neck. Petitioner requested referral to Dr. Ghanayem for his opinion on surgical options. (PX 14)

Petitioner saw Dr. Ghanayem on May 10, 2012. Dr. Ghanayem took a history, performed an examination and reviewed a CT myelogram which the doctor indicated showed cervical spondylosis, most significantly at the C6-7 disc space with posterior osteophyte formation. Dr. Ghanayem's impression was cervical spondylosis, C6-7. The doctor did not recommend surgical intervention at that time, but rather non-operative treatment including medications and therapy. (PX 8)

Petitioner testified that he continues to feel symptoms to this day. His right shoulder tends to go numb and feels like it has bugs crawling on it. He also suffers from a bit of a hunchback. Petitioner testified that he had no symptoms prior to March 20, 2009, and he has never really returned to the condition he was in prior to that date. He struggles with certain daily activities such as walking, driving, physically using his arms, cutting limbs with a chainsaw, and other physical activities. Petitioner provided that he did not have issues with any of these activities prior to March 20, 2009. Petitioner also testified that he decided not to pursue a surgical option because Dr. Nardone did not give a strong indication of it helping his condition.

Petitioner testified that he worked at the receiving dock for about 8 months before he retired. He continued to work in the commissary for about 2 hours a day, at which time he noticed an aggravation in his left hand. He testified that he did not really feel any pain in the right hand until he picked up the propane tank. After the propane tank incident, he continued to work with no heavy lifting, and would often supervise as inmates drove the forklift. Today, his hands feel much better after having undergone the surgeries.

Petitioner's treating surgeon, Dr. Emilio Nardone testified via deposition. Dr. Nardone testified that Petitioner initially presented with complaints of right shoulder pain; pain down the arm; numbness in the right hand and arm; left wrist and index finger numbness. Petitioner provided that he had lifted heavy propane tanks at work and hurt his shoulder. The doctor stated Petitioner provided that later his entire right arm went numb. (PX 5 pg. 7) Dr. Nardone detailed how he reviewed Petitioner's past medical history including his previous

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consultation with Dr. Nord. (PX 5 pgs 7-9) Dr. Nardone testified he felt Petitioner had a preexisting cervical spondylosis,with the foraminal stenosis that probably had nothing to do with the work injury. He however felt Petitioner had persistent symptoms mostly on the right side that could have been related to some sort of whiplash/stretch injury that started with a work accident. He stated the symptoms with the pain along the arms, and the numbness along the arms along the inner portion of the forearms seemed to be a direct correlation between the symptoms and the work injury. (PX 5 pgs. 11-12, 18) Dr. Nardone stated that the C6-C7 degeneration was preexisting. He indicated the symptoms didn't completely match the distribution of the nerves between C6-C7 and C8 although there can sometimes there can be some overlapping innervations. For that reason, he didn't feel surgery would have a high chance of succeeding. He however felt that overall, the injury sustained at work caused Petitioner's symptoms but those symptoms were not completely related to C6-C7 forminal stenosis. (PX 5 pgs. 13-14)

With respect to Petitioner's right and left hand symptoms, Dr. Nardone testified in response to a hypothetical. Dr. Nardone testified that Petitioner's repetitive finger motion involving typing on the computer after he scanned items as a possible cause or aggravating factor in developing carpal tunnel syndrome. Dr. Nardone stated, "quite often carpal tunnel syndrome is a consequence of repetitive finger hand motion. So considering that he was doing that type of activity, it's likely that that activity at the computer and the typing and so forth, would have been either the cause of the carpal tunnel or an aggravating factor..." (PX5 pgs. 20-22)

Dr. Daniel Troy, an orthopedic surgeon from Advanced Orthopedics and Spine Care, Illinois, testified via deposition regarding his independent medical examination of Petitioner. He gave testimony confirming the accuracy of his independent medical examination report and then gave summaries of the report. He confirmed Petitioner had long-standing pre-existing arthritic changes to his neck that were not causally related to the March 2009 accident. (RX 3 pgs 8-9) Dr. Troy provided that it didn't appear that Petitioner's carpal tunnel was related to the March 2009 accident. He explained that lifting the propane tanks does not appear to be an event that would cause carpal tunnel syndrome. The doctor however, stated that said event might have caused a temporary aggravation of Petitioner's preexisting changes in Petitioner's neck. He further stated that the fact that Petitioner had successful carpal tunnel releases proves that his symptoms were more carpal tunnel in nature. (RX 5, pgs. 9-10) Dr. Troy summarized his testimony as follows: "The patient has, again, long-standing pre-existing arthritic changes to his cervical spine greatest at C5-6 and C6-7 levels. The patient picked up a propane tank which may have caused a strain to his neck area, but because his degenerative changes are so long-standing and pre-existing it is my opinion that the strain should have resolved after six to twelve weeks...the current treatment and symptomatology he's undergoing at this point in time and complaints are secondary to his long-standing pre-existing arthritic changes and not from the injury of – the subject of injury of picking up a propane tank. (RX 5 pg. 13)

In support of the Arbitrator's Decision regarding F. WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY CONNECTED TO THE INJURY, the Arbitrator finds the following:

The Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the work accident sustained on March 20, 2009.

Petitioner offered the records of Dr. John Purnell, who noted on April 27, 2009 that Petitioner was suffering from pain in his right shoulder and right scapular area, all due to a work injury. Dr. Purnell referred Petitioner to Dr. Nord for orthopedic consultation and case management of upper discomfort with neuropathy

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symptoms. Petitioner identified a clear mechanism of injury with no pre-existing symptoms, and testified credibly as to why he delayed official treatment, initially thinking the issues would go away on their own.

Petitioner offered the records of Dr. Lawrence A. Nord, who diagnosed Petitioner with cervical spine stenosis and bilateral cervical radiculopathy. Dr. Nord referred Petitioner to Dr. Nardone for a neurosurgical consultation to determine whether surgery would be a viable option on the cervical spine.

Dr. Emilio Nardone testified that Petitioner had some right side symptoms that could have been related to some sort of whiplash or stretch injury that started with a work accident. He testified that his related symptoms could have included his pain along the arms and inner forearms. Dr. Nardone further stated that there seems to be a direct correlation between the onset of the symptoms and the work injury. He also states that the type of lifting Petitioner performed at work could have caused those symptoms. In his September 16, 2009 notes, Dr. Nardone states that Petitioner is experiencing pain in his right shoulder as well as his elbow, wrist, and knuckles. He notes that these symptoms began as a work injury when he was lifting heavy propane tanks.

Respondent offered the records of Dr. Daniel Troy, which the Arbitrator gives little weight. Dr. Troy reported in his IME dated April 11, 2012 that he believes that Petitioner's diagnoses were not related to his March 20, 2009 accident because they were pre-existing, long-standing, and degenerative in nature. He does state that the lifting action could have aggravated or irritated the pre-existing condition in his neck, but it would be a temporary condition and would have resolved within six to twelve weeks.

Based upon the credible testimony of Petitioner, as well as all of the medical records and medical testimony of Dr. Nardone, the Arbitrator finds that Petitioner met his burden of proving that his condition of ill-being is causally related to his work injury sustained on March 20, 2009.

In support of the Arbitrator's Decision regarding J. MEDICAL EXPENSES, the Arbitrator finds the following:

Petitioner offered PX1 as his total medical costs associated with the present case and consolidated case number 09 WC 28816. The Arbitrator has separated out Petitioner's medical expenses relating to Petitioner's cervical injury, and having found for Petitioner on causal connection, orders that Respondent shall pay reasonable and necessary unpaid medical services of $14,401.00, as provided in Sections 8(a) and 8.2 of the Act, as well as reimbursement to Petitioner of $65.00 for Petitioner's out-of-pocket expenses. Respondent shall be given a credit of $3,995.12/$5,406.88 adj. for medical benefits that have been paid by both its workers' compensation, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of the Arbitrator's Decision regarding L. WHAT IS THE NATURE AND EXTENT OF THE INJURY, the Arbitrator finds the following:

Petitioner experienced right shoulder and neck pain as a result of lifting propane tanks that weighed 75 to 100 pounds. He testified that he felt no pain in those areas prior to the accident date, and he has never been symptom free since the accident date. Petitioner stated that he did not pursue a surgical option for this condition because Dr. Nardone told him there was a significant chance that surgery would not improve the condition. Petitioner testified that the pain initially felt excruciating. Today, his right shoulder still goes numb and feels like bugs are crawling on it. Petitioner testified that he also suffers from having a bit of a hunchback. Petitioner continues to struggle with daily activities such as walking, driving, physically using his arms, operating a chainsaw to cut limbs, and other physical tasks.

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Based upon the greater weight of the evidence, the Arbitrator finds that Petitioner is permanently disabled to the extent of 10% under Section 8(d)2 of the Act.

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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

Beverly A. Rigsby,

Petitioner,

15IWCC0521

vs.

NO: 14 WC 20036

Kraft Foods, Inc./ Capri Sun,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, prospective medical expenses, causal connection, temporary total disability, denial of 14th Amendment due process in admitting treating records over Respondent's objection, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 15, 2014 is hereby affirmed and adopted.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $20,400.00. 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: JUL 8 - 2015

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gaf
O: 6/25/15
45

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

15IWCC0521

RIGSBY, BEVERLLY A
Employee/Petitioner

Case# 14WC020036

KRAFT FOODS INC/CAPRI SUN
Employer/Respondent

On 10/15/2014, 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 0.04% 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:

0656 GLASS & KOREIN LLC
MICHAEL H KOREIN
412 MISSOURI AVE
EAST ST LOUIS, IL 62201

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT E MACIOROWSKI
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

☐ 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
19(b)

15IWCC0521

Beverly A. Rigsby
Employee/Petitioner

Case # 14 WC 020036

v.

Consolidated cases: N/A

Kraft Foods, Inc./Capri Sun
Employer/Respondent

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **August 12, 2014**. 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 **Admissibility of PX 2, 3, 9**

FINDINGS

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On the date of accident, **05/30/14**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**36,670.51**; the average weekly wage was $**909.87**.

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

Respondent has not paid all reasonable and necessary 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 $**4,554.39** [1]for other benefits, for a total credit of $**4,554.39**[2].

Respondent is entitled to a credit of $**0.00** for payment of any medical bills by its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**606.58**/week for **10 1/7** weeks, commencing **June 3, 2014**, through **August 12, 2014**, as provided in Section 8(b) of the Act. Respondent shall be given a credit for non-occupational disability/indemnity benefits as stipulated to between the parties.

Respondent shall pay reasonable and necessary medical services of $14,234.25, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any medical bills previously paid. Respondent shall also pay the reasonable charges associated with further treatment recommended by Dr. Raskas, being additional physical therapy, the selective nerve root block with local anesthetic only at the L5 level, and follow-up with Dr. Raskas.

Petitioner's Petition for Penalties and Attorney's Fees is denied.

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.

Nancy Lindsay
Signature of Arbitrator

October 9, 2014
Date

ICArbDec19(b)

OCT 15 2014

[1] The parties further stipulated that Respondent should get a general net credit for any additional non-occupational indemnity benefits Petitioner has received from July 26, 2014 through August 12, 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner alleges the increased stress of lifting, pushing, pulling, bending, and twisting on May 30, 2014, constitutes a specific injury which served as an aggravation to her pre-existing low back condition. The issues in dispute are accident, causal connection, medical expenses, temporary total disability benefits, prospective medical care, penalties, attorney's fees, and admissibility of certified medical records. Witnesses testifying at the arbitration hearing included: Petitioner; Gerald Krug; Diane Scruggs; and Mike Hollenberg. Respondent had no exhibits.

The Arbitrator Finds:

Petitioner testified that, as of May 30, 2014, she was 59 years of age, and had worked for Respondent for 20 years as of March, 2014. Petitioner worked in the Kool-Aid Burst Department either as a filler operator or in secondary.

In June of 2010 Petitioner underwent a L4-5 laminotomy and microdissection with nerve root decompression for a herniated disc with stenosis, L4-5, right. This procedure was performed by Dr. David Raskas. On October 27, 2010, he released her from care without restriction. The office note reflected Petitioner occasionally noticed soreness behind the hip and that her pain levels at the time of release did not exceed 2 out of 10. (PX 2, pp. 9 - 11)

The medical records of Petitioner's family physician, Dr. Hoelscher, from April 22, 2010, through June 6, 2014, were offered into evidence by Petitioner (PX3).

Between October 27, 2010, and May 30, 2014, Petitioner was seen by Dr. Hoelscher for the following reasons:

November 30, 2010 – Possible sinus infection (PX3, pp. 66 – 68 noting Lumbosacral Spondylosis Resolved and no complaints of low back pain);

February 7, 2011 – Preventative check-up (PX3, pp. 63 – 65 noting Lumbosacral Spondylosis Chronic, yet no complaints of low back pain);

September 15, 2011 – Sinusitis (PX3, pp. 57 – 60 noting Lumbosacral Spondylosis Resolved and no complaints of low back pain);

February 13, 2012 - Preventative check-up (PX3, pp. 49 – 52 noting Lumbosacral Spondylosis among her chronic problems, yet no complaints of low back pain);

March 13, 2012 – Swollen left knee (PX3, pp. 44 – 47 noting Lumbosacral Spondylosis among her chronic problems, yet no complaints of low back pain);

May 11, 2012 – pain, swelling, bruising left knee (PX3, pp. 29 – 33 noting Lumbosacral Spondylosis among her chronic problems, yet no complaints of low back pain);

February 18, 2013 – elbow arthritis, reflux, and hyperlipidemia (PX3, pp. 40 – 43 noting Lumbosacral Spondylosis among her chronic problems, yet no complaints of low back pain);

April 10, 2013 – Cough, chest congestion, and fatigue (PX3, pp. 24 – 28 noting Lumbosacral Spondylosis among her chronic problems, yet no complaints of low back pain);

October 28, 2013 – presenting paperwork – screening for insurance (PX3, pp. 16 – 20 noting Lumbosacral Spondylosis among her chronic problems yet no complaints of low back pain);

January 20, 2014 – ear jaw neck pain (PX3, pp. 10 – 14 noting Lumbosacral Spondylosis among her chronic problems, yet no complaints of low back pain and p. 96); and

February 20, 2014 – preventative exam/screening colonoscopy/bilateral elbow and neck exam (PX3, pp. 3 – 7 noting Lumbosacral Spondylosis among her chronic problems yet no complaints of low back pain, p. 95 noting no low back complaints in history, review of systems, and on physical exam).

The records also reflect that Petitioner does not drink, has been in recovery for a long time (PX3, p. 95 Past/Family/Social Histories) and uses her Vicodin sparingly (PX3, p. 96, first paragraph).

Petitioner presented to Gateway on June 3, 2014. The medical records at Gateway (PX1) dated June 3, 2014 give the following history of onset: "Patient has had previous lumbar disc surgery 2 years ago. Last Friday at work there seemed to be a lot more lifting and packing and moving than normal after she went home on Friday she started to complain of having a lot of pain in lower back mainly on the right side radiating around to the right iliac crest." (PX1, p. 1-018) Positive physical exam findings were moderate pain on the right low back, muscle spasm right low back although the records reflect she had already taken Vicodin without relief (Id). Differential diagnosis was ligament injury, ruptured disc, sprain, vertebral fracture. (PX 1, p. 1-019)

A CT scan without contrast was performed at Gateway. Dr. Zabrowski interpreted it as showing multiple level bulging of the degenerative annulus and facet hypertrophy resulting in borderline – mild central and bilateral foraminal stenosis at L2-3, L3-4, L4-5, and L5-S1, post-stress by formation at L4-5 and L5-S1, normal development, no evidence of fracture deformity, and noted that if symptoms persist, MRI may prove beneficial. (PX 1, p. 1-024 to 1-025)

Petitioner was discharged from Gateway with a Work Release Form indicating she would be able to return to work after being seen and evaluated by Dr. Raskas her previous back surgeon. (PX 1, p. 1-026)

Petitioner signed her Application for Adjustment of Claim on June 9, 2014. (AX 2)

When Petitioner first saw Dr. Raskas on June 16, 2014, she provided a history of onset was as follows: "Beverly presents to the office today with a chief complaint of lower back pain on the right side that radiates to the right side of her pelvis, hip and groin. She states that the line was down and she had to push a cart with some liquid bottles in it up what she called a grade. She said it was not too steep of a grade and then she had to unload these things into the table so people could hand pack these bottles of liquid. She had to rise up on her tip

toes, push, pull, and bend repetitively more than she usually has to. On May 30, 2014, she started noticing the onset of symptoms went to the emergency room and has been off work since." (PX2, p. 2)

Physical exam findings included a positive Faber's test (PX2, p.3). As a result, Dr. Raskas was concerned Petitioner might have a possible stress fracture. He ordered a MRI of her pelvis and lumbar spine and placed her on light duty restrictions of no lifting, pushing or pulling greater than 10 pounds, no repetitive bending, twisting or squatting activities, and alternate sit/stand (PX 2, p. 4).

MRIs of Petitioner's pelvis and lumbar spine, with and without contrast, were performed at MRI Partners on July 1, 2014. The impression, interpreted by Dr. Cizek, were moderate to advanced bilateral hip osteoarthritis, worse on the left, mild hamstring origin tendinitis without tear, and an intact sacrum related to the pelvic images (PX2, p. 8). Dr. Cizek's impression from the lumbar images was post-operative changes at L4/5 with focal enhancing scar on the right side but lying near the traversing right L5 nerve root as well as creating some right lateral recess and foraminal stenosis, mild disc bulging at L2/3 and L3/4 without herniation (PX2, p. 9).

Petitioner returned to Dr. Raskas on July 7, 2014. After reviewing the MRI, he also noted abnormal soft tissue on the right side at L4-5 and noted that the pain she had radiating into her groin was probably related to the abnormality that was causing some stenosis. He further noted the abnormality had a morphology of a recurrent disc herniation and there was a part that was on the shoulder of the L5 nerve root that might be the cause of her symptoms. At that time he suggested a selective nerve root block with local only at L5 (to see if that alleviated her symptoms), physical therapy, and ongoing work restrictions. At that time, he also explained to Petitioner the concept of spinal injury and how her work activities had progressed her symptoms and necessitated the treatment he had recommended (PX2, pp. 5-6).

Petitioner underwent a few weeks of physical therapy beginning on July 7, 2014 (PX9) which she found to be helpful. The history of onset provided to Pro Rehab was consistent with the history provided to Gateway and Dr. Raskas (PX9, p. 10). Throughout the therapy notes, Petitioner was noted to have signs and symptoms consistent with her diagnosis and that she appeared to be motivated to get better (PX9, p.4, 7, 8, 9, and 11).

At the time of arbitration Petitioner had undergone no further treatment.

At the arbitration hearing Petitioner testified regarding her job duties. Within the Kool-Aid Burst Department, there are three filler operators to operate four filler machines in the filler room and one machine operator in "secondary" (hereinafter referred to as "McGovern Operator") who operates the four McGoverns. Each McGovern separates the 6.7 ounce bottles of Kool-Aid into six packs once they have been filled by each of the four filler machines. Consequently, each six-pack weighs 2.5125 pounds. Pursuant to a Subpoena issued by Petitioner's counsel (PX 7), Respondent produced the production records for the Kool-Aid Burst Department for Friday, May 30, 2014 and May 31, 2014 (PX10). PX10, p.1 demonstrated that McGovern # 1 ran at a 45% efficiency rate for the totality of May 30, 2014, while the Kool Burst packaging department for that day ran at 92.85% efficiency rate (PX10, p. 5).

Petitioner testified that, on May 30, 2014, she was the McGovern Operator; her shift beginning at 6:00 a.m. and ending at 2:30 p.m. She testified that, even if the McGoverns are running properly, her job involved lifting, pushing, pulling, climbing, bending, stooping and squatting. Because McGovern #1 was malfunctioning on May 30, 2014, she testified the "tubs" used to transport filled bottles from the McGovern to the "re-fill" area were heavier than usual. Although the two temporary workers normally push most of the "tubs", Petitioner

personally pushed quite a few that day. While Petitioner did not indicate the distance between the McGovern area to re-pack, she testified the tubs are not easy to maneuver.

In order to unjam the McGovern, Petitioner testified she had to climb three steps and hold onto the top of the machine; reach into the chute and remove any jammed bottles; come down one step; unjam the feed rollers; come down the other step; throw all jammed bottles she retrieved into a smaller tub; shut the feed roller and attempt to re-start the McGovern. She performed that task on May 30, 2014, more so than on a usual work day with respect to McGovern #1. She also pushed 55 gallon barrels of "low fills" over to the bottle grinder more so on that day than on a normal work day. Despite the assistance of other workers, she still had a more physically strenuous day at work as it related to her low back than a normal work day. Petitioner testified she also had to keep the floors clean, load the machines with sleeves, and unjam machines. Petitioner was also bending over more than usual. In addition to McGovern #1 running at only 45% efficiency, McGovern #2 ran at 82% (PX 10). Finally, Petitioner testified that, during the time she was repacking on May 30, 2014, she was doing more turning at the waist than a normal work day.

Petitioner testified that she believes the unusual amount of pushing the "tubs" to repack, pushing "barrels" of low fills to the Python, unjamming the machines, picking up bottles from the floor to keep the floor clean, loading the machines with sleeves, climbing up and down the McGovern to try to unjam product and restart it, and more turning at the waist from the excessive repack on May 30, 2014, all changed the course of her pre-existing low back symptoms. Petitioner testified that she did not notice her low back pain until she woke up for work the next morning on Saturday, May 31, 2014. At that time, her back was sore and she mentioned that to Diane Scruggs and Mike Hollenberg at work but did not report an injury. She did not report an injury because she did not yet know she was injured as opposed to just being sore.

Petitioner testified that from May 31, 2014, until the morning of June 3, 2014, she dealt with her symptoms by resting and taking muscle relaxers on her day off, Sunday, June 1, 2014. Despite still being sore, she continued to work on Monday, June 2, 2014, although she made it known to everyone with whom she worked that she was still sore albeit without indicating the reason she was sore. Petitioner testified that on the morning of Tuesday, June 3, 2014, she called Mike Hollenberg, and gave him notice that she now believed what she previously thought was just continuing low back soreness was actually an injury to her low back.

Petitioner testified that, by the time she gave notice of injury, her low back symptoms extended down to her tailbone and also wrapped around her right hip into the bend of her leg (groin area). She did not have these symptoms at any time before May 30, 2014. From May 30, 2014, to the date of hearing, there has not been a time in which her low back had been pain free. Conversely, from late October, 2010 up to May 30, 2014, she experienced periods in which she was symptom free.

After Petitioner left the message on Mike Hollenberg's voice mail, she was contacted by Respondent, and directed to go to Gateway Occupational (Industrial Medicine).

Petitioner testified that her back pain ranged no more than 2 or 3 when released from care in 2010. Before that surgery, and for a "little while" after, her low back symptoms radiated down her right leg under her foot but they eased up, she returned to full duty work for Respondent, and she did not miss any time from work due to her low back between late October, 2010 and May 30, 2014. She did not stop, limit or modify any activities at work or away from work due to any lingering low back pain between late October, 2010 and May 30, 2014.

Petitioner also testified that she would occasionally take one half a Vicodin on weekends or after work if she had sore back muscles at work up to twice a week, but not every week. Dr. Hoelscher's records reflect she only had her Vicodin refilled on three occasions between October 27, 2010 and May 30, 2014 (PX3, p. 54 referencing June 10, 2011, and September 29, 2011, refills; and p. 32 referencing February 18, 2013 refill) supporting this was only taken on an occasional as-needed basis as opposed to an ongoing daily problem.

Petitioner testified that because there was no physician present at Gateway Occupational when she arrived on Tuesday, June 3, 2014, Gateway Occupational directed her to Gateway Regional Medical Center. At Gateway Regional, Petitioner testified the Medical Center performed a CT scan, gave her Flexeril, and a Dilaudid pain shot, and ordered her off work until she could follow-up with her prior surgeon, Dr. Raskas (PX1).

According to Petitioner Dr. Raskas, from the first visit, placed her on restrictions of no lifting greater than ten pounds, no pushing or pulling greater than ten pounds, no repetitive bending, twisting or squatting, and alternate sit to stand. Petitioner testified that she contacted Don Kellig and Jay Wyatt in HR to see if they could accommodate her restrictions; however, she never received a response. Petitioner testified that she currently takes Hydrocodone and rates her pain level as a 5 on a pain scale of 0 to 10. She has attempted to perform simple household activities such as vacuuming with an 8 pound Oreck vacuum cleaner, mopping with a Swiffer, light dusting, and reading books. Dr. Raskas has ordered select nerve root blocks and more physical therapy which Petitioner is willing to undergo.

On cross-examination Petitioner acknowledged familiarity with Respondent's rules on reporting accidents and explained that she didn't fill out an accident report on the 30th because she didn't know she was injured. She acknowledged having days like the one on May 30th "here and there." She acknowledged not reporting an injury to Mike Hollenberg on May 30, 2014. Petitioner was questioned by Respondent's counsel about shoveling rock on May 31, 2014. Petitioner acknowledged owning a swimming pool. She denied having rocks delivered to her house. She acknowledged she used a spade to scoop rock off the back of her husband's truck at chest height before May 30, 2014, that she filled ten spades worth of rock to prep a three foot area at that time, that she suffered no ill effects to her low back as a result, and that she mentioned it to Diane Scruggs.

Gerald Krug, an employee in Respondent's maintenance department of almost 14 years, was subpoenaed to testify at trial by Petitioner's counsel (PX 7). Mr. Krug testified that his shift began at 6:00 a.m., on May 30, 2014 and ended at 6:00 p.m., that he worked on McGovern # 1 during Petitioner's shift on May 30, 2014, that he knows Petitioner, and that he has ample opportunity to observe her work as a McGovern Operator. He explained that the 45% efficiency for McGovern #1 on May 30, 2014 (PX 5) is a "low number" as McGoverns normally run in the 90th percentile range. In reviewing "PX10, p. 5", Mr. Krug noted the Kool Burst packaging department for the day ran at 92.85% efficiency - "a pretty good day." Despite the deficiency with McGovern # 1, filler machine # 1 continued to operate unless it would be manually shut down. According to Krug, even when the filler machine shuts down, it takes an additional 15 minutes for the line to clear the bottles.

Mr. Krug also testified that when a McGovern shuts down, the filler machine continues to send bottles to a downed McGovern. In turn, this forces bottles coming off the conveyor for that McGovern to fall through a trap door into a large tub that starts filling with the bottles and eventually has to be pushed to an area for repacking (hand packing the bottles into the six pack sleeves), the same "tub" referenced by Petitioner. Mr. Krug explained that it's possible to have a "good day" with a struggling McGovern but there's a lot of repack involved and it's constantly going up and down. The McGovern operator is responsible for the tubs when the McGovern is down. Since Mr. Krug estimates each filler machine puts out 162 bottles per minute, with McGovern # 1 operating at only a 45% efficiency rate, it did not take long for the tubs to fill up and for one to

get behind in work. Mr. Krug estimated the tubs are 4-1/2 feet to 5 feet long, 30 inches wide, and 3 feet deep. He has pushed tubs in the past to repacking. According to him, although the tubs sit on six caster wheels, they can weigh as much as 800 pounds when full, have to be pushed up an incline, and are tough to maneuver or steer. Additionally, he estimated the distance traveled from the McGovern to the re-pack area was 75 to 100 feet. Moving these tubs is one of the McGovern Operator's jobs to make sure the bottles are moved to repack.

In addition to the tubs, Mr. Krug identified 55 gallon barrels on casters that the McGovern Operator must push for "low fills." If a "low fill" is detected, (a bottle goes by a detector which indicates the bottle is not completely filled), the McGovern kicks it off into the 55-gallon barrels. Some of the low fill bottles may be half full, some may be almost full. The McGovern Operator must push the filled barrels over to a tub dumper, also known as a "Python." The Python squeezes the juice out and grinds the bottles. According to Mr. Krug, these 55 gallon barrels can become heavy and tough to roll around as the floor is not smooth. If either the "tubs" or low fill "barrels" previously identified overfill, bottles spill onto the floor and it is the McGovern Operator's obligation to bend over and pick them up off the floor to prevent injuries to others.

According to Mr. Krug, when one has a McGovern running at 45% efficiency, the McGovern Operator is required to constantly climb up and down the McGovern to restart it during maintenance.

According to Mr. Krug, the McGovern Operator must also re-pack or hand pack the bottles in the six pack sleeves that come from the tubs. Mr. Krug identified repacking as reaching in and pulling bottles out of the tub, getting them on the table, opening up a six pack packaging sleeve, manually placing the bottles into the sleeve, and then turning and placing them on the line. According to Mr. Krug, this requires twisting at the waist and a lot of repetitive motion.

Mr. Krug testified that on a normal work day, the McGovern Operator has to engage in quite a bit of pushing, pulling, lifting, grabbing, and climbing amongst the four McGoverns. Whenever one of the McGoverns goes down and he is working on it, Mr. Krug will run into the McGovern Operator a lot because she is right there cleaning up as he is trying to figure out what is going on. Based on his experience and observations, and assuming a 45% efficiency of McGovern #1 on May 30, 2014, the McGovern Operator of the four McGoverns was going to be "pretty busy just on starting it up, cleaning it out, and keeping the tub busy." Even though four to five others may help out the McGovern Operator with movement of the tubs and barrels, as well as re-packing, he opined that such a day would be more physically strenuous on the McGovern Operator than a normal work day when the machines are functioning appropriately -- " a rough day."

Mr. Krug described Petitioner as a good worker who came to work to do just that and never created any problems.

On cross-examination Mr. Krug acknowledged he was not Petitioner's supervisor but he was her co-worker and he has known her for approximately fourteen years. He also acknowledged that there might have been 5-6 people repacking on May 30, 2014. He acknowledged that May 30, 2014 was a tough day but that Petitioner had experienced tougher days here and there. He acknowledged that Petitioner said nothing to him about injuring her back. On re-direct Mr. Klug testified that Petitioner was not a complainer.

Respondent called Diane Scruggs to testify at hearing. Ms. Scruggs has worked full-time for Respondent since 1993 as a production lead. She is the lead for Petitioner's shift. Ms. Scruggs testified that Petitioner was the McGovern Operator on first shift on May 30, 2014. According to Ms. Scruggs, on a day when things "go chaotic" like May 30, 2014, everybody just helps pitching in doing what they can. Up to five other people were helping Petitioner with the repack and pushing of the tubs to the repack area during the shift.

Notwithstanding, given that McGovern #1 was operating at 45% efficiency, Ms. Scruggs agreed the McGovern Operator would be doing more climbing up and down, pushing of tubs or barrels, lifting, pulling and repacking than in a normal work day. Ms. Scruggs also testified that some of the tubs are awkward to push. Ms. Scruggs testified that Petitioner did not tell her she had injured her back on May 30, 2014.

Ms. Scruggs further testified that any conversation she had with Petitioner about Petitioner shoveling rock pre-dated May 30, 2014, and, further, that Petitioner made no complaints of pain between whenever such conversation took place and May 30, 2014. Ms. Scruggs could not precisely recall Petitioner complaining about any low back soreness before or after her back surgery in 2010. She recalled Petitioner mentioning her back hurt on May 31, 2014.

Respondent also called Mike Hollenberg to testify at hearing. Mr. Hollenberg has worked for Respondent for almost 25 years in a supervisory role. Mr. Hollenberg testified that Respondent's rule is that injuries were to be immediately reported to a supervisor who would fill out an accident report and send the employee for appropriate care. Petitioner did not report an injury to him on May 30, 2014.

Mr. Hollenberg testified that he has known Petitioner for over ten years and does not recall ever having to discipline her for her work or for being dishonest. Mr. Hollenberg testified that he had only a vague recollection of the events of May 30, 2014. After looking at the production records, he noted that if McGovern number one was down to 45% efficiency, and the production rate overall was 92%, it would mean a lot of repack which, on average if it is really a bad day, he would estimate, with breaks and lunches and things like that, 4 to 5 people in that area would help with re-pack. Mr. Hollenberg also testified that one would have to push the tubs 25 to 40 feet to get from a McGovern to the repacking area. Mr. Hollenberg testified that the fillers run at about a 155 bottles per minute. He testified that the tubs were easy to maneuver but acknowledged they must be pushed up an incline. He testified the tubs would weigh more than a grocery cart filled with beer or soda, but it's fairly heavy with the initial pull. Mr. Hollenberg did not have a recollection of whether she did or did not tell him that she was hurting between May 30, 2014 and June 3, 2014. She may have told him, but he did not recall one way or the other. Mr. Hollenberg had no recollection of when Filler #1 was ordered shut down, but did not dispute if that shut down took place at 1:00 p.m., that would have already been seven hours into Petitioner's shift. Petitioner completed her shift that day.

Mr. Hollenberg confirmed that Petitioner gave notice of an accident when she left a message on his cell phone the morning of June 3, 2014. Mr. Hollenberg retained the message and played it for the Arbitrator at the hearing. The message, to wit, said: "Hey, Mike, this is Bev Rigsby. If you can, call me back. My back went from bad to worse this morning. I couldn't even lean over the sink to rinse my face, so I don't know what to do or who to go see about it or – or what – but it's – it's from whatever – from all that work Friday. It just – I've just done something, so if you could call me back, I would appreciate it. Thanks. My cell number is 910-3684, bye."

Mr. Hollenberg acknowledged that Petitioner has never been disciplined for any reason, including making up stories.

On rebuttal, Petitioner testified that by 1:00 p.m., or the seventh hour of her shift, on May 30, 2014, the decision was finally made to shut down Filler #1 because they had too much re-packing to do, and they were out of room. In other words, Filler # 1 was still operating even though McGovern # 1 for that line was malfunctioning and causing the tubs to be filled for the first seven hours of her shift.

The Arbitrator concludes:

1. **Accident:** Petitioner was a credible witness as she was direct and forthright and candidly acknowledged her prior low back injury and how it felt prior to May 30, 2014. She came across as someone who had nothing to hide and was very believable in why she did not report any accident/injury on May 30, 2014 but did so on June 3, 2014. Additionally, no other witnesses suggested or implied that Petitioner was not an honest person.

Based on the testimony of all witnesses called by both parties, the impaired state of Respondent's equipment on May 30, 2014, imposed a greater physical burden significantly beyond the usual and customary requirements of Petitioner's job. Although there may have been other times when its machines might run below normal efficiency, those times were the exception, rather than the rule. The repetitive stress of that day caused Petitioner to experience low back and right leg symptoms to an extent and degree that had not been present since her previous release to full duty following an L4-5 laminotomy and nerve root decompression three and a half years earlier. The soreness was reported generally the next morning and when it persisted for two more days, Petitioner realized this was an injury beyond her pattern of occasional soreness that had been adequately managed with her own medication for several years, and properly reported it to Respondent, in compliance with its procedures.

It has long been recognized that, in pre-existing conditions cases, recovery will depend on the employees ability to show that a work-related accidental injury aggravated or accelerated the pre-existing disease such that the employees current condition of ill-being can be said to be causally connected to the work injury and not simply the result of a normal degenerative process of the pre-existing condition. *Caterpillar Tractor Co. v. Industrial Comm'n, 92 Ill. 2d 30, 65 Ill. Dec. 1, 427 N.E.2d 861 (1982).*

It is axiomatic that employers take their employees as they find them. *Baggett, 201 Ill. 2d at 199.* When the workers physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment. *General Electric Co. v. Industrial Comm'n, 89 Ill. 2d 432, 60 Ill. Dec. 629, 433 N. E. 2d 671 (1982)* Thus, even though an employee has a pre-existing condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. An accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co. v. Industrial Comm'n, 37 Ill. 2d 123, 227 N. E. 2d 65 (1967).*

Based on the credible testimony of Petitioner and those who worked with and over her on that date, the Arbitrator concludes that Petitioner sustained an accident on May 30, 2014, arising out of and in the course of her employment.

2. **Causation:** Petitioner's current condition of ill-being in her lumbar spine is causally related to her accident of May 30, 2014. This conclusion is based upon Petitioner's credible testimony and a chain of events. The medical records in evidence are quite clear in several significant respects. Following a successful L4-5 laminotomy and nerve root decompression by Dr. Raskas in June, 2010, she was released to full duty in October, 2010. From that date until this accident, Petitioner had no need for return to Dr. Raskas; she treated with her family physicians throughout that time, receiving only oral medications for occasional low back discomfort. Although Petitioner's back condition was noted as a chronic one, the treatment records show that complaints during that time were for other conditions and body parts, with her lumbosacral problem being

mentioned more historically than as a matter of active clinical significance, beyond oral occasion orders should be absence of the need for specific attention to Petitioner's low back and leg. Within those visits is even more telling about the success of her return to work from the prior surgery than if she had seen no doctors at all.

After the causative events of May 30, 2014, Petitioner's pain pattern changed significantly by the next morning, persisting from then to the present requiring testing and conservative measures to date well beyond whatever she had needed throughout the preceding 3-1/2 years of full duty employment. Respondent's introduction of some vague event of a time at Petitioner's home when she and her husband obtained some rocks may have been intended to raise questions as to whether an accident occurred at work on May 30, 2014.

However, all the evidence is consistent with the event at home having occurred one or more weeks prior to May 30, 2014. In fact, Petitioner's limited participation in those activities, and her ability to perform her full-time duties with Respondent from then until the date of this accident actually provides additional evidence of the extent to which the increased work burdens of May 30, 2014, aggravated a manageable, stable condition, causing her subsequent impairment and need for restricted work and treatment.

It is axiomatic that a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n, 93 Ill. 2d 59, 442 N.E. 2d 908(1982).* A causal connection between work duties and a condition may be established by a chain of events including petitioner's ability to perform the duties before the accident, and inability to perform same duties following that date. *Darling v. Industrial Commission 176 Ill. App. 3d. 186, 530 N.E. 2d 1135 (1988).*

3. **Admissibility of PX 2,3, and 9**: Respondent's counsel objected to any opinions as to causal connection in the certified medical records of Orthopedic Sports Medicine & Spine Care Institute (PX2), the certified medical records of BJC Medical Group/Alton Internal Medicine (PX3), and the certified medical records of Pro-Rehab (PX9). In so objecting, Respondent's counsel cited the cases of *Paoletti, Olson* and *Stone* as standing for his right to cross-examine the medical providers. The Arbitrator notes that each certified record was made in the ordinary course of business, and that Petitioner had no control over what the physicians or medical providers put into their records including any opinion on causation. Respondent's counsel even objected to the history of onset set forth in the medical records as being hearsay. In *Paoletti v. The Industrial Commission,* 665 N.E.2d 507, 1st Dist. 1996, this case involved a due process allegation as it related to the old Statute which permitted the Industrial Commission to review additional evidence after hearing. In *Paoletti*, the claimant argued that it was a due process violation by not allowing claimant to testify in rebuttal to Dr. Mercier's testimony that Dr. Mercier reviewed the history with claimant. Despite the Arbitrator's denying claimant's request, claimant made an offer of proof in which he stated that if he were permitted to testify, he would deny that Dr. Mercier reviewed with him any medical history, documents, or any other notes. The Commission also barred the claimant from presenting rebuttal evidence to additional surveillance videotape at the Commission level. In *Paoletti,* the Appellate Court ultimately determined that the Commission erred in barring the claimant from presenting rebuttal evidence to the additional video surveillance tape submitted to the Commission. The decision had nothing to do with the right to cross-examine a medical provider who provides certified treatment records.

Respondent's counsel also cited *Olson v. Illinois Workers' Compensation Commission,* an opinion not released for publication in the permanent Law Reports, and thus subject to revision or withdrawal. In *Olson,* Respondent's Section 12 examiner recommended an additional functional capacity evaluation and the Appellate Court determined that the Act does not provide the Workers' Compensation Commission or an employer with

the authority to compel a claimant to submit to a functional capacity evaluation recommended by the employer's physician. In *Olson,* the Court noted that the fundamental purpose of the Act is to afford protection to employees by providing them with prompt and equitable compensation for their injuries. In the present case, Respondent chose not to exercise its rights pursuant to Section 12 of the Act. Additionally, Respondent was free to take the deposition of Dr. Raskas, and that of the other objected to medical providers, on its own. Neither of the cases cited by Respondent's counsel have anything to do with the bases for the objections raised herein.

Stone v. Chicago mentions due process, but in a context of notice and service of process issues with no relevance to these facts or probative value for this proceeding.

On the contrary, Rule 902 of the Illinois Rules of Evidence, provides that extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following: (11) Certified records of regularly conducted activity. The original or a duplicate of a record of regularly conducted activity that would be admissible under Rule 803(6), if accompanied by a written certification of its custodian or other qualified person that the record (A) was made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, the person with knowledge of these matters; (B) was kept in the course of the regular conducted activity; and (C) was made by the regularly conducted activity as a regular practice. Illinois Rule of Evidence 803(6), in pertinent part provides that records of regularly conducted activity period, a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness, but not including in criminal cases, medical records. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

More importantly, the language of Section 16 of the Act is both clear and controlling. There is no basis for argument that these records were anything other than those generated by treating physicians in the ordinary course of their business of attending to Petitioner's injuries. None of the exhibits appear to have been "reports prepared by treating providers for use in litigation."

Respondent's objections to the histories and opinions contained in the records of the treating physicians PX 2, 3, and 9 are overruled.

4. Medical care to date: The records show appropriate diagnostic and treatment measures that have been somewhat successful thus far in alleviating Petitioner's symptoms, with no evidence that any of those modalities were not reasonably necessary. Accordingly, all bills for services to date in PX 4 shall be paid by Respondent in accordance with the Illinois Fee Schedule.

5. Prospective Medical Care: Petitioner's progress as indicated in her testimony and records and the records of her treating physicians is credible and persuasive as to the reasonableness of continuing with the treatment plan recommended by Dr. Raskas, entitling Petitioner to receive those services in Respondent's workers' compensation liability responsibility under Section 8(a) of the Act.

6. TTD: Since June 3, 2014, Petitioner has been under the care of physicians who have ordered her either off work, or under limited and specific light duty parameters. When she presented herself to Respondent

for work within those limitations, she received no response, whatsoever. Respondent stipulated to the period of disability. It only contested liability for the benefits. Accordingly, Petitioner is entitled to TTD from June 3, 2014, through August 12, 2014, as provided in Section 8(d) of the Act.

7. Penalties and Attorney's Fees: Penalties and attorney's fees are denied. Respondent had a right to question accident and causal connection. While the Arbitrator has ultimately found in favor of Petitioner, the case presented factual issues for determination.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ Affirm and adopt	☐ 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

John Hudson,

Petitioner,

15IWCC0512

vs.

NO: 10WC 000330

Peoria School District #150,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent, herein and notice given to all parties, the Commission, after considering the issue of medical expenses and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 14, 2014, is hereby affirmed and adopted.

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.

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

15IWCC0512

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.

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: JUL 7 - 2015
MJB/bm
o-05/11/15
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

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

15IWCC0512

HUDSON, JOHN
Employee/Petitioner

Case# **10WC000330**

PEORIA SCHOOL DISTRICT #150
Employer/Respondent

On 10/14/2014, 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 0.04% 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:

0225 GOLDFINE & BOWLES PC
ATTN: WORK COMP DEPT
124 S W ADAMS ST SUITE 200
PEORIA, IL 61602

5354 STEPHEN P KELLY AAL LLC
2710 N KNOXVILLE AVE
PEORIA, IL 61604

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ 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
19(b)

15IWCC0512

John Hudson
Employee/Petitioner

Case # **10** WC **00330**

v.

Peoria School District #150
Employer/Respondent

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 **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Peoria**, on **August 19, 2014**. 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

15IWCC0512

FINDINGS

On the date of accident, **April 1, 2008**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**26,891.28**; the average weekly wage was $**517.14**.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**12,115.85** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**12,115.85**.

ORDER

Respondent shall pay reasonable and necessary medical services of $2,906.30, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall 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 Section 8(j) of the Act.

Respondent shall authorize and pay the reasonable and necessary medical expenses associated with the ACL reconstruction surgery prescribed for the Petitioner by Dr. Below, as provided in Sections 8(a) and 8.2 of the Act.

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.

Arbitrator Anthony C. Erbacci

October 8, 2014
Date

10 WC 330
ICArbDec19(b)

OCT 14 2014

FACTS:

The Petitioner sustained undisputed accidental injuries arising out of and in the course of his employment with the Respondent on April 1, 2008. The Petitioner testified that he was employed by the Respondent as a substitute teacher and that on April 1, 2008, while he was attempting to break up a fight between two students; he fell and injured his right leg.

The Petitioner first sought medical attention at the Methodist Medical Center Emergency Room on the date of the accident. The history given at that time was "complains of right knee pain, unable to bear weight, was breaking up fight with kids at school, went down bleachers, twisted knee, fell onto the floor". (Petitioner Exhibit 2, p.4) The Petitioner subsequently underwent an MRI which found a hair-line fracture of the posterior tibial plateau, a partial tear of the lateral collateral ligament, as well as a complete tear of the Petitioner's anterior cruciate ligament. (Petitioner Exhibit 3) The Petitioner testified that he then came under the care of Dr. Steven Below at Great Plains Orthopedics. Dr. Below stated in his April 9, 2008 office note:

> He says that he is a very active gentleman. I would consider proceeding with a nonoperative approach at this time, including crutches and the use of the knee brace. We will then evaluate the posterolateral corner and ACL. We will get him into some physical therapy. If his knee is strong, we would proceed with a nonoperative approach. If he continues to have disability, we would consider possible ACL reconstruction with possible posterolateral corner reconstruction if indicated. Once again, this is a significant injury to his knee. (Petitioner Exhibit 3, p.7)

At that time, Dr. Below also found mild edema in the Petitioner's right calf and therefore ordered a venous Doppler study. This study was positive for a clotting issue and the Petitioner was therefore hospitalized at Methodist Medical Center from April 9, 2008 through April 14, 2008. A review of those records indicates that the Petitioner was being treated for right lower extremity deep vein thrombosis. The attending physician stated "this is most likely secondary to his prior injury that occurred on 4-1-2008". (Petitioner Exhibit 2)

Upon his release from the hospital, the Petitioner began a physical therapy regimen. During the course of his physical therapy, the Petitioner was noted to show some improvement but he continued to complain of instability and "giving-out" episodes. (Petitioner Exhibit 3)

During this time, the Petitioner was also under the care of his primary care physician, Dr. Daniel Hoffman. On June 28, 2008, Dr. Hoffman referred the Petitioner for a CT scan at Methodist Medical Center to re-check his deep venous thrombosis problem for which he had previously been hospitalized. This test came back negative for any problems. (Petitioner Exhibit 2) Dr. Hoffman also referred the Petitioner for a second orthopedic opinion to Dr.

George Lane at Advanced Orthopedics. Dr. Lane was of the opinion that the Petitioner should gradually increase his activity with a brace and, given that the Petitioner wanted to be very active, he still might be a candidate for an ACL repair. (Petitioner Exhibit 6, p.5)

The Petitioner continued to treat with Dr. Steven Below at Great Plains Orthopedics. On September 24, 2008, the Petitioner was allowed to return to work with the restrictions of no climbing ladders, sit down as needed, and to continue to wear the prescribed brace. (Petitioner Exhibit 7, pp.12-13) The Petitioner's next visit with Dr. Below was on January 26, 2009 at which point the Petitioner was given a cortisone injection due to his continued complaints of occasional pain as well as giving out of the right knee. On March 12, 2009 the Petitioner was given a different brace for his right knee to increase stability. The Petitioner's final visit with Dr. Below came on December 9, 2010. During that visit, the Petitioner was noted to continue to exhibit signs of instability. A discussion was held and it was decided that since the Petitioner was very fit and had almost no arthritic changes in his knee, that he would be a good candidate for an ACL reconstruction. The decision whether to have that procedure was left up to the Petitioner. In his deposition testimony, Dr. Below opined that the Petitioner's accident of April of 2008 was the cause for the treatment which he had rendered, as well as the treatment he had recommended for the Petitioner. (Petitioner Exhibit 7, p.18)

At the Respondent's request, the Petitioner was examined by Dr. Richard Lehman on April 7, 2011. It was Dr. Lehman's opinion that the Petitioner's problem with his knee "was caused by his - - this whole process was caused by his injury at work. I believe that is the case." (Respondent Exhibit 3, p.39) However, based upon his examination, Dr. Lehman felt that the Petitioner was not suffering from any instability and, given his lack of degenerative changes in his knee, he would recommend against any surgical intervention.

The Petitioner testified that he continues to experience pain and discomfort in his right knee, especially with activity. The Petitioner also stated that he continues to have instability in his right knee. The Petitioner testified that prior to this accident, he had never experienced any of these symptoms and that he has not suffered any accidents to his right knee subsequent to the accident of April 1, 2008.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

Dr. Below, the Petitioner's treating physician, opined that the Petitioner's accident of April of 2008 was the cause for the treatment which he had rendered, as well as the treatment he had recommended for the Petitioner. Dr. Lehman, the Respondent's examining physician also opined that the Petitioner's knee problem was caused by his injury at work. Based upon

the opinions of both Dr. Below and Dr. Lehman, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the accident of April 1, 2008.

In Support of the Arbitrator's Decision relating to (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, the Arbitrator finds and concludes as follows:

Having found that the Petitioner's current condition of ill-being is causally related, and noting the opinions of Dr. Below and Dr. Lehman, the Arbitrator further finds that the medical services that were provided to the Petitioner were reasonable, necessary, and causally related the accident of April 1, 2008. The Arbitrator orders the Respondent to pay the medical bills listed in Petitioner's Exhibit 8, pursuant to the applicable fee schedule.

In Support of the Arbitrator's Decision relating to (K.), Is Petitioner entitled to any prospective medical care, the Arbitrator finds and concludes as follows:

The Petitioner testified at Arbitration that he continues to experience pain and discomfort in his right knee with activity. The Petitioner also testified at Arbitration that he continues to have "giving-out" or instability episodes with his right knee. These symptoms and complaints have been consistent throughout the treatment that the Petitioner underwent with Dr. Below at Great Plains Orthopedics. During his last examination of the Petitioner, Dr. Below continued to find signs of instability in the Petitioner's right knee. It was decided that if the Petitioner wanted to remain as active as possible, he would be a candidate for an ACL reconstruction. If and when this ever happened was left up to the Petitioner. The Petitioner's family physician, Dr. Daniel Hoffman, also sent the Petitioner to Dr. George Lane at Advanced Orthopedics for a second opinion regarding surgery. Dr. Lane stated in his October 21st, 2008 note that "Originally I said I would not do the ACL but he wants to be very active so he may be a candidate for ACL repair". (Petitioner Exhibit 6, p.5)

At the Respondent's request, the Petitioner was examined by Dr. Richard Lehman on April 7, 2011. Dr. Lehman testified that during his examination of the Petitioner, he was unable to find any instability in the Petitioner's right knee. Dr. Lehman opined that based upon the lack of any finding of instability, a lack of degenerative changes in the Petitioner's right knee, the Petitioner's age and the fact of the prior DVT, an ACL reconstruction was not reasonable or necessary for the Petitioner.

The Arbitrator notes that Dr. Below was noted findings of instability in the Petitioner's right knee throughout the course of his treatment of the Petitioner. In his deposition, Dr. Below testified that the sole reason for performing the ACL reconstruction is to address the instability issue and that, were this finding not present, surgery would not be recommended. While the Arbitrator notes the opinions of Dr. Lehman, given that Dr. Lehman only examined

the Petitioner on one occasion, the Arbitrator finds the opinions of Dr. Below in this matter to be more persuasive.

The Petitioner testified at Arbitration that it is his desire to undergo this procedure so that he can get back to the pre-injury activity levels that he once enjoyed which includes golf, tennis, and playing with his grandchildren.

Based upon the foregoing, the Arbitrator finds that the surgery recommended by Dr. Below and Dr. Lane is reasonable and necessary, as well as causally related to the accident of April 1, 2008.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ 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

Sunshine J. Dixon,

Petitioner,

15IWCC0523

vs.

NO: 13 WC 08413

Kindred Hospital,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, maintenance, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 24, 2014 is hereby affirmed and adopted.

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.

15IWCC0523

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $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: JUL 8 - 2015

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gaf
O: 6/25/15
45

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

15IWCC0523

DIXON, SUNSHINE J
Employee/Petitioner

Case# 13WC008413

KINDRED HOSPITAL
Employer/Respondent

On 10/24/2014, 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 0.05% 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:

0834 KANOSKI BRESNEY
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

4876 ARNETT LAW GROUP LLC
BETHANY WHITE
500 W MONROE ST SUITE 2010
CHICAGO, IL 60661

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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
19(b)

15IWCC0523

Sunshine J. Dixon
Employee/Petitioner

Case # 13 WC 08413

v.

Consolidated cases: n/a

Kindred Hospital
Employer/Respondent

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on August 20, 2014. 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 _____

15IWCC0523

FINDINGS

On the date of accident, July 22, 2012, 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.

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

In the year preceding the injury, Petitioner earned $16,753.37; the average weekly wage was $470.60.

On the date of accident, Petitioner was 37 years of age, single with 1 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services. The parties stipulated that all medical would be paid.

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. The parties stipulated that all TTD had been paid to date and that Respondent was entitled to an overpayment of $941.19.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8 as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Petitioner's petition for payment of maintenance is denied.

Respondent is entitled to a credit of $941.19 for overpayment of temporary total disability benefits.

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.

William R. Gallagher, Arbitrator
ICArbDec19(b)

October 20, 2014
Date

OCT 24 2014

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on July 22, 2012. According to the Application, Petitioner was picking up supplies and sustained an injury to her right lower extremity. There was no dispute that Petitioner sustained a work-related accident; however, Respondent disputed liability on the basis of causal relationship. This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of maintenance benefits as well as provision of vocational rehabilitation services.

At trial, the parties stipulated that all of the medical services provided to Petitioner to date were reasonable and necessary and that Respondent had, or would, make payment of same pursuant to the fee schedule. The parties also stipulated that Petitioner was entitled to payment of temporary total disability benefits for a period of 65 5/7 weeks commencing August 7, 2012, through November 11, 2013, and that Respondent had paid Petitioner temporary total disability benefits for that period of time. Further, Petitioner and Respondent agreed that Respondent had, in fact, overpaid Petitioner temporary total disability benefits in the amount of $941.19 and was entitled to a credit for same. Petitioner sought payment of maintenance for a period of 40 3/7 weeks, commencing November 12, 2013, through August 20, 2014.

Petitioner worked for Respondent as a CNA and her job duties consisted primarily of providing care to patients which included bathing, feeding, helping them use the bathroom, etc. On July 22, 2012, Petitioner had just obtained some supplies and, while she was carrying them, she accidentally dropped a box. Petitioner bent over to pick up the box and, when she returned to a standing position, she felt pain in her right leg. Petitioner testified that she completed her shift even though her right leg was painful and swollen.

The following morning, Petitioner sought medical treatment at Priority Care. At that time, Petitioner stated that she injured her right knee the night before when she bent down to get supplies and that she twisted her knee. Petitioner was examined by Dr. Gerald Bitar, who noted that she had an antalgic gait, swelling of the right knee and a full range of motion but with pain. He ordered an x-ray of the knee, prescribed medication and a brace. The x-ray was negative for fractures (Petitioner's Exhibit 9).

On July 24, 2012, Petitioner was seen at SIU Center for Family Medicine by Physician's Assistant Zachary Sims, who noted that she had right leg pain and swelling. He ordered an ultrasound study to rule out a deep vein thrombosis. It was performed that day and was negative (Petitioner's Exhibit 3; pp 171-175).

Petitioner was again seen by Sims on July 26, 2012. At that time, Sims diagnosed Petitioner with a right hamstring strain/sprain. He ordered physical therapy. Petitioner was subsequently seen by Airn Etherton, RN, on July 31, and August 2, 2012, and Petitioner was diagnosed with a right calf strain and again physical therapy was ordered (Petitioner's Exhibit 3; pp 157-169).

Petitioner was examined by Dr. Rachel Rahman on August 7, 2012, for right lower leg swelling and pain. Further physical therapy was ordered (Petitioner's Exhibit 3; pp 152-156). On August

8, 2012, Petitioner went to the ER of St. John's Hospital. At that time, Petitioner complained of low back and right leg pain. On clinical examination, there was some swelling of the right foot but no calf swelling. A CT scan of the lumbar spine was obtained which was negative. A Venus Doppler test was ordered to rule out a DVT. This was performed the next day and it was normal (Petitioner's Exhibit 1; pp 19-21, 35).

On August 9, 2012, Petitioner was again seen by PA Sims who noted that Petitioner's initial complaints were to the right knee but now complaints were to the right hamstring. He also noted that Petitioner's pain was out of proportion with the findings on examination (Petitioner's Exhibit 1; pp 133-134).

On August 10, 2012, Petitioner went to the ER of St. John's Hospital. At that time, Petitioner complained of right calf pain. The ER record noted that Petitioner's symptoms were most likely due to a muscular/tendon injury and an MRI was ordered (Petitioner's Exhibit 1; pp 68-70). The MRI was performed on August 14, 2012, and the radiologist's impression was truncation of the soleus muscle suggesting a near complete tear, extensive swelling of the flexor digitorum longus tendon suggesting near complete tear, mild swelling of the tibialis posterior tendon suggesting partial intrasubstance tear, suggestion of tear of the plantaris tendon and possible intrasubstance tear of the gastric venous muscle (Petitioner's Exhibit 1; pp 67-69, 84-85).

PA Sims saw Petitioner on August 17, 2012, reviewed the MRI scan and indicated that he was going to refer Petitioner to an orthopedic surgeon (Petitioner's Exhibit 1; p 88). Petitioner was seen by PA Patricia Lacy on August 21, 2012. On clinical examination, Petitioner had swelling primarily in the ankle and foot and complained of significant pain in the calf, ankle and foot. PA Lacy as well as Dr. McAndrew read the MRI scan and opined that it did not reveal any significant tears. The diagnosis was compartment syndrome of the right lower extremity and an EMG of the right lower extremity was ordered (Petitioner's Exhibit 4; pp 88 – 89).

Petitioner was again seen by PA Lacy on August 28, and September 7, 2012, because of her continued symptoms (Petitioner's Exhibit 4; pp 104-115). The EMG was performed on September 11, 2012, which revealed right tibial and peroneal neuropathy around the right leg area as well as possible focal myositis in the right leg (Petitioner's Exhibit 4; pp 95-96). An MRI of the right leg was performed on September 19, 2012, and it revealed swelling of multiple muscles of the right lower leg and mild chondromalacia of the patella (Petitioner's Exhibit 2; p 18).

Petitioner was again seen by PA Lacy on September 20, 2012, and PA Lacy reviewed the EMG and MRI findings. On clinical examination, Petitioner had swelling of the right lower extremity. PA Lacy opined that Petitioner had muscular tears and the remnants of compartment syndrome that caused a right foot drop (Petitioner's Exhibit 4; pp 124-125).

At the direction of the Respondent, Petitioner was examined by Dr. John Kefalas, an orthopedic surgeon, on October 17, 2012. In connection with his examination of Petitioner, Dr. Kefalas reviewed medical records provided to him by Respondent. Dr. Kefalas opined that Petitioner had right lower leg weakness, foot drop and right knee pain. He was unable to explain why Petitioner developed peroneal nerve neuroproxia and swelling following the accident of July 22, 2012. He

recommended additional physical therapy and that Petitioner continue to use the APO device that had been previously prescribed for her. He opined that Petitioner was not capable of returning to work as a CNA, but could do office work in a seated position (Petitioner's Exhibit 10).

On November 1, 2012, Petitioner was again seen by PA Lacy. At that time, Petitioner's primary complaint was inability to move her right foot/ankle. On clinical examination, it was noted that Petitioner had significant atrophy of the right lower extremity. The impression was right leg pain and motor loss in the right lower leg from anterior compartment syndrome. PA Lacy recommended continued physical therapy (Petitioner's Exhibit 4; pp 147-148).

On December 7, 2012, Petitioner was again seen by PA Lacy following thoracic and lumbar MRI scans. In regard to her right lower leg, Petitioner's symptoms had improved to where she was able to begin weight-bearing and the range of motion of the ankle/foot had also improved. PA Lacy's impression remained compartment syndrome of the right lower extremity. PA Lacy recommended a neurological consultation and that, while Petitioner was improving, her recovery would take a significant amount of time (Petitioner's Exhibit 4; pp 184-185).

On April 11, 2013, Petitioner was again seen by PA Sims because of painful muscular spasms in the right calf. PA Sim's noted that Petitioner was scheduled to be seen by a neurologist on May 1, 2013 (Petitioner's Exhibit 3; pp 57-60).

On May 1, 2013, Petitioner was examined by Dr. Laxmi Dhakal, a neurologist. On clinical examination, Dr. Dhakal noted that Petitioner had intact reflexes but decreased sensation below the knee. He opined Petitioner had compartment syndrome with possible muscle injuries. He recommended a repeat EMG (Petitioner's Exhibit 4; pp 52-53).

On May 6, 2013, Petitioner was again seen by PA Sim's. Sims noted Petitioner had received an extensive amount of physical therapy, but she continued to make, at best, a slow recovery. He ordered another MRI and functional capacity evaluation (FCE) as well as recommended obtaining another medical opinion (Petitioner's Exhibit 3; pp 52-53).

An MRI was performed on June 13, 2013, which revealed a contusion of the calf and possible mild synovitis (Petitioner's Exhibit 3; p 45). An FCE was performed on July 9, 2013, and the examiner observed that Petitioner gave a maximal effort. Petitioner's ability to walk, carry and climb stairs was limited by her right ankle range of motion and right foot drop (Petitioner's Exhibit 6; pp 18-24).

On July 25, 2013, PA Sims saw Petitioner and reviewed the findings of the FCE. He opined that another FCE he was indicated to determine Petitioner's ability to return to work as well as determining her ability to drive (Petitioner's Exhibit 3; pp 22-23).

At the direction of Respondent's medical case manager, Petitioner was examined by Dr. Paul Smucker, an orthopedic surgeon, on August 30, 2013. On clinical examination, Dr. Smucker noted that Petitioner had a chronic right foot drop and that the prognosis for return of motor function one year post injury was poor. He recommended further physical therapy and opined

Petitioner could return to work with a 20 pound lifting restriction (Petitioner's Exhibit 5; pp 80-83).

Petitioner was again seen by Dr. Smucker on October 18, 2013, and she advised him that she had been to physical therapy and that there was some improvement although she continued to complain of right leg pain and numbness. Dr. Smucker again noted a chronic right foot drop and ordered another EMG. Dr. Smucker performed the EMG on October 24, 2013, and it was normal (Petitioner's Exhibit 5; pp 12; 20-21).

Dr. Smucker saw Petitioner on November 11, 2013, and noted on clinical examination that there was no swelling of the right foot/ankle and that motor strength testing was unchanged. He opined that Petitioner had "ficticious right foot drop" and that there was no evidence of neurological injury based on the normal EMG study. He opined Petitioner was at MMI and could return to work without restrictions (Petitioner's Exhibit 5; pp 3-4).

On December 12, 2013, Petitioner had an FCE performed for the purpose of determining her ability to return to work. The examiner opined that Petitioner had work/activity restrictions primarily because of her altered gait and foot drop (Petitioner's Exhibit 6; pp 29-36).

At the direction of her attorney, Petitioner was examined by Dr. Michael Watson, an orthopedic surgeon, on May 6, 2014. In connection with his examination of Petitioner, Dr. Watson reviewed medical records provided to him. On clinical examination, Dr. Watson described an obvious right foot drop, limited range of motion and atrophy of the right lower leg musculature. He opined Petitioner had post compartment syndrome of the right lower leg with peroneal nerve and posterior tibial nerve palsy. He further opined that the condition was caused by the work-related accident but that Petitioner was at MMI. He further stated that Petitioner could not return to work as a CNA and that she had work restrictions of no walking more than 15 minutes out of every hour, no pushing, pulling or lifting over 10 pounds and that Petitioner would need to regularly take narcotic pain medications and muscle relaxants because of the condition (Petitioner's Exhibit 7).

At the direction of Respondent, Dr. David Zoellick, an orthopedic surgeon, performed a medical records review and prepared a report regarding same on July 28, 2014. He did not examine the Petitioner. In addition to his review of the medical records, Dr. Zoellick watched surveillance video of the Petitioner that was previously obtained in October, 2013. Based on his review of the preceding, Dr. Zoellick opined that Petitioner sustained a calf muscle tear and that many of Petitioner's complaints were non-organic. He indicated the possibility of symptom magnification on the part of the Petitioner (Respondent's Exhibit 3).

Respondent tendered into evidence surveillance video of the Petitioner obtained on October 18, October 30, and October 31, 2013. The Arbitrator watched the surveillance video and determined the most relevant video was obtained on October 31, 2013, when Petitioner was observed walking in what appeared to be a normal manner. On one occasion Petitioner was wearing the orthopedic boot; however, on another she was not (Respondent's Exhibit 1).

At trial Petitioner testified that she attempted to return to work at the successor corporate owner of the Respondent, but did not receive an offer of employment. Petitioner stated that she applied for cashier's positions at both Wal-Mart and K-Mart but she could not recall exactly when. She also stated that a friend informed her that she could apply for a job as a bartender, but she had no specific recollection of when that occurred either.

Petitioner testified that she still has swelling and pain in the right lower leg every day and that her right foot "drops" when she walks. She stated that her daily activities are limited because of her numerous right leg/foot symptoms.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is, in part, causally related to the accident of July 22, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner sustained an injury to the right lower extremity and was subsequently diagnosed with compartment syndrome. After an extremely prolonged course of medical evaluations, treatment, physical therapy and diagnostic studies, Petitioner's condition resolved.

The most recent EMG of October, 2013, was normal and Dr. Smucker opined that Petitioner had a "ficticious right foot drop." He opined that Petitioner could return to work without restrictions.

Although Dr. Zoellick did not conduct an examination of Petitioner, he conducted a very thorough and comprehensive review of all of the medical records and watched the surveillance video of the Petitioner. The Arbitrator finds the opinion of Dr. Zoellick to be consistent with that of Dr. Smucker.

The Arbitrator finds the opinions of Dr. Smucker and Dr. Zoellick to be persuasive.

The Arbitrator further notes that the surveillance video of Petitioner obtained in October, 2013, undermines her credibility.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

Based on the stipulation of the parties, the Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical charges incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 8, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

In regard to disputed issue (L) the Arbitrator makes the following conclusions of law:

The Arbitrator concludes that Petitioner is not entitled to maintenance benefits.

The Arbitrator concludes that, based on the stipulations of the parties, Petitioner is entitled to temporary total disability benefits of 65 5/7 weeks commencing August 7, 2012, through November 11, 2013, and that Respondent is entitled to a credit of overpayment of said benefits in the amount of $941.19.

In support of these conclusions the Arbitrator notes the following:

As stated herein, the Arbitrator found the opinions of Dr. Smucker and Dr. Zoellick to be persuasive. Dr. Smucker authorized Petitioner to return to work without restrictions on November 11, 2013, accordingly, no maintenance benefits are awarded.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Evins,
Petitioner,

vs.

NO: 07 WC 30507

Village of Niles,
Respondent.

15IWCC0528

DECISION AND OPINION ON REVIEW

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

The Commission views the case differently than the Arbitrator and finds Petitioner is permanently disabled to the extent of 2% man as a whole under Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $619.97 per week for a period of 10 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 2% loss of a man 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.

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: JUL 13 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/jm
O6/4/15

43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

EVINS, MARK
Employee/Petitioner

Case# **07WC030507**

15IWCC0528

VILLAGE OF NILES
Employer/Respondent

On 9/30/2014, 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 0.04% 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:

2559 BOWMAN & CORDAY LTD
LANE ALLEN CORDAY
20 N CLARK ST SUITE 500
CHICAGO, IL 60602

0507 RUSIN & MACIOROWSKI LTD
DANIEL R EGAN
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

15IWCC0528

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MARK EVINS
Employee/Petitioner

v.

VILLAGE OF NILES
Employer/Respondent

Case # 07 WC 30507

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **August 5, 2014**. 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

B. ☐ 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 **March 12, 2007**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$57,824.00**; the average weekly wage was **$1,112.00**.

On the date of accident, Petitioner was **40** years of age, ***single*** with **3** dependent children.

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

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

After reviewing all of the evidence presented, the Arbitrator makes the following findings, attached to this document.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **$619.97**/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.

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

09-30-14
Date

SEP 30 2014

STATEMENT OF FACTS

Petitioner, currently 48 years old, has been employed by the Respondent, Village of Niles, for 25 years (T.11). He initially worked in the water meter division for 10 years and then transferred to the sewer department (T.11,12). Petitioner testified to the physical nature of sewer department job activities, (T.12-14), as corroborated by the written Job Description. Sewer section work duties include maintenance and repair of sewer lines, manholes and catch basins and the occasional operation of various machinery/equipment. Seasonal duties will include branch and leaf pick-up and snow abatement/removal operations (Resp.Ex.No.1). Petitioner used shovels, picks, trowels, wrenches, TV cameras and hoists (T.13).

On March 12, 2007, Petitioner was digging out black top when he felt pain in his right shoulder (T.24, Pet.Ex.No.1, pp 6a,b,c). He was directed to Advocate Occupational Health where he received initial treatment to his right shoulder and upper trapezius, physical therapy and work restrictions (Pet.Ex.No.6, pp 3-33). On March 19, 2007, Petitioner complained of tingling down his right fifth finger (p.19) and right cervical paraspinal, upper trapezius and anterior shoulder pain continued on March 22, 2012 (p.9). Physical therapy continued and Petitioner was seen by orthopedic specialist Dr. George Firlit on April 10, 2007 (p.19). An MRI was ordered, and findings demonstrated 2 to 3mm posterior and right sided disc protrusions at C5-C6 and C6-C7 (p.20). Physical therapy for the cervical paraspinal area continued and, on May 12, 2007, Dr. Firlit referred Petitioner to Dr. Bernstein for consultation and treatment (p.25).

Dr. Bernstein prescribed cervical epidural injections and referred Petitioner to Dr. Henry Kurzydlowski at the Lutheran General Pain Clinic (Pain Care Consultants) for same (Pet.Ex.No.8, p.6). Petitioner underwent cervical epidural steroid injections on June 15 and July 2, 2007 (Pet.Ex.Nos. 8, 9, 10). Dr. Bernstein assessed Petitioner's condition post CT myelogram to be degenerative disc disease at C5-C6 with evidence of foraminal stenosis and

right paracentral disc osteophyte complex (Pet.Ex.No.5, p.13). Petitioner was released to return to work without restrictions.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner suffered a work-related accident on March 12, 2007 while digging out blacktop (T.24, Pet.Ex.No.6a,b,c). He initially felt pain in his right shoulder for which he received treatment at Advocate Occupational Health (Pet.Ex.No.6). It became apparent to the treating physicians that the radicular pain he experienced was emanating from his cervical spine. MRI findings demonstrated right sided disc protrusion at C5-C6 and C6-C7 (Pet.Ex.No.6, p.20). Cervical epidural injections were performed by Dr. Kurzydlowski at Dr. Bernstein's recommendation (Pet.Ex.No.8).

There is no evidence of prior injury to Petitioner's neck, right arm and shoulder. Dr. Bernstein assessed Petitioner's condition as neck pain and symptoms suggesting right upper extremity radiculopathy following a work incident (Pet.Ex.No.5, p.40).

Upon careful review of the medical evidence presented and the credible testimony of the Petitioner, the Arbitrator finds Petitioner's condition of ill-being with reference to his neck, right arm and shoulder to be causally related to his work-related accident of March 12, 2007.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

As a result of his work-related accident of March 12, 2007, Petitioner sustained injury to his cervical spine, right arm and shoulder. Petitioner underwent extensive physical therapy and two cervical epidural injections. MRI findings indicate right-sided disc protrusions at C5-C6 and C6-C7 (Pet.Ex.No.6, p.20), and Dr. Bernstein diagnosed degenerative disc disease at C5-6 with evidence of foraminal stenosis and right paracentral disc osteophyte complex (Pet.Ex.No.5, p.41).

The Arbitrator finds that as a result of said accident, Petitioner has sustained serious and permanent injury to the extent of 10% of his entire person.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ 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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Skokowski,
Petitioner,

vs. No: 13 WC 01583

Euclid Beverage, Ltd.,
Respondent.

15IWCC0515

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and extent of permanent disability, and being advised of the facts and law, modifies the October 3, 2014 Decision of the Arbitrator, which is attached hereto and made a part hereof.

Claim numbers 13 WC 01583 and 13 WC 37529 were heard in consolidation before Arbitrator O'Malley on July 24, 2014. A separate decision was issued for each claim. The Arbitrator found for claim 13 WC 01583 that Petitioner proved he sustained an accident that arose out of and in the course of employment on December 27, 2011 and also proved that a causal connection exists between the condition of ill-being of his right shoulder and the accident. The Arbitrator found Petitioner sustained a 12.5% loss of the person as a whole, referable to the right shoulder. After considering the entire record, and for the reasons set forth below, the Commission modifies the Decision of the Arbitrator as stated below.

The Commission notes it considered as a factor in determining permanent partial disability the Section 12 report of Dr. Westin which included an AMA impairment rating of 10% of the right upper extremity. The Commission, after considering the entire record, affirms and adopts the Arbitrator's finding of 12.5% loss of the person as a whole, pursuant to Section 8(d)2 of the Act.

The Commission further finds the Petitioner claimed on the Request for Hearing form, admitted into evidence as Arbitrator's Exhibit 2, to be entitled to temporary total disability for December 18, 2012 through May 23, 2013, a period of 22 2/7 weeks. Respondent agreed to the period of temporary disability but disputed causal connection. The parties stipulated further on the Request for Hearing form that Respondent paid $20,019.03 in temporary total disability benefits.

15IWCC0515

The Decision of the Arbitrator awarded a credit of $20,019.03 to Respondent for temporary disability benefits paid but failed to order Respondent pay to Petitioner temporary total disability benefits after finding causal connection for his current condition of ill-being.

The Commission orders Respondent to pay to Petitioner temporary total disability benefits of $898.25 per week for 22 2/7 weeks, for the period commencing December 18, 2012 through May 23, 2013, as provided in Section 8(b) of the Act. Respondent shall be given a credit of $20,019.03 for temporary total disability benefits paid.

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 2014, is hereby modified.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $898.25 per week for 22 2/7 weeks, as provided in Section 8(b) of the Act. Respondent is to receive credit for benefits paid in the amount of $20,019.03.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of $695.78 per week for 62.5 weeks, because the injuries sustained caused the 12.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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 Respondent pay to Petitioner interest under §19(n) of the Act, if any.

Bond for removal of this cause to the Circuit court by Respondent is hereby fixed at the sum of $62,800.00. 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 the Circuit Court.

DATED: JUL 7 - 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-05/20/15
jdl/adc
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SKOKOWSKI, BRIAN
Employee/Petitioner

Case# **13WC001583**
13WC037529

EUCLID BEVERAGE LTD
Employer/Respondent

15IWCC0515

On 10/3/2014, 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 0.04% 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:

1380 MURPHY & MURPHY
JUSTIN S STONER
53 W JACKSON BLVD SUITE 1760
CHICAGO, IL 60604

5001 GAIDO & FINTZEN
ROBERT L SMITH
30 N LASALLE ST SUITE 3010
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

☐ 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

Brian Skokowski,
Employee/Petitioner

v.

Euclid Beverage, Ltd.,
Employer/Respondent

Case # **13** WC **1583**

Consolidated cases: **13 WC 37529**

15IWCC0515

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Geneva**, on **7/24/14**. 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 _____

15IWCC0515

FINDINGS

On **12/27/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,063.24**; the average weekly wage was $**1,347.37**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **no** 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 $**$20,019.03** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**20,019.03**.

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 $695.78 per week for 62.5 weeks, because the injuries sustained caused the 12.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

9/30/14
Date

OCT 3 - 2014

STATEMENT OF FACTS:

Petitioner, a 50 year old driver/delivery man, testified that his job responsibilities included hauling kegs weighing approximately 160 pounds each and beer cases weighing 20-25 pounds each.

Petitioner testified that on December 27, 2011 he was unloading a palette of beer when a case fell. He indicated that he stuck his right arm out to stop it from falling and felt a sharp pain in his right shoulder. He noted that he had experienced right shoulder pain for years, which he described as "nagging" and which he described as a "3" on a scale of 1 to10. However, he testified that he experienced increased pain on the date in question, which he described as about a "6."

Tyler Medical Services records reflect that Petitioner sustained a previous injury to his right shoulder on October 1, 2003. (PX2). In a "WC Chart" dated January 16, 2004, it was noted that "... while [Petitioner] was working, his right shoulder has gradually begun to ache. He states the pain is mostly there when he lifts a case of beer straight up in front of him and places it on a shelf. He states also pull motions increase the pain. He state the pain is approximately3-4 out of 10 and when he points to the area of maximal tenderness, he points to both the anterior and posterior shoulder. Patient does take Advil for pain and has placed ice on it which he states does provide some relief. Patient has no complaints of decreased ROM in the shoulder. He states that he believes his grip strength is full, has no complaints of deficits in grip strength. He states he did not come in sooner to see us, because he wanted to make it through the busy time with the holidays work..." (PX2). Petitioner was diagnosed with "[r]ight shoulder pain" and instructed to take over-the-counter Advil as well as to alternate ice and heat. Petitioner was also given a Theraband with instructions and told to return if he had any increased pain or problems. (PX2). Petitioner was allowed to return to full duty work at that time. (PX2).

Petitioner returned to Tyler Medical on January 22, 2004 at which time he was diagnosed with"[i]mproving right shoulder pain with mild AC impingement syndrome, Grade I AC separation and rotator cuff tendonitis." (PX2). Petitioner was allowed to continue to work full duty. (PX2).

Petitioner returned to Tyler Medical on February 2, 2004 at which time he was diagnosed with "[i]ncreasing right shoulder pain, rotator cuff tendonitis, mild AC impingement syndrome, and grade I AC separation." (PX2). An MRI was prescribed and Petitioner was started on Naproxen. (PX2). Petitioner was allowed to continue to work as a beer truck delivery driver without restrictions. (PX2).

Petitioner returned to Tyler Medical on February 16, 2004 at which time he was diagnosed with right shoulder impingement syndrome and bursitis based on the MRI results. (PX2). It was recommended that Petitioner follow up with an orthopedic surgeon, and it was noted that Mr. Skokowski had "... chosen to follow up with his private orthopedic physician." (PX2). Petitioner was discharged from care and no limitations were imposed at that time. (PX2). There is no indication in the record whether Petitioner followed up with any orthopedic surgeon for his right shoulder thereafter.

With respect to the alleged accident on December 27, 2011, Petitioner testified that he first sought treatment for his right shoulder "within a few days" of the incident. Tyler Medical Services records show that he presented to Dr. Robert Long, D.O. on January 3, 2012 "... for evaluation of right shoulder pain. He denies any specific work injury or blunt trauma. He notes it with his job responsibilities as a driver, which entails loading and unloading. He was seen at our facility in 2004 for right shoulder pain, which have been present since October 2003. He eventually had an MRI, which revealed exuberant hypertrophy of the acromioclavicular joint causing impingement of the supraspinatus muscle. No tear noted. Positive bursitis. He elected to follow up with his private orthopedist at that time. Surgery was recommended. Evidently, per his description, an IME was

obtained and physical therapy was recommended, which he did perform. States the symptoms never completely resolved and he did not have the surgery. They have become more intense over the past 2 weeks, which he attributes to his usual job responsibilities. Those responsibilities recently have been more intense due to the holiday season ..." (PX2). Petitioner was diagnosed with right shoulder pain with impingement and given a restriction of no work involving the right arm as well as no above-shoulder reaching or lifting involving the affected arm. (PX2).

Petitioner returned to Tyler Medical Services on January 6, 2014 at which time Dr. Long noted palpable pain throughout the shoulder and limited range of motion in all planes. (PX2). Dr. Long diagnosed right shoulder pain/impingement, ordered physical therapy and imposed restrictions including no work involving the right arm, no above shoulder reaching or lifting with the right arm, no commercial driving and climbing limited to stairs. (PX2). Petitioner was instructed to follow-up after completion of physical therapy or sooner if symptoms change. (PX2).

Petitioner completed a course of eight physical therapy sessions between January 9, 2012 and January 24, 2012. Although the therapy was helpful in improving his active range of motion, Petitioner continued to demonstrate rotator cuff weakness with pain and tenderness over the AC joint and posterior cuff. Only two of the five goals of physical therapy were met at that time. (PX2).

In a "WC Chart" note dated January 24, 2012, Dr. Long indicated that Petitioner had made overall improvement, but that Mr. Skokowski felt he was continuing to progress and had not plateaued. (PX2). As a result, Dr. Long recommended up to an additional 6 sessions of PT if needed. (PX2). Dr. Long also recommended that Petitioner increase his activity, to see how he tolerates it, and that his restrictions should include no above shoulder reaching or lifting with the right arm, lifting up to 50 lbs. from floor to waist, lifting limited to close to the body with no extended arms, climbing limited to stairs and no commercial driving yet. (PX2). Petitioner was to return for follow-up after completion of therapy or sooner if symptoms change. (PX2).

Petitioner underwent additional physical therapy throughout February 2012. In a "WC Chart" note dated February 24, 2012, Dr. Long indicated that Petitioner had completed his formal therapy, completing all treatment goals and met his job match based on the functional screen. Dr. Long also noted that Petitioner was not experiencing any pain and currently had no complaints of numbness, tingling or radiating pain. (PX2). Dr. Long stated that Petitioner would like to return to his regular job responsibilities. (PX2). Given that Petitioner was back to his baseline, and in light of his subjective improvement, clinical exam and physical therapy results, Dr. Long released Petitioner to attempt his regular job responsibilities as tolerated. (PX2).

Petitioner returned to Dr. Long on March 20, 2012 at which time it was noted that overall he had been doing well but that his right shoulder was sore and felt "tired" after a workday. (PX2). No complaints of radiating pain and no new injury or trauma were reported. (PX2). Due to his persistent complaints, Dr. Long ordered a new MRI at that time. (PX2). Petitioner was allowed to continue to perform his regular job duties. (PX2).

Petitioner returned to Dr. Long on April 20, 2012 at which time it was noted that the MRI of the right shoulder performed on April 17, 2012 had demonstrated mild tendinopathy with findings suggestive of a focal intrasubstance tear at the supraspinatus insertion as well as a type 2 anterior acromion with persistent spurring and hypertrophy of the AC joint. (PX2). Dr. Long noted that Petitioner felt he was able to perform his regular duties, and referred him for an orthopedic consultation. (PX2).

On April 24, 2012, Petitioner visited Dr. Ted Suchy for orthopedic consultation. (PX2). Following his examination and review of the MRI, Dr. Suchy diagnosed a small tear of the supraspinatus with impingement

syndrome and hypertrophic AC joint. (PX2). Dr. Suchy recommended and administered a corticosteroid injection at that time. (PX2). Dr. Suchy noted that Petitioner could continue to work regular duty. (PX2). Dr. Suchy also indicated that if Petitioner's symptoms persisted, the next step would be arthroscopic evaluation with acromioplasty and repair of rotator cuff. (PX2).

In office notes dated June 7, 2012 and June 26, 2012, Dr. Suchy reported that Petitioner wanted to hold off on any surgical intervention, and noted that Petitioner had made good improvement with therapy and injections. (PX2). Petitioner was allowed to continue to work regular duty. (PX2).

On July 24, 2012, Petitioner returned to Dr. Suchy with continued complaints of pain and discomfort in his right shoulder which wakes him up at night and makes it difficult to do any shoulder level or above work. (PX2). Dr. Suchy reported that Petitioner wanted to get through the summer because it was the busy time at work. (PX2). As a result, Dr. Suchy recommended and then administered another cortisone injection. (PX2). Petitioner was allowed to continue working regular duty. (PX2). Petitioner testified that the injections were somewhat helpful in relieving symptoms.

At the request of Respondent, Petitioner was examined by Dr. David H. Watt of OAD Orthopaedics on June 7, 2012 for purposes of a §12 examination. Following his examination and review of the records, Dr. Watt diagnosed Petitioner with right shoulder rotator cuff impingement syndrome, supraspinatus tendonosis with intrasubstance tearing and acromioclavicular joint arthritis. (PX1). Dr. Watt opined that this diagnosis was "... consistent with and casually related to the patient's job duties of a route driver and delivery of beer[,] lifting, pulling, and pushing of heavy objects on a repetitive basis." (PX1). Dr. Watt noted that "[t]he patient does have pre-existing right shoulder pain prior to the 12/29/2011 [sic] date as confirmed by the MRI of 2004 and the patient's persisting symptoms. However[,] these are all consistent with the repetitive use of the patient's job, which he has done prior to 2004." (PX1). Dr. Watt agreed that Petitioner's treatment to date had been reasonable, and that arthroscopic intervention would be appropriate given Petitioner's continuing symptoms. (PX1). Dr. Watt went on that state that "... the MRI does not suggest a full-thickness tear and therefore I doubt that rotator cuff repair would be necessary. However, if at the arthroscopic evaluation greater than 50% partial-thickness tear or full-thickness tear is seen, then arthroscopic rotator cuff repair would be appropriate." (PX1).

Petitioner returned to Dr. Suchy on September 20, 2012 with continued complaints of pain and discomfort in his right shoulder. (PX2). Given that Petitioner had been treating for 9 months, had had two corticosteroid injections as well as extensive physical therapy, without improvement, Dr. Suchy recommended surgical intervention consisting of arthroscopy of the right shoulder with acromioplasty, debridement of the AC joint and possible biceps tenodesis. (PX2). It was noted that Petitioner wished to proceed with surgery. (PX2).

Dr. Suchy ultimately performed surgery on December 18, 2012 consisting of arthroscopy with debridement of the labrum and a partial rotator cuff tear, biceps tenodesis, acromioplasty, and debridement of the acromiocravicular joint with resection of the distal clavicle. (PX2). Dr. Suchy's post-operative diagnoses were 1) degenerative tear of the labrum with partial tear of the rotator cuff, 2) impingement syndrome, 3) internal derangement of the right acromiocravicular joint, and 4) partial tear of the biceps tendon with chronic bicipital tendinitis. (PX2).

In a "WC Chart" note dated April 25, 2013, Dr. Suchy indicated that Petitioner was 12 weeks post-surgery and was doing well. (PX2). Dr. Suchy ordered a work conditioning program at that time. (PX2).

Petitioner returned to Dr. Suchy on May 23, 2013 having completed work conditioning. (PX2). Dr. Suchy's examination found good strength against resistance, good stability and full range of motion. Dr. Suchy deemed

Petitioner to have reached maximum medical improvement as of that date, noted that he could perform regular duty with respect to his right shoulder and discharged him from care. (PX2). Petitioner testified that he has not sought any additional medical treatment for his right shoulder since that time.

At the request of Respondent, Petitioner visited Dr. Craig D. Westin of Illinois Bone & Joint Institute on February 24, 2014 for purposes of a §12 examination. Dr. Westin's diagnosis at that time was right shoulder status post biceps tenodesis, distal clavicle resection and acromioplasty. (RX2). Dr. Westin noted that the prior treatments to the right shoulder in 2003 and 2004 "... are for the same problem which was ultimately aggravated to the point of needing surgery by the work accident of December 29 [sic], 2011." (RX2). Dr. Westin also stated that "[t]he patient developed arthritis of the acromioclaviular (AC) joint as a result of the repetitive lifting, pushing, and pulling of his job." (RX2). Dr. Westin went on to indicate that the arthritis and rotator cuff impingement had been corrected by the surgery and that Petitioner did not have any restrictions now regarding his right shoulder. (RX2).

Petitioner testified that his right shoulder is no longer the source of any work restriction, but that he still experiences discomfort with specific activities. He testified that activities such as throwing a ball or shining a pair of shoes cause pain in the affected shoulder. He performs home exercises using a pulley that he finds helpful in maintaining the condition of the right shoulder.

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

While Petitioner admittedly received conservative treatment relative to his right shoulder in 2003 and 2004, and experienced what he termed "nagging" problems with his right shoulder thereafter, the record shows that he continued to work full duty for the next seven (7) years in a job that required heavy and repetitive lifting. Following the undisputed accident on December 27, 2011, Petitioner received conservative treatment in the form of physical therapy and cortisone injections before eventually agreeing to undergo surgery on December 18, 2012. (PX2). Petitioner testified that he had worked for Respondent since 1997 and that he had suffered no other injuries to his right shoulder following the accident.

Furthermore, both of Respondent's §12 examining physicians, Drs. Watt and Westin, agreed that Petitioner's work activities either caused our aggravated his right shoulder condition. To wit, Dr. Watt opined that Petitioner's right shoulder rotator cuff impingement syndrome, supraspinatus tendonosis with intrasubstance tearing and acromioclavicular joint arthritis was "... consistent with and casually related to the patient's job duties of a route driver and delivery of beer[,] lifting, pulling, and pushing of heavy objects on a repetitive basis." (PX1). In addition, Dr. Watt noted that "[t]he patient does have pre-existing right shoulder pain prior to the 12/29/2011 [sic] date as confirmed by the MRI of 2004 and the patient's persisting symptoms. However[,] these are all consistent with the repetitive use of the patient's job, which he has done prior to 2004." (PX1). Likewise, Dr. Westin opined that the prior treatments to the right shoulder in 2003 and 2004 were "... for the same problem which was ultimately aggravated to the point of needing surgery by the work accident of December 29 [sic], 2011." (RX2). Dr. Westin also stated that "[t]he patient developed arthritis of the acromioclaviular (AC) joint as a result of the repetitive lifting, pushing, and pulling of his job." (RX2).

Therefore, based upon the above, and the record taken as a whole, the Arbitrator finds that Petitioner's current condition of ill-being with respect to his right shoulder is casually related to the accident on December 27, 2011.

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

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

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

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

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

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a driver at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 50 years old at the time of the accident.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that while returned to work for Respondent in a light duty capacity, and never returned to work full time for Respondent, he noted that this was due to an unrelated health issue. He was released to full duty on June 4, 2013 and has not seen a physician for his right shoulder since. Petitioner testified that he currently works for Miracle Method, which he started the Monday before his testimony at arbitration. There is no evidence, testimonial or otherwise, that Petitioner's future earnings capacity has been adversely impacted as a result of the injury on December 27, 2011.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner underwent surgery on December 18, 2012 consisting of arthroscopy with debridement of the labrum and a partial rotator cuff tear, biceps tenodesis, acromioplasty, and debridement of the acromiocravicular joint with resection of the distal clavicle. (PX2). Dr. Suchy's post-operative diagnoses were 1) degenerative tear of the labrum with partial tear of the rotator cuff, 2) impingement syndrome, 3)

internal derangement of the right acromiocravicular joint, and 4) partial tear of the biceps tendon with chronic bicipital tendinitis. (PX2).

Petitioner underwent post-operative physical therapy and work conditioning and was ultimately released to full duty by treating surgeon Dr. Suchy with respect to his right shoulder on May 23, 2013. Petitioner has not sought treatment for his right shoulder since.

Petitioner testified that he returned to light duty work for Respondent following surgery but never returned to work for Euclid Beverage due to an unrelated cardiac condition. He recently started working for Miracle Method.

Petitioner testified that currently the pain in his right shoulder "comes and goes" and that his shoulder pops once in a while. He indicated that he performs home exercises for his right shoulder two times a week using a rubber band, noting that the exercises help. However, he stated that his complaints affect his ability to sleep and that he has a hard time sleeping on his right side. He does not presently take prescription medical medication for his shoulder condition.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 12.5% person-as-a-whole pursuant to §8(d)2 of the Act.

STATE OF ILLINOIS

COUNTY OF MACON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alex Dubrin,
Petitioner,

vs.

NO: 11 WC 15014

Caterpillar Inc.,
Respondent.

15IWCC0531

DECISION AND OPINION ON REMAND

Petitioner appeals the decision of Arbitrator Andros finding Petitioner failed to prove he sustained an accidental injury arising out of and in the course of his employment on March 9, 2011 and he failed to prove a causal relationship exists between his present condition of ill-being and the alleged March 9, 2011 work accident. The Issues on Review are whether an employment relationship exists between Petitioner and Respondent, whether Petitioner sustained an accidental injury arising out of and in the course of his employment on March 9, 2011, whether a causal relationship exists between his present condition of ill-being and the alleged March 9, 2011 work accident, and if so, the extent of Petitioner's temporary total disability, the nature and extent of Petitioner's permanent disability and the amount of reasonable and necessary medical expenses. On December 7, 2012, the Commission affirmed the Arbitrator's decision. On December 10, 2013 the Circuit Court of Macon County reversed the Commission's finding that the Petitioner's injury was not related to work, confirmed the Commission's findings regarding Petitioner's average weekly wage and remanded the case back to the Commission for a calculation of an award consistent with the Circuit Court Order. While the Commission finds no basis in law or the record to alter the decision, the Commission, pursuant to the Circuit Court's Order, finds Petitioner sustained an accidental injury arising out of and in the course of his employment on March 9, 2011 and he proved a causal relationship exists between his present condition of ill- being and the alleged March 9, 2011 work accident. As a result, Petitioner was temporarily totally disabled from June 2, 2011 through September 11, 2011 for 14-4/7 weeks under Section

8(b) of the Illinois Workers' Compensation Act, is entitled to $2,021.29 in medical expenses under Section 8(a) of the Act and permanently lost 25% of the use of his right leg under Section8(e) of the Act, for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner, a 25 year old assembly team leader, testified that on March 9, 2011 he was filling in on the truck assembly line for an Operator II who was absent. Petitioner testified that the Operator II is positioned on the top of the truck during the assembly process. On that day, Petitioner said he was putting wiring harnesses on trucks. He created Petitioner's PX9, a diagram, to explain where the harness is attached and where he was positioned while working on the truck. Petitioner said he was working in the corner of C and D and his right foot was on X while his left foot was on Y. Petitioner testified that he squatted down to get the harness. He twisted to tum the harness at the comer. His back was to A. He twisted his body towards D. His right leg was bent. When he turned out of a squat, he kind of stood up; his right leg popped and he felt pain. He got off of the truck. He did not tell a supervisor about the injury that day because it was about time to leave and he assumed his knee would get better. He was off of work the next day. He sought medical help at the medical clinic as soon as he walked into work on the day he came back to work.

2. The March 11, 2011 Incident Report indicates "I was working on op #2 in 7945 when my knee popped a couple of times; Witness: John; No prior injuries".

3. The March 11, 2011 Initial Nursing Assessment indicates that Petitioner reported his right knee popped a couple of times on Wednesday while at work but it did not start hurting right away. Petitioner reported the pain was worse on Thursday and now he is having problems walking. The Petitioner states he was working on top of truck when the pain/pop started. The Petitioner also reported that he was not at work on Thursday because he was attending a funeral. Nurse Brown reported in her progress note that Petitioner reported his initial injury occurred on March 9, 2011. He stated, "My knee is not right. I did not do anything that I know of to hurt it. It popped a couple of times on Wednesday. I did not do anything differently. I worked on a big truck and crawled around." Petitioner said he does not recall giving a history of "right knee popped a couple of times on Wednesday while at work but his right knee did not start to hurt right away". He agreed that two sentences down in the clinical department's records it indicates "patient states he was working on top of truck when pain/pop started".

4. At the Arbitration hearing, Petitioner testified that the pain started as soon as his knee popped. He denied that it started gradually. He told the supervisor about the accident

the day he came back to work. He completed an incident report which states "I was working on Operator 2 in 7945 when my knee popped a couple of times".

5. On March 25, 2011 Dr. Gill noted that the patient presents today with right knee pain secondary to an injury he sustained on March 9, 2011 while working. He says he typically works climbing up and down onto the trucks and he said on March 9, 2011 while walking he felt something pop in his knee. The patient requested a referral to Dr. Schopp which was given.

6. The March 30, 2011 Intake form for Dr. Schopp indicates that Petitioner sustained an accidental injury on March 9, 2011 while at work. He reports that while positioned on top of truck at work, his knee popped twice and he has experienced pain ever since. He has no pain in his knee before going to work on March 9, 2011 and the pain started suddenly. There was some discomfort after knee popped at work but the pain has gotten worse since.

7. On April 4, 2011, Petitioner saw Dr. Schopp who noted that on March 9th. Petitioner was on top of a truck. He felt two pops in his right knee along the lateral joint line and he has had problems with his knee ever since that time. Dr. Schopp diagnosed Petitioner as having knee joint pain and a knee sprain. He prescribed a right knee MRI which took place on April6, 2011 and which showed a bucket-handle type tear involving the lateral meniscus with flipped meniscal tissue into the central aspect of the joint with a double PC sign. Moderate-grade partial tear involving the lateral half of the distal patellar tendon near the tibial tubercle insertion, along with moderate knee joint effusion.

8. During the April 11, 2011 follow-up visit with Dr. Schopp, the doctor opined that Petitioner's MRI is consistent with a bucket handle tear of the lateral meniscus. Dr. Schopp advised that Petitioner undergo surgery. On June 2, 2011 Petitioner underwent an arthroscopic partial lateral menisectomy. The post-operative diagnosis was a lateral meniscus tear.

9. At the June 10, 2011 follow-up visit with Dr. Schopp, Petitioner reported he was on top of a truck on March 9th at the plant. During the course of that activity, he felt a pop in his right knee along the lateral joint line. It was associated with an immediate onset of pain. From that moment on, Petitioner has had persistent swelling and joint line pain and trouble with range of motion. Based on Petitioner's history, the mechanism of injury and the surgical findings, it is very reasonable to conclude that it was the March 9th event where Petitioner was on top of the truck which was the origin of his symptoms. Therefore, the March 9th work accident was the cause of the injury.

10. On July 6, 2011 at Taylorville Memorial Hospital's physical therapy department, the therapist indicted that Petitioner's initial injury occurred on March 9th while he was at work. He reported twisting the knee and experiencing pain. His prior job

duties included building trucks, which required climbing, squatting and lifting up to 30 pounds.

11. On September 13, 2011 follow-up visit with Dr. Schopp, the doctor noted that on physical examination Petitioner has fluid motion, healed portals and was neurovascularly intact. He released Petitioner to return to full duty.

12. Petitioner testified that his knee is still painful at times. He experiences trouble with climbing ladders, squatting and kneeling down. Sometimes, standing all day is painful. He now has to sit on the couch differently. He experiences difficulty washing his feet while in the shower because he has to bend at the knee. A couple of times at night his knee popped out and woke him up. He has noticed pain with cold weather. Petitioner testified that he is back at work and is still a team lead. He fills in when people are not there. When no one is absent, he sits at a desk and orders parts. He has not gone back to the plant medical department for additional treatment. He worked overtime last week. He takes Tylenol at home if his knee starts to hurt.

13. John Eytchison testified he was an Operator I on March 9, 2011. He connects the engine to the radiator along with other components. He works directly below the Operator II. He can see the Operator II placing the wiring harness on the truck in the C and D positions as noted on PX9. He sees the Operator II squat. On March 9, 2011, Petitioner told him that he had popped his knee and it caused him pain. The conversation in which Petitioner said his knee popped took place after Petitioner was off the truck base and he was on the floor.

14. Dr. Schopp, a board certified orthopedic surgeon, was deposed on September 12, 2011. Based on Petitioner's history, mechanism of injury and the findings at surgery, it is very reasonable to conclude that the event on March 9th was the origin of his injury. Squatting, twisting and climbing are the type of activities that cause this type of injury. Meniscus injuries are usually twisting injuries, sometimes athletic injuries, but they can occur when arising from a deep squat if the leg is twisted awkwardly or if enough force is put through the leg. He did not record and cannot recall any specifics regarding twisting or squatting that Petitioner was doing at the time he felt the pop.

15. Dr. Kornblatt, an orthopedic surgeon, was deposed on October 5, 2011. He evaluated Petitioner on April 10, 2011. At that time, Petitioner reporting developing an acute pain and popping in his right knee while working on the top of a truck on March 9, 2011. Petitioner stated he did not have any prior knee injuries. Dr. Kornblatt testified that he specifically asked Petitioner how the injury occurred and Petitioner said he was squatting and he sustained a twisting injury to his right knee on March 9, 2011. Based on Petitioner's history, the medical records and his physical examination, it is his opinion that Petitioner's mensical pathology was not caused by his work activities on March 9th. A bucket-handle lateral mensical tear usually takes significant trauma or significant twisting along with deep flexion. Usually when you get a big tear in the

15IWCC0531

meniscus, you know when it happened. The fact that Petitioner said he did not have any pain when he felt the pop in his knee suggest that this was an unstable meniscal tear that was there prior to alleged incident and during his activities, the meniscus was moving in and out causing the pop. Dr. Kornblatt opined that it was highly unlikely that Petitioner tom the meniscus during his job activities. Dr. Kornblatt agreed that squatting and twisting of the knee can cause this particular type of injury. He noted that if Petitioner had a prior condition and he attempted to squat or twist his knee sometimes he would experience the pain and if he did not experience pain until after the popping that would not necessarily indicate that the tear occurred around the time of the popping. In the medical records, it indicates Petitioner was working on top of a truck. Petitioner provided two conflicting facts. When Petitioner was in my office, he claimed to be squatting and twisting his knee. There was no mention of that in the written medical records. The medical records say he did not do anything to his knee. It just popped. Dr. Kornblatt opined that if Petitioner tore the meniscus when it popped he would have experienced pain right away. Dr. Kornblatt opined that Petitioner had a pre-existing tear and part of the meniscus moved into the joint. He further opined that it was hard to believe that Petitioner would have that big a tear without significant trauma that was not pre-existing. Even straight deep squatting is not likely to result in a bucket-handle mensical tear. It would most likely be related to squatting in association with twisting. It is highly unlikely that the meniscus would move into the joint, tear at that time and the patient not have pain until the next day. It does not make sense to him.

While the Commission finds no basis in law or the record to alter the decision, the Commission, pursuant to the Circuit Court's Order, finds Petitioner sustained an accidental injury arising out of and in the course of his employment on March 9, 2011and he proved a causal relationship exists between his present condition of ill-being and the alleged March 9, 2011 work accident. As a result, Petitioner was temporarily totally disabled from June 2, 2011 through September 1 1 , 2011 for 14-4/7 weeks under Section8(b) of the Illinois Workers' Compensation Act, is entitled to $2,021.29 in medical expenses under Section 8(a) of the Act and permanently lost 25% of the use of his right leg under Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $454.67 per week for a period of 14-4/7 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 sum of $2,021.29 for medical expenses under §8(a) of the Act.

15IWCC0531

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $409.21 per week for a period of 53.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 25% loss of use of the right leg.

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 in the amount of $9,657.83 paid, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $21,100.00.

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: JUL 13 2015

Mario Basurto

MB/jm

David L. Gore

O: 5/27/15

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Stephen Mathis

STATE OF ILLINOIS)	☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF WILLIAMSON)	☒ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIAM "RANDY" BUNN,

Petitioner,

15IWCC0520

vs.

NO: 09 WC 049372

GILSTER-MARY LEE CORP.,

Respondent.

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 accident, medical expenses, jurisdiction, notice, temporary disability and permanent disability and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below on the issue of accident and subsequently awards benefits under the Act.

Arbitrator Lindsay found there to be evidence to support Petitioner's claim of sustaining an accident while working for Respondent on August 13, 2009, but found both that the Commission lacked jurisdiction to hear his claim and that the Petitioner's claim was time-barred from proceeding due to his failure to provide timely notice to Respondent. The Commission finds otherwise and reverses the arbitrator on both counts.

The threshold issue in the Decision of the Arbitrator was jurisdiction. Arbitrator Lindsay found the Commission had no jurisdiction to adjudicate Petitioner's claim. She found that there was no nexus between Petitioner's claim and the State of Illinois, as required by the Act. Petitioner, a resident of the State of Missouri, was injured in McBride, Missouri, while working for Respondent, an Illinois entity. Arbitrator Lindsay recognized elements of Respondent's hiring process involved Petitioner undertaking certain acts in Illinois but found those acts insufficient to confer jurisdiction to the Commission. Of most significance to Arbitrator Lindsay were the final actions taken in the formation of the employment contract between Petitioner and Respondent. By the arbitrator's view, the Petitioner's hire occurred within the State of Missouri. As explained below, the Commission finds the final elements of Petitioner's contract formation occurred in Illinois and, resultantly, confers jurisdiction to the Commission.

15IWCC0520

There is agreement between the parties that the hiring process began in Illinois. Petitioner testified that he submitted his application for employment to Respondent's headquarters in Chester, Illinois. Richard Welker, Respondent's Traffic Manager and the Respondent's employee responsible for human resource matters, acknowledged that applications are received there and the receipt of the same begins the hiring process. Mr. Welker indicated that applications are reviewed and background investigations are conducted in Chester, Illinois. Those applicants Respondent feels merit an interview are then interviewed in Chester, Illinois.

During the interview, a discussion is had about Respondent and the benefits it offers to its employees. A successful interview results in the applicant being sent to a Chester, Illinois, hospital to undergo drug screening and a physical examination. Following this process, the applicant is then brought to Respondent's Perryville, Missouri, facility where the applicant's driver's license and eligibility for employment as well as Respondent's operational policies are reviewed. Mr. Welker testified the hiring process is not completed until the meeting in Perryville, Missouri. Petitioner's testimony corroborated Mr. Welker's testimony except as to where the post-drug screening and physical examination meeting occurred. Petitioner testified this meeting occurred in the basement of Respondent's headquarters in Chester, Illinois.

The Commission is not satisfied with Mr. Welker's explanation of the hiring process. The Commission questions the claimed changing of venue from Respondent's headquarters in Chester, Illinois, to its facility in Perryville, Missouri. The Commission's questions this as no explanation was offered as to why the second meeting would take place in Perryville, Missouri, if the only actions taken there were for Respondent to review Petitioner's driver's license and his eligibility to work and to review Respondent's operational policies.

Lost upon the Commission is why Respondent would initially interview Petitioner in Chester, Illinois, and have Petitioner undergo drug screening and a physical examination in Chester, Illinois, only to have a subsequent meeting in Perryville, Missouri. What was not lost upon the Commission is Mr. Welker's admission that he could not say to a certainty that the as-testified-to hiring procedures were followed in this situation. The combination of the unexplained changing of venues from Chester, Illinois, to Perryville, Missouri, and Mr. Welker's uncertainty as to whether the process he described actually occurred as described leads the Commission to find Petitioner's testimony concerning the hiring process to be credible. The Commission, therefore, finds the actions taken to finalize the employment contract between Respondent and Petitioner occurred in Respondent's headquarters in Chester, Illinois. Accordingly, the Commission finds there is jurisdiction for it to consider Petitioner's claim under the Act.

Arbitrator Lindsay adopted Petitioner's claim of having sustained a compensable injury on August 13, 2009, noting the opinions of both Dr. deGrange and Dr. Riew were that Petitioner did sustain a work-related injury as the result of removing the fifth wheel pin to disconnect the trailer from his semi-tractor. The Commission was presented with no evidence that would cause it to disturb Arbitrator Lindsay's finding with respect to accident. Arbitrator Lindsay, notwithstanding her finding a lack of jurisdiction to adjudicate Petitioner's claim, nevertheless found Petitioner failed to give timely notice of his injury to Respondent and, as a result, not be entitled to benefits under the Act. The Commission finds Petitioner provided notice within the statutory timeframe to do so.

Petitioner described experiencing a sensation akin to a shock on August 13, 2009, when he pulled the fifth wheel pin. He continued to decouple the trailer from his semi-tractor and proceeded to go home. Two days later, on August 15, 2009, the back of his left hand, his left arm and left thumb became cold. He subsequently experienced tingling in his left arm as well. Petitioner was seen by his primary care physician, Dr. Womack, on September 14, 2009. Petitioner claims it was only then that he became aware that the problems he presented to Dr. Womack for were the result of the incident he experienced on

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August 13, 2009. Petitioner testified to having notified Respondent of the accident on September 21, 2009, the Monday after he was seen by Dr. Womack. Respondent countered this testimony with a recorded statement Petitioner made that indicated he first informed Respondent of his accident on October 19, 2009. Petitioner did not dispute the accuracy of the recorded statement.

The Commission acknowledges Petitioner's proffered testimony of providing notice of his injury to Respondent following his September 14, 2009, visit was convincingly rebutted by the aforementioned recorded statement. The Commission, however, does not find this to be fatal as to the issue of Petitioner's notice of an accident to Respondent. It simply clarifies the date on which the Commission finds notice was received by Respondent from September 21, 2009, to October 19, 2009. The revised date is still within the timeframe, as set forth in Section 6(c) of the Act, requiring Petitioner to inform Respondent of his injury. Petitioner became aware of the connection of his then-current condition of ill-being and his August 13, 2009, injury on September 14, 2009, and reported this to Respondent on October 19, 2009. Under this circumstance, the Commission is satisfied the Petitioner provided Respondent notice of his accidental injury that comports with the Act.

The Decision of the Arbitrator, having found against Petitioner on the issues of jurisdiction and notice, did not address the remaining contested issues, deeming them to be moot. Having found otherwise, the Commission now addresses those issues.

The Commission finds Petitioner's complaints of ill-being to be causally related to his August 13, 2009, accident. Petitioner, in 2005, had a history of symptomatic cervical spinal stenosis and of treating this condition with a number of physicians in 2005. The absence of treatment records for the same between 2005 until August 13, 2009, implies the symptomatic nature of Petitioner's condition had resolved to a degree that made treatment unnecessary. The Commission finds only a 50-pound lifting restriction continued beyond Petitioner's treatment in 2005.

On August 13, 2009, Petitioner sustained an accident while removing the fifth wheel pin, an accident that caused his cervical spinal stenosis to become symptomatic once more. The treatment that ensued included a decompression with a laminectomy of C3, laminoplasties of C4-7, and left-sided foraminotomies from C4-7, all occurring on November 23, 2009. Later, he underwent an anterior cervical discectomy and fusion a C5-6 and C6-7, that being on January 3, 2011. Petitioner's treating physician, Dr. Daniel Riew, lends credence to this claim, by the finding of the causal relationship between Petitioner's August 13, 2009, accident and his need for two surgical interventions to his cervical spine. He noted Petitioner had continued to work following the 2005 diagnosis and did so without any problems with ambulation or complaints of numbness or cold affecting his arms and hands. Those problems emerged, per Dr. Riew, only after Petitioner's August 13, 2009, accident. The Commission notes, despite the multiple surgical interventions, Petitioner testified to experiencing continued pain, numbness in his hands and arms, and numbness and tingling in his legs with generalized weakness. The Commission finds Petitioner's August 13, 2009, accident to have resulted in the two surgeries, as well as his continuing complaints.

In treating the injuries to his cervical spine, Petitioner undertook medical treatment at Washington University Orthopedic, Barnes Jewish Hospital, the Brain and Neurospine Clinic of Missouri and Therapy Solutions and incurred medical bills as a result. Respondent contested these charges only on the issue of liability. The Commission finds these bills were reasonably and necessarily incurred to treat Petitioner's injuries and are the responsibility of Respondent.

Petitioner, over the course of treatment for his injuries, was medically precluded from working for a total of eighteen (18) weeks, from October 19, 2009, through January 5, 2010, and again from January 3, 2011, through February 20, 2011. This period of disability was as a result of Petitioner's two

surgeries to his cervical spine. The Commission awards TTD benefits accordingly.

The Commission notes Petitioner made a successful return to his career as truck driver and returned to his unrelated baseline lifting restriction of 50 pounds. It also notes, however, Petitioner's residual symptoms include pain in his left hand, generalized weakness, occasional loss of balance and dizziness. For these lingering after effects, the Commission finds Petitioner sustained a 25% loss of the person as a whole stemming from his August 13, 2009, accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $875.30 per week for a period of 18 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 sum of $787.77 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 25% use of the person as a whole

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 66,237.66 for medical expenses under §8(a) of the Act.

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

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

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

DATED: JUL 8 - 2015
KWL/mav
O: 5/11/15
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Thomas J. Tyrrell

Michael J. Brennan

DISSENT

I respectfully dissent from the decision of the majority. Arbitrator Lindsay's findings are thorough, well reasoned and grounded in the law. This decision is correct and should be affirmed

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cynthia Stiegman,

Petitioner,

vs.

NO: 12 WC 19773

15IWCC0530

Nascote Industries, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision finding that Petitioner failed to prove a causal relationship exists for her condition of ill-being for her left carpal tunnel syndrome and vacates the award of 10% loss of use of the left hand. The Commission finds that Respondent is not liable for medical expenses for the left carpal tunnel release surgery. In cases relying on the repetitive trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability. "Although medical testimony as to causation is not necessarily required, where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that claimant's work activities caused the condition complained of." *Nunn v. Illinois Industrial Commission*, 157 Ill.App.3d 470, 510 N.E.2d 502, 506 (1987).

The Commission notes no doctor opined causal connection for left carpal tunnel syndrome. Dr. Ahn did not opine a causal relationship for left carpal tunnel syndrome to Petitioner's job duties; he just noted repetitive use and did not explain himself. Dr. Boyer had no opinion regarding causation of left carpal tunnel syndrome. The only opinion regarding left carpal tunnel syndrome is by §12 Dr. Koo, who opined no causal relationship for left carpal tunnel syndrome. The Commission affirms the Arbitrator's finding of causal connection for the left thumb, aggravation of preexisting arthritis. The Commission finds Respondent liable for treatment for Petitioner's left thumb, including surgery. The Commission finds that the period of temporary total disability is attributable to Petitioner's left thumb condition. The Commission affirms the Arbitrator's permanency award for the left thumb. The Commission also corrects the clerical error on the face sheet of the Arbitrator's Decision to indicate that Petitioner sustained repetitive trauma accidental injuries arising out of and in the course of her employment manifesting on April 13, 2011. The Commission affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's award of 10% loss of use of the left hand is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $559.65 per week for a period of 1 week, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $503.74 per week for a period of 38 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the left thumb to the extent of 50%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical expenses related to the treatment of the left thumb under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act. Respondent shall have §8(j) credit for medical expenses paid.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $19,800.00. 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: JUL 13 2015
MB/maw
o5/27/15
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Mario Basurto

Stephen J. Mathis

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

STIEGMAN, CYNTHIA
Employee/Petitioner

Case# **12WC019773**

15IWCC0530

NASCOTE INDUSTRIES INC
Employer/Respondent

On 10/16/2014, 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 0.04% 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:

2261 WILLIAMS CAPONI & FOLEY PC
KIRK A CAPONI
30 E MAIN ST PO BOX 565
BELLEVILLE, IL 62222

5364 LAW OFFICE OF PATRICK JENNETTEN
4711 N PROSPECT RD
PEORIA HEIGHTS, IL 61616

15IWCC0530

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cynthia Stiegman
Employee/Petitioner

v.

Nascote Industries, Inc.
Employer/Respondent

Case # **12** WC **19773**

Consolidated cases: **N/A**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **August 14, 2014**. 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. [x] 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **April 13, 2014**, 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 not*** sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the injury, Petitioner earned $**43,656.94**; the average weekly wage was $**839.56**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit for any medical bills paid by its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $559.65/week for one week, commencing **February 22, 2012** through **February 29, 2012** which is the period of temporary total disability for which compensation is payable.

Respondent shall pay Petitioner the sum of **$503.74**/week for a further period of **58.5** weeks, as provided in Section 8(e) of the Act because the injuries sustained caused **50% loss of use of the left thumb and 10% loss of use of the left hand.**

Respondent shall pay Petitioner all out-of-pocket medical expenses and outstanding balances for any medical bills as stipulated by the parties.

Respondent shall pay Petitioner compensation that has accrued from April 13, 2011 through August 14, 2014 and shall pay the remainder of the award, if any, in weekly payments.

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

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

Signature of Arbitrator

October 10, 2014
Date

OCT 16 2014

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner alleges repetitive trauma injuries to her left hand, wrist, and thumb. Respondent disputes liability for Petitioner's injuries. The disputed issues include: accident; causal connection; temporary total disability benefits; medical expenses; and the nature and extent of any permanent disability. Petitioner was the sole witness testifying at the arbitration hearing. Respondent was represented by Brent Cannon. At the commencement of the hearing Petitioner moved to amend her Application for Adjustment of Claim, without objection, to allege left carpal tunnel syndrome and a fused left thumb.

The Arbitrator finds:

Petitioner, age 57, testified she works for Respondent and has done so for the past 27 years. Respondent is a manufacturer of car parts. Over the years Petitioner has worked in various positions including molding (producing car bumpers), secretarial/clerical, material control (setting up loads for painting), shipping coordination, quality auditing (checking the manufacturing process to make certain the products were to specifications), and as a technician at the ILVS building. For the 13 - 15 years preceding the arbitration hearing Petitioner has worked as a technician.

Petitioner's current job responsibilities as a technician includes knowledge as to how to perform a variety of different jobs as she is required to step in to various jobs on the lines for other employees while they are on breaks, lunches, or leaves. Petitioner indicated at the time of her injuries in April of 2011, she was performing job duties for an employee out on a medical leave for a three-and-a-half month period. This particular job involved assembling parts and, in particular, placing a metal bar onto plastic fascias.

Petitioner testified that the problematic part of the job she began performing in January of 2011 involved placing a metal bar onto a section of plastic fascia. The fascia, according to Petitioner, had tabs on it and Petitioner was required to hook the bottom part of the metal bar on the tabs while applying pressure to force the metal onto the plastic and without bending the metal. Petitioner explained that she and others unsuccessfully tried spraying the parts with soap and water to make the metal slide down the plastic. The only way she could perform the job was to use her hands and physically force the metal over the plastic. As Petitioner performed that job she experienced extreme pain. Petitioner testified that at that particular time customer requirements were quite heavy and, therefore, she could be doing several hundred pieces per week. Petitioner demonstrated how she performed the job at the time of her hearing.

On cross-examination, Petitioner agreed that the job duties she performed for the three-and-a-half months while filling in for the absent employee, varied throughout the day. Petitioner testified approximately thirty percent (30%) of her day involved the thumb activity she described as causing pain in her thumb. Petitioner agreed the 30% was

based upon seven (7) hours of working, or just over two hours per day of thumb-intensive work.

Petitioner testified she went to her supervisor on April 13, 2011, complaining of pain in her left thumb. A Safety Investigation Report (RX 1) was completed on April 15, 2011. Petitioner claimed pain and numbness in her left thumb while installing clips and J hooks. The investigation noted Petitioner had left thumb pain while exerting force against clip tools and snapping J hooks into place. (RX 1)

Petitioner saw Dr. Byler with Midwest Occupational Health on April 25, 2011, at Respondent's facility. Dr. Byler noted pain at the base of Petitioner's left thumb with no specific injury. Dr. Byler ordered a thumb x-ray to determine if there was degenerative joint disease. (RX 9) X-rays of Petitioner's left thumb were performed at Washington County Hospital on April 25, 2011, and revealed mild joint space narrowing at the base of the first carpal metacarpal joint, deformity of the tuft of the distal phalanx of the left middle finger possibly related to an old fracture and rounded soft tissue calcification along the radial aspect of the first carpal metacarpal joint possibly related to tendinitis. (RX 11) Petitioner returned to Dr. Byler on May 2, 2011, who advised of the waxing/waning course that occurs with her degenerative joint disease. Petitioner was to increase physical therapy and modalities. (RX 9) Petitioner underwent physical therapy with NovaCare at the facility located within Respondent's premises. (RX 10)

Petitioner testified that the therapy she underwent aggravated her thumb.

Petitioner thereafter treated with Dr. Joon Ahn, an orthopedic surgeon in Mt. Vernon, on June 27, 2011. According to an initial information sheet completed for the doctor, Petitioner (who is right handed) complained of extreme pain and burning in her left thumb since February of 2011 along with numbness in her thumb, index, and middle finger since the end of March of 2011. Petitioner described her job as involving repetitive motion as a technician. Petitioner was noted to have a weak grip and was dropping things. Petitioner also reported that she had been wearing a splint during the daytime as provided to her by Respondent. On examination Dr. Ahn noted a positive grind test with significant crepitus and tenderness along with positive Phalen's and Tinel's signs on the left. Dr. Ahn diagnosed left basal joint arthritis and left carpal tunnel syndrome and noted they were probably secondary to repetitive use. Petitioner received an injection into her left thumb. Nerve conduction studies were ordered. (PX 2)

Petitioner returned to Dr. Ahn on July 25, 2011, following the nerve studies which revealed mild carpal tunnel syndrome on the left. Petitioner's symptoms were markedly improved following a left thumb injection and Petitioner wanted to continue to treat conservatively, and Dr. Ahn agreed. Petitioner was told to return on an as-needed basis. (PX 2)

Petitioner continued working for Respondent. She sought no medical treatment between July 25, 2011 and January 24, 2012. Petitioner testified that during this time period she worked around her symptoms.

Petitioner presented to Dr. Boyer, a hand surgeon at Washington University Orthopedics, on January 24, 2012, for a second evaluation of her thumb and hand. Dr. Boyer took a history from Petitioner noting she worked with a tremendous amount of thumb-based stress work in an auto parts factory resulting in pain in her left thumb base. (PX 3, p.5) Petitioner was diagnosed with left thumb base arthrosis and carpal tunnel syndrome. Dr. Boyer recommended surgery to treat the conditions. (PX 3, p.7)

Dr. Boyer performed surgery on February 22, 2012, including a left carpal tunnel release and a CMC fusion. According to the operative report Dr. Ahn noted an interesting anatomical variant while performing the carpal tunnel release as a branch of Petitioner's median nerve passed palmar to the transverse carpal ligament. (PX 1; RX 13; PX 3) Dr. Boyer explained the fusion procedure involved removing all the cartilage from the joint, then placing the bone surfaces back together to allow them to joint. (PX 3, p. 8) Dr. Boyer testified Petitioner did well post-operatively, ultimately releasing Petitioner on May 22, 2012, at maximum medical improvement. (PX 3, pp. 8-10)

Dr. Byler ordered an x-ray of Petitioner's right hand which was performed on May 24, 2012. (RX 12)

Dr. Michelle Koo performed an independent medical examination of Petitioner at the direction of Respondent pursuant to Section 12 of the Act on July 31, 2013. Petitioner was noted as right-handed, and had undergone surgery for left carpal tunnel syndrome and left CMC thumb fusion in February of 2012 by Dr. Boyer. Dr. Koo reviewed relevant medical records, job descriptions, accident reports, and surgical reports. Dr. Koo took a detailed history from Petitioner regarding her condition, including Petitioner's account of developing pain and symptoms in the left thumb associated with pushing metal bar snaps into plastic fascias for approximately six (6) months. (RX 6)

Dr. Koo found no causal relationship between Petitioner's job duties and the development of her condition in her left hand and thumb. Dr. Koo noted Petitioner had risk factors including obesity, smoking, and female gender and age that predisposed her to arthritis in the base of the thumb. Dr. Koo did not see any causal or aggravating factors between Petitioner's work activities and the development of arthritis in the base of her left, non-dominant, thumb. Dr. Koo felt Petitioner's job activities were self-paced with no production requirements. (RX 6)

Dr. Boyer testified by deposition. Dr. Boyer explained that based upon the history and physical examination, as well as the description of Petitioner's activities, he related Petitioner's condition to her work activities. (PX 3, p. 10) Dr. Boyer testified Petitioner would have motion restriction associated with her thumb fusion, with the limitation of motion the desired effect to treat the condition. He felt her condition might wax and wane as it would probably get a little better but then decrease over time. (PX 3, pp.10-11)

Dr. Boyer testified on cross-examination that his relation of Petitioner's condition to work activities was based upon the history provided of performing a tremendous amount of thumb-based work involving pinching and gripping. Dr. Boyer could not speak to the specifics of the actual job activities. (PX 3, p. 12) Dr. Boyer agreed his opinions were based upon Petitioner's perception of her work activity causing pain and disability to her thumb base. (PX 3, p. 13) Dr. Boyer agreed on cross-examination that the work activities performed by Petitioner could have hypothetically caused temporary symptoms associated with her arthritis, and further his opinions might change if Petitioner's job activities varied without constant repetitive thumb tasks. (PX 3, p. 18)

Dr. Boyer agreed that he could not give the precise details of Petitioner's work activities, and that the basis for his opinion was due to Petitioner credibly attributing her symptoms to the work activities. (PX 3, p. 19) Dr. Boyer agreed on cross-examination that he related the thumb arthritis to Petitioner's work activities, and he had no opinion between the work activities and Petitioner's development of carpal tunnel syndrome. (PX 3, p. 19)

Respondent introduced a job demands analysis report into evidence. (RX 3) Petitioner agreed she had reviewed the job analysis report, and it was generally a good indication of her normal job duties with Respondent. The job demands analysis report indicates Petitioner's job duties were medium level as defined by the U.S. Department of Labor, with frequent handling, occasional fingering, occasional forceful gripping, and occasional forceful pinching. The DOT classifications for forceful gripping and pinching were both defined as light in nature. (RX 3)

Dr. Koo testified by deposition on behalf of Respondent. Dr. Koo testified that Petitioner's job activities were not a causative factor in the development of her left carpal tunnel syndrome or her left CMC joint arthritis. (RX 14, pp.14-17) Dr. Koo noted Petitioner's job was self-paced, by her own description, and further that exposure to the specific activity for working just 6-8 months would not be a factor in the chronic degenerative arthritis in the left thumb. (RX 14, p. 14) Dr. Koo did not believe the left carpal tunnel syndrome was related, as Petitioner did not work with vibratory tools, her work was self-paced, and there were no other work factors that would cause or aggravate the left carpal tunnel syndrome. (RX 14, p. 15) Dr. Koo also found significant that Petitioner related the job activities to her arthritis; however, she did not have any symptoms in her dominant hand despite performing the job activities with both hands. Dr. Koo testified arthritis with activity usually presents itself more severely in the dominant hand. (RX 14, p. 18)

Dr. Koo testified that while Petitioner related her symptoms in the left thumb as starting in February of 2011, Dr. Koo reviewed family doctor records that predated February of 2011. Petitioner presented to her family doctor in 2010 complaining of joint pain in both hands consistent with arthritis, and Petitioner was potentially taking anti-inflammatories for arthritis as early as 2009. Petitioner's family doctor even ordered labs in 2010 to rule out rheumatoid arthritis versus degenerative arthritis (RX 14, p. 16)

Respondent introduced medical records from Medical Alternatives Corp. (RX 7) and Crossroads Family Medicine (RX 8), including records predating the claimed accident date. Petitioner gave complaints of pain on March 16, 2009, of her left hand going numb. Petitioner had neck pain, shoulder pain, and hand pain. (PX 7)

Petitioner treated with her family physician, Crossroads Family Medicine, on June 10, 2010. Petitioner complained of persistent joint pain with swelling, and she had been taking Celebrex and Ibuprofen. Petitioner stated that she could not go without anti-inflammatories, and her joints were so bad and she had swelling. Petitioner was noted as having edema in the hands, grip was very weak, and increase of pain when her fingers were squeezed. Petitioner was diagnosed with joint pain and swelling. (RX 8)

At the time of trial Petitioner testified she still has problems with her left hand and thumb especially since she has problems gripping with her thumb. Petitioner demonstrated she is unable to touch her thumb to her other fingers, and is unable to bend her thumb at the first joint. Petitioner testified she cannot put a necklace on by herself, tying shoes is challenging, and even buttoning jeans or cutting fingernails is a difficult task. Petitioner was able to return to her job duties with Respondent; however, she does not have the capability to place the metal on the fascias any longer and there are a few other processes she is unable to perform at work. She has changed the way in which she makes boxes and can no longer use a rivet gun.

On cross-examination Petitioner acknowledged that she performed other duties during the pertinent three and one-half month period in 2011. Petitioner testified she assembled parts and used rivet guns and pneumatic staplers.

The Arbitrator concludes:

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner sustained an accident on April 13, 2011 that arose out of and in the course of her employment with Respondent. Her current condition of ill-being in her left hand, wrist and thumb is causally related to her employment with Respondent and her injury.

The parties do not seem to dispute the manifestation date. Rather, the focus of the dispute is whether any accident arose out of Petitioner's employment and whether her injuries are work-related. In concluding that Petitioner has met her burden of proof on both issues, the Arbitrator relies upon Petitioner's credible testimony concerning her job duties, the production requirements, and the chronology of events as well as the opinions of Dr. Ahn and Dr. Boyer. For the reasons to be set forth herein, the Arbitrator was not persuaded by the testimony and opinions of Dr. Koo.

Petitioner's testimony was unrebutted by her supervisor, Mr. Cannon, who was present during the hearing. Petitioner was initially treated at Respondent's facility by Respondent's medical staff. While Respondent's doctor did not feel Petitioner had a work injury because Petitioner denied any specific injury, he did not address whether she had a repetitive trauma injury and Petitioner was provided with a splint to wear at work as well as an order for physical therapy which further aggravated her thumb.

While Petitioner's medical records indicate some left hand complaints back in early 2009 related to a new program at work, Petitioner's treatment was brief and more related to neck and shoulder complaints as she was diagnosed with cervicobrachial syndrome at the time. Additionally, while medical records also indicate Petitioner was advised to undergo rheumatoid testing in June of 2010 due to bilateral joint pain and swelling in her hands, Dr. Koo testified that the results of the tests came back negative. (RX 14, p. 17) Even assuming Petitioner had pre-existing arthritis in her thumb, the initial x-ray also showed evidence of tendinitis in her thumb. At a minimum Petitioner's job in early 2011 aggravated that pre-existing condition.

Dr. Ahn diagnosed Petitioner with left thumb basal joint arthritis and carpal tunnel syndrome both of which he felt were probably secondary to repetitive use. Dr. Ahn was provided with a good history from Petitioner as to the onset and nature of her complaints.

While Respondent has relied upon the opinions of Dr. Koo, the Arbitrator did not find them persuasive. Dr. Koo did not address causation with respect to Petitioner's carpal tunnel syndrome in her initial written report. Her deposition testimony on the subject was quite brief. (RX 13, pp. 14-15) and she based her negative opinion on the fact she believed Petitioner's job was self-paced with no exposure to vibration. Dr. Koo never addressed the impact, if any, as to the anatomical variant noted during Petitioner's carpal tunnel surgery. While Dr. Koo assumed Petitioner had no production requirements, Petitioner credibly explained that during the time period in question "customer requirements were heavy." Dr. Koo also acknowledged on cross-examination that Petitioner could have been an individual who worked at a very fast pace. Also, when asked if Petitioner's engaged in the activity of "pushing with the pins" more than she was under the impression might be potentially more of a factor, Dr. Koo testified she would really need to know the exposure. (RX 14, p. 21) Lastly, Dr. Koo was under the impression Petitioner did not have any exposure to pneumatic tools. (RX 14, p. 20) Petitioner testified to the contrary and her testimony was not rebutted.

The Arbitrator notes that Dr. Boyer did not provide a causal opinion between Petitioner's work activities and her left carpal tunnel syndrome (PX 3, p. 19). However, as noted above, Dr. Ahn did.

As mentioned above, Petitioner credibly described her job duties for Respondent and the onset and development of her complaints. Dr. Boyer, Petitioner's treating surgeon, related Petitioner's left thumb arthritis to Petitioner's work activities based upon

the history she provided to him which he felt, as the Arbitrator herein does too, was credible and reliable.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary?

The parties stipulated that in the event of a determination in favor of Petitioner on the issue of liability Respondent would be liable for any out-of-pocket payments to Petitioner and outstanding balances on Petitioner's medical bills. Petitioner's bills have all been paid by a group medical plan for which credit may be allowed under Section 8(j) of the Act. Accordingly, Respondent shall hold Petitioner harmless from same.

Issue (K): What amount of compensation is due for temporary total disability?

Petitioner is awarded temporary total disability benefits from February 22, 2012 through February 29, 2012 a period of one week. Respondent did not dispute liability for the time period only liability for same.

Issue (L): What is the nature and extent of the injury?

Petitioner has undergone one surgery involving two procedures -- a left carpal tunnel release and a fusion to her left thumb. Based upon Petitioner's testimony she has had more residual effects as a result of her thumb surgery than the carpal tunnel surgery. At the hearing, Petitioner demonstrated limited mobility for her thumb. Dr. Boyer testified that Petitioner's motion in her thumb will probably wax and wane but that it is limited due to the nature of the procedure. While Petitioner's injury is to her non-dominant hand it is clear from her testimony that she relies upon both hands to perform her job duties. She no longer has the complete use of her thumb. She performs her job but not all aspects of it. She has also had to make changes in the way she performs certain aspects of her job.

Petitioner is awarded permanent partial disability benefits of 50% loss of use of the left thumb and 10% loss of use of the left hand.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Evins,
Petitioner,

vs.

NO: 13 WC 9881

15IWCC0529

Village of Niles,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and permanency and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 1, 2014 is hereby affirmed and adopted.

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

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

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: JUL 13 2015

MB/jm

O: 6/4/15

43

Mario Basurto

David L. Gore

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

EVINS, MARK
Employee/Petitioner

Case# **13WC009881**

15IWCC0529

VILLAGE OF NILES
Employer/Respondent

On 12/1/2014, 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 0.07% 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:

2559 BOWMAN & CORDAY LTD
LANE ALLEN CORDAY
20 N CLARK ST SUITE 500
CHICAGO, IL 60602

0507 RUSIN & MACIOROWSKI LTD
DANIEL R EGAN
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

15IWCC0529

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED DECISION

MARK EVINS
Employee/Petitioner

v.

VILLAGE OF NILES
Employer/Respondent

Case # 13 WC 9881

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **August 5, 2014**. 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 **June 27, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$72,847.32**; the average weekly wage was **$1,400.91**.

On the date of accident, Petitioner was **44** 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.

After reviewing all of the evidence presented, the Arbitrator makes the following findings, attached to this document.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **$669.64**/week for **200** weeks, because the injuries sustained caused the **40%** loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

11-24-14
Date

DEC 1 - 2014

STATEMENT OF FACTS

Petitioner, currently 48 years old, has been employed by the Respondent, Village of Niles, for 25 years (T.11). He initially worked in the water meter division for 10 years and then transferred to the sewer department (T.11,12). Petitioner testified to the physical nature of the sewer department job activities (T.12-14), as corroborated by the written Job Description. Sewer section work duties include maintenance and repair of sewer lines, manholes and catch basins and the occasional operation of various machinery/equipment. Seasonal duties will include branch and leaf pick-up and snow abatement/removal operations (Resp.Ex.No.1). Petitioner used shovels, picks, trowels, wrenches, TV cameras and hoists (T.13).

On June 3, 2002, Petitioner sustained a work-related accident while picking up branches, when he felt his back lock-up (T.14; Pet.Ex.No.1, pp 1a,b). He was taken by ambulance to Lutheran General Hospital, where he was admitted from June 3-7, 2002. He underwent MRI and lumbar steroid injection. Dr. David Spencer felt he demonstrated exaggerated complaints of pain and disability out of proportion to objective findings. MRI demonstrated mild degenerative changes in the lower lumbar spine, as compared to previous MRI of June 2000 (Pet.Ex.No.2). Petitioner continued under the care of Dr. Spencer, who prescribed physical therapy which was performed at HealthSouth from July 9, 2003 through August 21, 2003 (Pet.Ex.No.3). Petitioner was off work for 12 weeks, paid full salary, and returned to fully duty (T.16,17).

Petitioner testified that he has sustained an initial work related back injury for Respondent in 1992 while shoveling sand. He continued to carry on his regular work duties from that time through 2002 (T.15).

On December 14, 2004, Petitioner sustained a work-related accident while working on a TV truck; he got up from an unusual seated position and sustained injury to his lower back. (T.18; Pet.Ex.No.1, pp 2a,b). He was sent by Respondent and received treatment from

Omega Healthcare for the period of December 27, 2002 – February 2, 2003, consisting of therapy and restricted work activities. He was released to return to work with no restrictions on February 10, 2003 (Pet.Ex.No.4).

On January 6, 2006, Petitioner sustained a work-related accident, while doing sewer and water locating, he reached back for a map book and felt a knot in his lower back (T.19; Pet.Ex.No.1, pp 3a,b). He was seen by Dr. Spencer on January 7, 2006, taken off work and given steroids (Pet.Ex.No.5, p.8). Dr. Spencer then returned him to work with a 25 pound bending and lifting restriction on January 14, 2006 (Pet.Ex.No.5, p.9).

On March 22, 2006, Petitioner sustained a work-related accident while lying on his stomach by a storm line manhole trying to move a TV camera (T.20,21; Pet.Ex.No.1, pp 4a,b,c). Initial treatment was rendered at Advocate Occupational Health, and he was prescribed medication and work restrictions (Pet.Ex.No.6, p.1). He also followed care with Dr. Spencer, who noted findings of sciatic shift and evidence of acute discogenic pain. Dr. Spencer prescribed steroids and off work for approximately one week (Pet.Ex.No.5, p.10).

On August 1, 2006, Petitioner sustained a work-related accident while attempting to remove a TV camera from a manhole. He felt pain in his lower back (T.23, Pet.Ex.No.1, pp 5a,b,c). He again treated with Dr. Spencer who prescribed steroids and two weeks off work (Pet.Ex.No.5, p.12).

On September 11, 2007, Petitioner sustained a work-related accident while fixing tubes on a Vactor, when he injured his low back (T.28; Pet.Ex.No.1, pp 7a,b,c).

On February 29, 2008, Petitioner sustained a work-related accident while driving a salt truck. He was turning the wheel to steer for a U-turn and was reaching back for the control levers to raise the plow, when he felt pain in his low back (T.30; Pet.Ex.No.1, pp 8a,b,c). Initial treatment was rendered at Advocate Occupational Health, and he was referred to follow-up with

Dr. Spencer (Pet.Ex.No.6, p. 34). Dr. Spencer prescribed bed rest, steroids, muscle relaxants and pain medication and MRI, which demonstrated no new changes (Pet.Ex.No.5, pp 14-16). Petitioner was off work from March 1, 2008 through April 6, 2008.

On May 20, 2009, Petitioner sustained a work-related accident while pulling manhole covers, he injured his low back (T.32; Pet.Ex.No.1, pp 9a,b,c). He remained under the care of Dr. Spencer who prescribed therapy, steroids, work restrictions, MRI and CT myelogram (Pet.Ex.No.5, pp 17-20). Post myelogram CT scan demonstrated central right sided L5-S1 disc protrusion. Dr. Spencer recommended laminectomy/diskectomy and L5-S1 fusion (Pet.Ex.No.5, p.21). Petitioner was examined at Respondent's request by Dr. Stanford Tack. Dr. Tack suggested a four week course of physical therapy, independent exercise program and pain management via analgesic medications. He believed it was premature to recommend decompression surgery, but based upon Petitioner's history and length of time the symptoms have been functionally limiting, ultimately a fusion may be necessary at both L4-L5 and L5-S1 (Pet.Ex.No.17, p.4).

Petitioner remained off work for 21-5/7 weeks, from May 21, 2009 through October 19, 2009. Petitioner testified that after his return to work his ability was limited. It was getting harder to get down and get stuff. Heavy stuff was a bit harder to pick up, due to his lower back problems (T.34).

On July 15, 2010, Petitioner sustained a work-related accident with injury to his low back while bending over a sewer holding a guide stick (T.34; Pet.Ex.No.1, pp 10a,b,c). Initial treatment was rendered by Advocate Occupational Health, which recommended an MRI, off work status and referral to orthopedic physician (Pet.Ex.No.6, p.36). Petitioner saw Dr. Spencer on the date of accident, who prescribed off work status and again suggested surgery

(Pet.Ex.No.5, pp 22-23). Petitioner was off work from July 16 through November 4, 2010, a period of 16 weeks (per stipulation).

On June 27, 2011, Petitioner sustained a work-related accident injuring his low back while working on a water main break (T.37,38; Pet.Ex.No.1, pp 11a,b,c,d). He was taken by ambulance to Lutheran General Hospital, where he was admitted through July 2, 2011. Treatment consisted of medication, MRI and physical therapy (Pet.Ex.Nos. 12, 13). On August 15, 2011, Petitioner was re-admitted to Lutheran General Hospital by Dr. Spencer for surgery: L4-L5 and L5-S1 bilateral laminectomy, diskectomy and bilateral interbody fusion and BMP, bilateral posterior lateral fusion with pedicle plates and screws at L4-L5 and L5-S1 (Pet.Ex.No.14, pp 2-4). He was discharged from the hospital on August 20, 2011, at which time he continued care with Dr. Spencer.

Petitioner remained off work and commenced a course of post-surgery physical therapy at Athletico, for the period of October 14, 2011 through January 31, 2012 (Pet.Ex.No.15). Following therapy, a course of work conditioning was performed at Accelerated Rehabilitation Center from February 8, 2012 through March 5, 2012 (Pet.Ex.No.16).

Petitioner was released by Dr. Spencer to return to work with restrictions on April 19, 2012. Initially, he answered phones for a couple of weeks and then obtained a position in the stock room (T.42). His duties involved managing the stock room, ordering equipment and keeping inventory; an easier job (T.42,43). On August 21, 2012, at Petitioner's request, Dr. Spencer released him to full duty (Pet.Ex.No.5, p.35), in order for Petitioner to keep his job with the Village (T.43). Petitioner has not sought medical treatment since August 2012 (T.44). Petitioner remains at his position in the stock room (T.43).

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner testified to sustaining an original low back injury during his employment with Respondent while shoveling sand in 1992 (T.15). Following that injury, he continued to perform regular work activities (T.15). Lutheran General Hospital records indicate prior MRI findings of June 6, 2000 for comparison to the June 3, 2002 MRI (Pet.Ex.No.2).

Subsequent to the original work-related injury of 1992, Petitioner sustained numerous work-related injuries to his lumbar spine, as set forth in the preceding *Statement of Facts*. On June 3, 2002, Petitioner injured his low back while picking up branches. Treatment was rendered at Lutheran General Hospital (Pet.Ex.No.2). Dr. Spencer, at that time, felt Petitioner's symptoms seemed out of order from the objective findings. Petitioner was released to full duty work; and continued to return to work full duty after each of his next nine (9) work-related injuries over the course of ten years.

On May 20, 2009, while lifting manhole covers, Petitioner sustained serious injury to his lumbar spine at which time Dr. Spencer first recommended laminectomy/diskectomy and spinal fusion surgery (Pet.Ex.No.5, p.21).

Dr. Stanford Tack, who examined Petitioner on September 18, 2009, at Respondent's request, opined that Petitioner's then current symptoms reflect an exacerbation of a pre-existing spinal condition as a result of an occupational injury of May 20, 2009 (Pet.Ex.No.17, p.3). Dr. Tack, at that time, felt it premature to recommend decompression surgery; however, based upon Petitioner's history and length of time his symptoms have been functionally limiting, ultimately this type of treatment (surgery) may be necessary (Pet.Ex.No.17, p.4).

On June 27, 2011, after an 18 hour shift repairing water main breaks, Petitioner again injured his lumbar spine. After wrenching bolts on a hydrant, he was unable to climb out of the

hole (T.37; Pet.Ex.No.1, pp 11a,b,c,d). He was taken by ambulance to Lutheran General Hospital and admitted for bed rest, therapy and diagnostic testing (Pet.Ex.Nos.12,13). Ultimately, surgery was authorized and performed by Dr. Spencer at Lutheran General Hospital on August 15, 2011: L4-5 and L5-S1 bilateral laminectomy, diskectomy and bilateral interbody fusion with P-cage and BMP, bilateral posterior lateral fusion with pedicle plates and screws at L4-L5 and L5-S1 (Pet.Ex.No.14).

Dr. Tack, in his July 11, 2012 report, stated that the ongoing minor low back pain symptoms experienced by Mr. Evins relate to his injury of June 28, 2011, which represented an aggravation of a pre-existing condition. The ongoing symptoms also relate to mechanical changes resulting from the patient's surgical procedure performed on August 15, 2011. The surgical procedure was performed in response to symptoms precipitated by the occupational incident of June 28, 2011 (Pet.Ex.No.18, p.3).

Based upon a review of the medical records and reports, and Petitioner's credible testimony, the Arbitrator finds Petitioner's present condition of ill-being causally related to his multiple work-related accidents and lumbar spine injuries, and most specifically related to the work-related accident of June 27, 2011, which necessitated the surgical procedure.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

As a result of his multiple work related accidents, Petitioner underwent surgery by Dr. Spencer at Lutheran General Hospital: L4-5 and L5-S1 bilateral laminectomy, diskectomy and bilateral interbody fusion with P-cage and BMP, bilateral posterior lateral fusion with pedicle plates and screws at L4-L5 and L5-S1 (Pet.Ex.No.14).

Dr. Tack stated that general recommendations for a two level fusion would be maximal lifting on a permanent basis of up to 50 pounds, which is compatible with the patient's current job description (Pet.Ex.No.18, p.3).

Petitioner is currently working in the stock room, which is less physically demanding than the sewer department. Though released to return to work full duty, at his own request, Petitioner still bares the limitations and residuals of a two level fusion.

Petitioner's current subjective complaints of discomfort and pain in his low back, limitation in activities (T.44-45) are consistent with the nature of his lumbar injury and surgical procedure. He testified to carrying lighter weights, being careful how he picks stuff up, and asking for help to lift heavier loads (T.46).

The Arbitrator finds Petitioner credible with respect to all aspects of his testimony, as same is corroborated by the medical evidence and accident reports submitted in evidence. His conduct in returning to full duty work in an extremely physical job after each accident prior to surgery speaks to his character, credibility and integrity. At trial, the Petitioner did not exaggerate his subjective complaints of pain, though he had every opportunity to do so. In fact, he appeared to minimize his complaints.

As a result of his multiple work-related lumbar spine injuries and subsequent surgical procedure, and specifically the accident of June 27, 2011, the Arbitrator finds that Petitioner has sustained serious and permanent injury to the extent of 40% of his entire person.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
ROCK ISLAND

☒ 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

Lloyd Roberts,

Petitioner,

15IWCC0524

vs.

NO: 13 WC 22230

USF Holland,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical expenses, prospective medical expenses, permanent partial disability, vocational rehabilitation, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 22, 2014 is hereby affirmed and adopted.

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.

15IWCC0524

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.

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 Circuit Court.

DATED: JUL 8 - 2015

David L. Gore

DLG/gaf
O: 6/25/15
45

Stephen Mathis

Mario Basurto

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

ROBERTS, LLOYD
Employee/Petitioner

Case# **13WC022230**

15IWCC0524

USF HOLLAND
Employer/Respondent

On 12/22/2014, 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 0.11% 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:

0412 RIDGE & DOWNES
ZBIGNIEW BEDNARZ
101 N WACKER DR SUITE 200
CHICAGO, IL 60606

2904 HENNESSY & ROACH PC
STEPHEN J KLYCZEK
2501 CHATHAM RD SUITE 220
SPRINGFIELD, IL 62704

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

☐ 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
19(b)

15IWCC0524

LLOYD ROBERTS
Employee/Petitioner

Case # 13 WC 22230

v.

Consolidated cases: _____

USF HOLLAND
Employer/Respondent

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Rock Island**, on **November 13, 2014**. 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 **Vocational plan/rehabilitation**

FINDINGS

15IWCC0524

On the date of accident, **May 4, 2012**, 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.

Because Petitioner's current condition is not causally related to the accident of May 4, 2012, Petitioner is not entitled to additional TTD or vocational rehabilitation.

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

Dec. 19, 2014
Date

ICArbDec19(b)

DEC 22 2014

15IWCC0524

IN SUPPORT OF THE ARBITRATOR'S MEMORANDUM OF DECISION, THE ARBITRATOR MAKES FINDINGS REGARDING THE FOLLOWING ISSUES

- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- F. Is Petitioner's present condition of ill-being causally related to the injury?
- K. Is Petitioner entitled to any prospective medical care?
- L. What temporary benefits are in dispute (TTD)?
- O. Other (Vocational Plan/Rehabilitation)

STATEMENT OF FACTS

1. Petitioner testified he is right-handed and has worked for Respondent as an over-the-road truck driver driving trailer-tractors since 2003.

2. Petitioner testified that, on the date of accident, he was closing a large padlock on the rear door of his trailer and had to strike it three times with his right hand at the base of his palm. The padlock was at shoulder height. Petitioner testified the lock was not closing because it might have had dirt in it. Petitioner also testified that upon striking the padlock he felt pain and stinging in his right hand. On cross examination, Petitioner demonstrated how hard he struck the padlock by banging on a table.

3. Petitioner testified on direct examination that he had requested from the dispatcher, Mick O'Brien, a replacement lock because he was having problems closing the lock. Petitioner testified he first requested a replacement lock in February 2012, but was told that there were no new padlocks to give him.

4. Petitioner testified on direct examination that he reported his injury to the terminal manager, Jerry Kramer, on May 21, 2012. Petitioner testified that he waited to see if his hand would get better. Petitioner also testified that Mr. Kramer told Petitioner to report to Concentra for treatment.

5. At Concentra, Petitioner complained of pain in his right hand and numbness in the third and fourth digits. It was noted that Petitioner had full range of motion and good grip strength. X-rays taken were negative. Petitioner was prescribed Mobic and physical therapy was ordered. Petitioner followed up with Concentra on June 13, 2012. Additional x-rays were taken which were also negative. An MRI was ordered and physical therapy was discontinued. Petitioner continued to work regular duty. The MRI performed on June 22, 2012 revealed a complex tear of the TFCC and a tear of the scapholunate tendon. Petitioner returned to Concentra on June 27, 2012 complaining of continued pain and associated weakness, but no numbness. It was noted that Petitioner wanted to see a surgeon. It was also noted that the condition was compatible with the injury and it was appropriate to see a

surgeon. Petitioner was placed on restrictions of no lifting over 20 pounds and occasional grasping. A soft wrist braced was provided. (PX 1)

6. Petitioner testified on cross examination that Concentra gave him the name of an orthopedic surgeon, Dr. Lyles, but Petitioner testified he did not feel compelled to see Dr. Lyles, but made an appointment with Dr. Lyles anyway. Petitioner first saw Dr. Lyles on July 5, 2012 stating his problems were getting progressively worse and had stiffness, as well as, pain which was worse with direct pressure and lifting. Dr. Lyles provided an injection into the wrist and put Petitioner in a removable long arm forearm brace. Petitioner was restricted to one-handed work only. Petitioner returned to Dr. Lyles on July 19, 2012 reporting that his pain was persistent. On that day, surgery was discussed. Dr. Lyles performed surgery on August 15, 2012, which involved a right scapholunate ligament reconstruction, Brunelli style, using a plate and anchors. On August 23, 2012, Dr. Lyles reported that Petitioner needed an ulnar shortening and placed Petitioner in a short arm fiberglass cast taking Petitioner off of work completely. On September 12, 2012, Petitioner underwent a second surgery which involved a right ulna osteotomy and shortening. On September 20, 2012, Petitioner was placed in a short arm cast. Subsequently, Petitioner underwent physical therapy and was continued off of work by Dr. Lyles. On January 17, 2013, Petitioner declined any injections and physical therapy was continued. On February 7, 2013, and EMG was ordered, as well as, a second opinion for possible reflex sympathetic dystrophy. (PX 4)

7. Petitioner was seen by Dr. Brooks, a physiatrist, on February 25, 2013. Dr. Brooks prescribed Voltren Gel and Lyrica. Dr. Brooks performed on EMG/NCV on March 6, 2013 which was normal. (PX 4)

8. Petitioner returned to Dr. Lyles on March 21, 2013 reporting that he could not perform most manual labor tasks, as well as, simple dexterous tasks like using a dinner knife. Dr. Lyles referred Petitioner to Dr. Shah and put a hold on physical therapy. Dr. Lyles continued to take Petitioner off of work. There were no records of Dr. Shah admitted into evidence. Petitioner was next seen by Dr. Lyles on April 29, 2013. At that time, Dr. Lyles referred Petitioner to a neurologist and pain management. No neurology records were admitted into evidence. Petitioner returned to Dr. Lyles on May 30, 2013. At that time, Dr. Lyles reported that Petitioner would benefit from ongoing occupational therapy and referred Petitioner to Dr. Chang in Iowa City. No records from Dr. Chang were admitted into evidence. Petitioner next saw Dr. Lyles on July 1, 2013, and at that time, Dr. Lyles deemed Petitioner to be a maximum medical improvement, but encouraged Petitioner to continue to follow up with neurology to see if they can mitigate his symptoms. (PX 4)

9. Petitioner was treated by Dr. Wenk for depression and anxiety. (PX 3) On direct examination, Petitioner testified that since the accident, he is short with his family and snaps and yells at them. On cross examination, Petitioner admitted to having stressors in his life other than his right hand condition which contribute to his perceived depression and anxiety.

10. Starting on June 5, 2013, Petitioner has been seen by Dr. Miller and Dr. Hockman for pain management. On June 5, 2013, Petitioner told Dr. Miller he had no intention of returning back to work as a driver. Most recently, Petitioner was seen by Dr. Miller on October 27, 2014 who continues to prescribe Opana and Norco to Petitioner. (PX 2)

11. At the request of Respondent, Petitioner was evaluated by an orthopedic surgeon, Mark Cohen. Dr. Cohen saw Petitioner on December 9, 2013. (RX 1, pp.5-10) Dr. Cohen testified on direct examination that he had a difficult time understanding how trauma to the right palm would cause a

scapholunate ligament tear and TFCC tear. (RX 1, p.16) On cross examination, Dr. Cohen testified that acute TFCC tears typically occur from a fall on an outstretched hand which hyperextends the wrist. Dr. Cohen also testified that chronic tears can occur, as well. Dr. Cohen testified that chronic tears typically occur in people who are predisposed to chronic tears who are born with one bone of their forearm longer than the other. Dr. Cohen testified that Petitioner had an ulna longer than the radius so he was predisposed to having a chronic tear of the TFCC. (RX 1, pp. 25-27) Also on cross examination, Dr. Cohen testified that striking a padlock with the base of the palm is not the mechanism by which someone can tear either the TFCC or the scapholunate ligament. Dr. Cohen also testified that even a weakened TFCC due to degenerative changes would not be affected by the striking of the base of a palm to a padlock. Dr. Cohen went on to testify that when a person uses their hand as a hammer, the wrist is stabilized, therefore, striking an object with the palm does not typically lead to an extension of the wrist and certainly does not lead to a hyperextension of the wrist. Dr. Cohen went on to testify on cross examination that Petitioner probably had a contusion to the nerves that provided feelings to the third and fourth fingers as a result of striking the padlock. Dr. Cohen also testified on cross examination that a third of the men at Petitioner's age will have tears in the TFCC and the scapholunate ligament. (RX 1, pp.29-36) Also on cross examination, Dr. Cohen noted that Petitioner's initial complaints to the treating doctor were that he had pain in his palm with resisted finger movement, and although, at one point he had pain with wrist extension, much of his pain involved his hand not his wrist. Therefore, Dr. Cohen questioned whether or not either the scapholunate ligament or the TFCC was the cause of his wrist pain. Dr. Cohen also noted that, when Petitioner was seen by Dr. Lyles on July 5th, Dr. Lyles specifically noted no joint instability or laxity in the scapholunate ligament. (RX 1, pp. 39-41) Dr. Cohen also testified that the tremors in both of Petitioner's hands would not be from a wrist injury. (RX 1, pp.47-50) On redirect examination, Dr. Cohen testified that Petitioner's complaints had a functional or non-organic component to them which he explained were findings that could not be explained on the basis of anatomy that suggested that Petitioner may have had complaints that were above and beyond the pathology for which he had suffered or been treated for. Dr. Cohen answered affirmatively when asked if those functional or non-organic components of his complaints placed the validity of his complaints into question. (RX 1, pp. 51-51)

CONCLUSIONS OF LAW

The Arbitrator Finds:

1. The Arbitrator finds that Petitioner sustained an accidental injury arising out of and in the course of his employment on May 4, 2012 as it relates to Petitioner's right hand. The testimony of Petitioner supports that the padlock to the rear door of the trailer was not working properly which necessitated Petitioner to strike the padlock three times in a forceful manner.

2. There is no causal connection between the condition of ill-being which necessitated the surgeries to the right wrist and the accident. Dr. Cohen explained in detail how the mechanism of injury could not have caused the condition which necessitated the surgeries, that being, a TFCC tear and a scapholunate ligament tear. He further explained that the accident could not have aggravated any prior tears of those ligaments, making them symptomatic and bringing about the need for surgery. The only medical evidence in favor of Petitioner is a comment made by Dr. Dunbar at Concentra on June 27, 2012 that Petitioner's condition was compatible with the injury. However, Dr. Dunbar is not an orthopedic surgeon. Petitioner's treating orthopedic surgeon, Dr. Lyles, did not provide a causal connection opinion in his records and Dr. Lyles' deposition was not taken. Petitioner had the burden of proof as to all of the elements of his case. Based upon the evidence presented, the Petitioner did not

meet that burden as it applies to causation. Petitioner did prove that the accident caused a contusion to the ulnar nerves of the hand, based primarily on Dr. Cohen's testimony. (RX 1 at 33)

3. Based on the finding of no causal connection between the condition which necessitated the surgeries and his present complaints to the accident, Respondent is not liable for prospective medical treatment, additional TTD, or vocational rehabilitation.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

☒ 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

Trisha Biley,
Petitioner,
vs.

NO: 12WC 38585

Grupo Antolin,
Respondent,

15IWCC0537

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 8, 2014, is hereby affirmed and adopted.

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

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

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

DATED: JUL 16 2015
o071415
CJD/jrc
049

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BILEY, TRISHA
Employee/Petitioner

Case# **12WC038585**

GRUPO ANTOLIN
Employer/Respondent

15IWCC0537

On 9/8/2014, 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 0.05% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
DAVID M BARISH
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

1408 HEYL ROYSTER VOELKER & ALLEN
KEVIN J LUTHER
120 W STATE ST PO BOX 1288
ROCKFORD, IL 61105

15IWCC0537

STATE OF ILLINOIS)
)SS.
COUNTY OF WINNEBAGO)

☐ 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

TRISHA BILEY,
Employee/Petitioner

v.

GRUPO ANTOLIN,
Employer/Respondent

Case # 12 WC 38585

Consolidated cases: NONE.

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 **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Rockford**, on **July 16, 2014**. 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 **October 22, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$23,599.68**; the average weekly wage was **$453.84**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **two** dependent children.

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

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

Respondent shall be given a credit of $ **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 to Petitioner temporary total disability benefits of **$302.56**/week for **63-1/7** weeks, commencing **October 23, 2012** through **January 9, 2014,** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$286.00**/week for **23.75** weeks, because the injuries sustained caused the serious and permanent disability to her **left hand** to the extent of **12.5%** thereof, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$286.00**/week for **23.75** weeks, because the injuries sustained caused the serious and permanent disability to her **right hand** to the extent of **12.5%** thereof, as provided in Section 8(e) of the Act.

Respondent shall pay to Petitioner reasonable and necessary medical expenses of **$55,694.40**, pursuant to the Medical Fee and pursuant to Section 8(a) and 8.2 of the Act.

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.

JOANN M. FRATIANNI
Signature of Arbitrator

August 29, 2014
Date

SEP - 8 2014

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

Petitioner testified she worked for Respondent in assembly. She began working for a temporary service that placed her with Respondent in April of 2012. She became a fulltime employee in June of 2012. Petitioner testified she performed the same work the entire time she worked in Respondent's plant. Petitioner further testified to a gunshot wound to her right hand a few years prior to working for Respondent. She testified she received minimal treatment and experienced no other injuries to her right or left hand since that time.

Petitioner testified her job required her to rotate jobs every two hours. She described eight different jobs, all of which required substantial movement of both arms and wrists. The first job required her to place bushings in a door by pushing very hard and turning her wrist. The second job required her to put in screws using a tool gun, installing door latches. When she would perform this task she would experience pressure on her hand. The third job required her to install wires, which caused her to rotate her wrists in awkward positions and pressed hard and to screw in a motor using an air drill or screwdriver. The fourth job required placing wires in latches, and pressing them in awkward positions. She would also press to snap in pushpins. The fifth job required her to wear gloves as there was a risk of cutting her hands. The sixth job involved speaker grills that she slid in using a power drill. She would experience pressure from the drill. The seventh position had her push in with her thumbs and down. She had to push hard. The eighth position required her to use both hands pushing the machine and use of force, Petitioner testified she had no more than a few seconds between finishing a task and having to start another one over again.

Petitioner testified that she began to experience cramping and pain in her hands. By September of 2012, she began to experience tingling and numbness and increasing pain by October of 2012. She saw Dr. Soufan, her family physician, on October 22, 2012, and informed him she had symptoms from one to four weeks with a gradual onset. Dr. Soufan in turn prescribed an EMG/NCV study that was performed on October 31, 2012. This test revealed bilateral carpal tunnel syndrome. Following the EMG, surgery was prescribed and she was prescribed light duty work until surgery was performed.

Petitioner did not immediately undergo surgery as Respondent denied the claim, and she was terminated from her employment due to absenteeism.

She finally came under the care of Dr. Rhode, an orthopedic surgeon. Dr. Rhode performed surgery in the form of a right carpal tunnel release on August 27, 2013, and a left carpal tunnel release was performed on October 1, 2013. During this period of time, Petitioner complained of hand cramping bilaterally, dropping items and waking up in tears due to pain, along with tingling and numbness to her fingers depending upon her activity.

Petitioner was released to return to work effective January 9, 2014.

Since her release, Petitioner has performed additional factory work and no longer experiences tingling and numbness. She still experiences cramping bilaterally in her hands, with the right being worse. Her hands cramp when she peels potatoes and she testified her hands are not as strong as prior to the injury, but have improved post surgery.

Petitioner saw Dr. Jay Pomerance for an examination on February 21, 2013. This exam was at the request of Respondent. Dr. Pomerance testified by evidence deposition that he reviewed a job video and felt there were no activities to provoke carpal tunnel syndrome. Petitioner testified she reviewed the same video and that it showed only one of the eight positions she described during her testimony.

Dr. Rhode testified by evidence deposition that the job activities that Petitioner described to him would be a causative factor in carpal tunnel syndrome.

Respondent also obtained an AMA rating evaluation from Dr. Stephen Weiss. Dr. Weiss did not use carpal tunnel syndrome as a diagnosis and instead diagnosed nonspecific wrist pain and found no AMA impairment.

Based upon the above, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on October 22, 2012, and that such injuries were caused by repetitive trauma or motion. The job activities described by Petitioner and relied upon by Dr. Rhode are both forceful and repetitive. Dr. Pomerance viewed only one of the eight tasks performed by Petitioner in this matter, and as such, his opinions carry weight in this matter. Dr. Rhode in turn viewed the video and relied upon all the tasks that Petitioner informed him she performed on behalf of Respondent, including using powered guns and what motions were performed. This would make Dr. Rhode's opinions more based on the facts before this Arbitrator than that of Dr. Pomerance.

Petitioner did work this position for seven months before developing symptoms, five as a direct full time employee of Respondent and two months as a temp.

As such, the Arbitrator adopts the opinion of Dr. Rhode as to the issue of causal connection between the job activities Petitioner performed in this matter on behalf of Respondent and the conditions of ill-being that were diagnosed and treated by Dr. Rhode.

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?

Petitioner introduced into evidence certain medical charges that were incurred after this accidental injury:

South Chicago Surgical Solutions	$22,610.80
OP Ottawa	$ 3,007.24
Rockford Health	$ 3,854.00
Rockford Radiology	$ 120.00
Anesthesia Services/Bob Rudy, Inc.	$ 2,805.00
Orland Park Orthopedics	$23,297.36

These charges total $55,694.40.

See findings of this Arbitrator in "C," "D" and "F" above.

Based upon said findings, Respondent is found to be liable to Petitioner for the above charges, which represent reasonable and necessary medical care and treatment that was caused by this accidental injury.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "C," "D" and "F" above.

15IWCC0537

Petitioner was temporarily and totally disabled from work commencing October 23, 2012 through January 9, 2014. Petitioner on January 9, 2014 was released by Dr. Rhode to return to full duty work. Respondent agrees to this period of time but disputes liability for same.

Based upon the findings of this Arbitrator in "C," "D" and "F" above, the Arbitrator further finds that as a result of this accidental injury, Petitioner was temporarily and totally disabled from work commencing October 23, 2012 through January 9, 2014, and is entitled to receive benefits from Respondent for this period of time.

L. What is the nature and extent of the injury?

For injuries that occur after or on September 1, 2011, the determination of permanent partial disability is subject to five factors listed in Section 8.1(b) of the Act:

(1) The reported level of impairment pursuant to the AMA guide;
(2) The occupation of the injured employee;
(3) The age of the employee at the time of the injury;
(4) The employee's future earning capacity;
(5) Evidence of disability corroborated by the treating medical records.

(1) The level of impairment pursuant to the AMA guidelines unfortunately resulted in an examination by Dr. Stephen F. Weiss, who found 0% impairment rating of each hand, but not based on a diagnosis of bilateral carpal tunnel syndrome. This rating examination was performed at the request of Respondent and is clearly flawed under those circumstances.

(2) The occupation of Petitioner is that of factory assembly work. Her job consisted of performing assembly work by rotating through eight stations. Her work activities consisted of use of a power hammer and drills. Petitioner has currently been employed in various factory jobs since her release to return to work by Dr. Rhode on January 9, 2014.

(3) Petitioner's age was 33 years at the time of the accident.

(4) Petitioner's future earning capacity indicates she has been released to return to assembly work full duty and has returned to work in various factory jobs since that time.

(5) Evidence of disability as corroborated by the treating medical evidence and records include the evidence deposition testimony of Dr. Blair Rhode. Dr. Rhode testified to his opinion that Petitioner would have some residual symptomology. Dr. Rhode testified that Petitioner returned to the exact same job and she could suffer recurrent carpal tunnel syndrome. He further testified he released Petitioner to unrestricted full work on January 9, 2014 and felt she had reached maximum medical improvement on February 6, 2014.

In addition to the factors as stated above, for accidental injuries occurring after June 28, 2011, if the injury involves carpal tunnel syndrome due to repetitive trauma, the permanent partial disability awarded shall not exceed 15% loss of use of each hand, based on 190 weeks.

Taking all of the factors into account in this matter, the Arbitrator finds that Petitioner has sustained a 12.5% loss of use to her right hand and a 12.5% loss of use of her left hand at her rate of compensation.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Florentino Nunez,

Petitioner,

15IWCC0513

vs.

NO: 11 WC 44363

Pactiv,

Respondent.

DECISION AND OPINION ON REVIEW

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

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- Petitioner is a 45 year old employee of Respondent, who described his job as a full time electrician. Petitioner was hired by Respondent November 3, 2000. Petitioner's job involved maintaining machinery, fixing break downs, building new machines. Petitioner was required to lift, pull, and carry heavy objects, so his job was considered heavy level. His average weekly wage was about $1,572.15. On the date of accident, October 4, 2011, Petitioner testified he had an accident on a lathe. Petitioner stated that he was polishing a shaft with some emery cloth strip and it got caught on the shaft and spun around and grabbed both of his hands. Petitioner is right hand dominant. Petitioner testified he reported the accident immediately via radio to his lead man, Louis Quintero. Petitioner testified that an ambulance was called and he was taken to Advocate Christ Hospital.

15IWCC0513

Petitioner testified that x-rays were taken of his left hand and he was diagnosed with a left third finger amputation at the PIP joint level. Petitioner was sent by the emergency room for a consultation with Dr. Gary Kronen, an orthopedic surgeon. Petitioner testified he also had a partial amputation of the left third finger and an open wound on the fourth finger. Petitioner was advised that he would require emergency surgery. On October 4, 2011 the doctor performed a surgery consisting of a revision amputation of the left third finger and preparation of the wound on the left fourth finger. Petitioner was advised to stay off work and follow up with the doctor the next day. Petitioner was prescribed some pain medication. Petitioner saw Dr. Kronen at the MidAmerica Hand to Shoulder Clinic on October 5, 2011 and another surgery was then discussed and occupational therapy was started. Petitioner testified (over objection regarding the right hand) that on October 5, 2011 x-rays were done; Petitioner testified that he had advised the doctor that his finger was still hurting and the doctor took the x-ray and found his right index finger was fractured. The doctor continued to restrict Petitioner from work. Petitioner agreed the doctor noted that Petitioner may need to see a psychologist for posttraumatic stress disorder. Petitioner started occupational therapy that day at the Clinic. On October 7, 2011 Dr. Kronen performed another surgery consisting of a ray metacarpal revision amputation of the left third finger; that surgery basically narrowed the hand/brought the index and ring fingers together. Dr. Kronen again wanted Petitioner to start occupational therapy on October 10. 2011 and again recommended a consultation with a psychologist or psychiatrist. Petitioner did not seek that consult as he thought he could handle it himself. On October 19, 2011, Dr. Kronen performed another surgery which then consisted of incision and drainage to the left hand. On October 25, 2011 Dr. Kronen advised Petitioner to continue the occupational therapy and also prescribed a blocking splint and a CPM machine. Regarding the **right** index finger fracture, Petitioner testified the doctor put a splint on it. Dr. Kronen gave Petitioner light duty restrictions at that time. Petitioner stated that he returned to Dr. Kronen on October 27, 2011 and everything was the same.

- Petitioner testified that on October 31, 2011 Respondent accommodated him with a light duty position. Petitioner had been paid TTD benefits from October 5 through October 30, 2011. Petitioner testified that on November 17, 2011, Dr. Kronen prescribed a P1blocking splint to help restore motion, which would then be connected to an MP joint blocking splint and Petitioner was advised he may require further surgery. Petitioner agreed that on November 28, 2011 he received a PPD check for the statutory loss payment for the 100% loss of his left middle finger. Petitioner was advised by the doctor on December 15, 2011 to continue occupational therapy for range of motion and strengthening. Petitioner again saw Dr. Kronen January 12 and February 9, 2012 and advised to continue occupational therapy. On January 16, 2012 Petitioner received an underpayment of the statutory loss because Respondent had paid at the wrong rate for the 100% loss of his left middle finger. On March 8, 2012, Dr. Kronen prescribed a home exercise program and continued Petitioner on light duty restrictions. Petitioner stated that he was released to full duty on April 5, 2012. On June 7, 2012, Petitioner underwent x-rays of the right hand which showed healing of the distal phalanx of Petitioner's **right** index finger. Also on that day the doctor prescribed another surgery for the left hand and

an EMG to determine if Petitioner had carpal tunnel syndrome (the EMG was negative). Dr. Kronen diagnosed Petitioner with CTS on the left hand and injected the left carpal tunnel on June 22, 2012. Dr. Kronen prescribed another surgery July 31, 2012.

- Petitioner was sent by Respondent to Dr. John Fernandez for a Section 12 IME on August 2, 2012. On August 16, 2012 Dr. Kronen performed surgery of left CTS release as well as a revision amputation of the left third finger and Petitioner was advised to stay off of work. Petitioner again began occupational therapy on August 24 at the MidAmerica Clinic. Petitioner was advised on August 27, 2012 to continue therapy for range of motion and strengthening and was released to light duty. Respondent again accommodated the light duty on August 29, 2012. Petitioner was eventually paid TTD benefits from August 6 through August 28, 2012. On September 20, 2012 Dr. Kronen then diagnosed Petitioner with left metacarpal syndrome and advised continuation of therapy and light duty restrictions. On October 18, 2012, Dr. Kronen advised Petitioner he had some hypoesthesia of the digital nerves and prescribed some desensitization treatment. On November 15, 2012, Dr. Kronen advised Petitioner to continue occupational therapy and to be more aggressive with the desensitization of the digital nerves in the intermetacarpal space. Petitioner received an injection to the left intermetacarpal space December 13, 2012. On January 15, 2013, the doctor prescribed a new EMG which was done January 15, 2013 and was negative. Petitioner was sent for another IME with Dr. Fernandez on January 23, 2013 and on January 24, 2013, Dr. Kronen prescribed another surgery. On January 29, 2013, Dr. Kronen performed surgery consisting of a revision of metacarpal amputation with the narrowing of the intermetacarpal space, excision of a neuroma of the left hand, with implementation into muscle of the radial, ulnar sensory digital nerves and again Petitioner was taken off of work. On January 31, 2013 the doctor again prescribed occupational therapy and on February 14, 2013 advised petitioner to continue therapy. On March 7, 2013, Dr. Kronen advised Petitioner to continue therapy and released him to work light duty. Petitioner returned to light duty work on March 12, 2013 and TTD benefits were eventually paid for the period of January 31, 2013 through March 11, 2013.

- On March 25, 2013, Dr. Kronen noted Petitioner's manipulation issues and numbness and tingling and referred him to Dr. Fakhouri for a second opinion. Dr. Fakhouri saw Petitioner on April 12, 2013 and recommended further therapy versus further surgery regarding the nerve issues, but did recommend surgery of transposition of the index finger. On April 18, 2013, Dr. Kronen continued the light duty restrictions and advised petitioner to continue therapy. On May 30, 2013 Dr. Kronen performed a digital block injection to help eliminate symptoms of cramping. Petitioner saw Dr. Kronen June 27, 2013 and the doctor gave Petitioner three options; surgery, a second opinion from another doctor, or placement at maximum medical improvement (MMI) after a functional capacity evaluation (FCE). Petitioner saw Dr. Kronen on July 25, 2013 and was placed at MMI and prescribed the FCE as Petitioner did not want surgery at that time. Petitioner testified that the doctor also suggested that Petitioner speak to Respondent about a permanent position based on the restrictions of the FCE. Petitioner stated that he

underwent an FCE on August 2, 2013 at Accelerated Rehab. On August 12, 2013, Dr. Kronen released Petitioner at MMI with the restrictions set out by the FCE; right hand duty using the upper extremity in a normal fashion and with material handling ability limitations for bilateral lifting at 40 pounds, frequent bilateral lifting at 20 pounds, bilateral carrying at 40 pounds, bilateral shoulder lifting at 30 pounds, and pushing and pulling 35 horizontal force pounds. Petitioner has continued to work for Respondent full time with the current restrictions. Petitioner agreed that on December 2, 2013 he saw Dr. Kronen so the doctor could correct his notes as Petitioner had an issue with them; Petitioner testified that instead of putting the fracture on the right finger, the doctor noted it on the left finger so Petitioner advised the doctor and the doctor went back and checked his records and corrected the notes in the report. Petitioner had seen no other doctors regarding his left or right hand injury.

- Petitioner testified that he was currently taking no medications for his injuries; not even any OTC medication for pain. Petitioner stated that he does use heat or ice packs and he does home exercises, always stretching when he is sitting watching TV or something. Petitioner testified that currently at work he has difficulties. He stated he cannot get up on machines to service equipment or get on ladders or climb on things. He stated with building things at work, his fingers cramp up so he has a hard time holding things (with his hand) and it takes him a little while but he gets it. Petitioner testified that he has people help him lifting heavy things and if he has to move something they usually get someone to help him. Petitioner testified that prior to the injury he was working overtime but he is not able to do that as much as he used to. Petitioner testified he has difficulties at home, just small stuff, he stated he usually compensates by using his right hand. Petitioner stated when they start cramping up bad, even now, like with pushing buttons through his collar, he has a hard time, or even carrying something with his hand, trying to open the door with the keys, especially with multiple keys, trying to get one key is difficult. Petitioner testified that he used to be a trustee at a baseball organization and he did a lot of field work but now he mostly watched the guys; he was not much help, so he stepped aside from that. Petitioner stated that he used to coach basketball. Petitioner stated that it is hard trying to show the kids how to pass the ball and things like that so he kind of stepped down from that also. Petitioner testified he gets pain in his left hand if he used it a lot (over objection). Petitioner testified that he cannot lift anything heavy and if he does his hand feels stiff with the more pressure he puts on it; like it falls asleep and starts tingling. He stated he gets the sensation at a low level without using it, so as soon as he starts moving his fingers he can feel the tingling increase. As to his **right** index finger, Petitioner testified that it just feels a little stiffer than the rest of his fingers. Petitioner understood that Respondent had paid all his medical bills except for $94.00. Petitioner did have a prior left fourth finger injury where he did have stitches, but he did not file a workers' compensation case regarding that; he had no subsequent injuries to his left hand. Petitioner is now 48 years old. Prior to the accident Petitioner had planned to work until retirement at 67. Because of his accident, he did not know if he would still work that long. He stated if he goes and looks for a job now he would not get a job the way he is now.

The Commission finds that Petitioner testified of his accident, which is not disputed, regarding his left hand, fingers, and CTS. Petitioner also indicated that his right hand/index finger was also injured at the same time. There is, however, nothing in the ER records regarding the right index finger being injured and the first indication in the subpoenaed records regarding the right extremity was June 2012 when he was diagnosed with the arthritis in the fingers, and there it was noted that Petitioner denied trauma to his right. There is nothing in the subpoenaed records regarding an x-ray in October 2011 regarding the right extremity. The only indications are the later 'correction' as to the clear typo in the one note indicating a right amputation, Dr. Kronen stating some x-ray in October 2011 showed a right index fracture and Dr. Kronen stating that a subsequent x-ray in June 2012 showed a healed fracture; again there is nothing in the record supporting that as an injury related to the accident here. The Commission finds the decision of the Arbitrator, admitting PX 4, error as PX 4 was not subpoenaed, hearsay and prepared in anticipation of litigation. The Commission therefore reverses to deny PX 4 as inadmissible hearsay/prepared in anticipation of litigation and not considered as evidence for any right index finger award with no other evidence to support any right index finger involvement.

The Commission finds that Petitioner's testimony is unrebutted regarding the left fingers, amputations, and carpal tunnel syndrome (CTS), so Petitioner met the burden of proving a causal connection as to those left hand injuries and ongoing condition of ill-being. Regarding the right index finger, however, as stated above, there is nothing in the record other than PX 4 (inadmissible) regarding any injury. Petitioner's testimony is not supported with reliable, valid evidence. Accordingly, Petitioner failed to meet the burden of proving accident or causal connection regarding any right index finger fracture injury. It would be understandable that the doctor and Petitioner would be most concerned with the finger amputation and left hand, but one would question no complaints in any records until some 8 months later regarding the right index finger. At that time, Petitioner denied trauma, and the diagnosis was arthritis, which Dr. Kronen (in PX 4) indicated was not related to the accident. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence as to the left hand, and fingers conditions of ill-being, but contrary as to the right index finger with only the unreliable PX 4 (created, in anticipation of litigation) in support and no evidence in support in the treating records produced via subpoena. The Commission, herein, affirms and adopts the Arbitrator's finding as to causal connection to the left hand, finger amputation, fingers and traumatic CTS development, but reverses to find no causal connection regarding the right index finger as there are no subpoenaed treating records corroborating evidence of right index trauma.

The Commission finds Petitioner testified of an undisputed left fingers/hand injury and there is a clearly evidenced causal connection in that regard. As to the left hand, fingers, amputation, CTS, Petitioner suffered multiple injuries to his left hand/fingers in the accident. Petitioner further then developed traumatic CTS while the injury primarily began with the amputation and finger lacerations. So Petitioner's injuries are properly awarded for both the fingers (amputation and lacerations) and the hand (CTS), especially given Petitioner required a CTS release surgery and Respondent's own examiner found that causally related to the trauma; Respondent paid little to no attention to those facts in their argument. Petitioner suffered significant injury and disability regarding his left hand and fingers and he noted his ongoing daily problems which are supported

in the medical records and the permanent restrictions based on the FCE per Dr. Kronen. Petitioner did only lose one digit as a result of the traumatic and further surgical amputation of the left middle finger and the 100% loss of use of that at the 60% of average weekly wage (AWW) rate was proper. The maximum rate applicable to an amputation is computed at 60% of the average weekly wage so the Arbitrator's $943.29 rate was correct. Petitioner sustained not just finger traumas but also traumatic CTS that also required surgical intervention. There is no credit towards the hand via the statutory amputation. As to the hand and other left fingers, the Arbitrator used the wrong maximum permanent partial disability (PPD) rate for the date of accident. The Arbitrator should have used the maximum rate of **$695.78** (Not $664.72). As to the right index finger, with the finding above of no causal connection as a result of Petitioner's unsupported testimony, Petitioner failed to meet the burden of proving entitlement to any PPD award regarding the alleged right index finger fracture (even accident is questionable in that regard). The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence as to the left hand, and left fingers, but contrary to the evidence regarding the right index finger. The Commission, herein, affirms and adopts the Arbitrator's finding as to Permanent partial disability as to the left hand, and fingers (but **corrects to the proper PPD max rate to $695.78**), and further reverses to deny any and all PPD regarding the unsupported alleged right index finger injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $943.29 per week for a period of 38 weeks, as provided in §8(e)(3) of the Act, for the reason that the injuries sustained caused the 100% loss (statutory loss) of Petitioner's left middle finger (Respondent to receive credit for amounts paid for that statutory loss, as stipulated), that Respondent pay to Petitioner the sum of $695.78 per week for a period of 90.35 total weeks, as provided in §8(e)(2, 4, & 9) of the Act, for the reason that the injuries sustained caused the 10% loss of Petitioner's left index finger (4.3 weeks), 15% loss of Petitioner's left ring finger (4.05 weeks), and 40% loss of Petitioner's left hand (82 weeks).

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.

15IWCC0513

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $63,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUL 7 - 2015
o-5/7/15
DLG/jsf
45

David L. Gore

Stephen Mathis

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

NUNEZ, FLORENTINO
Employee/Petitioner

Case# **11WC044363**

15IWCC0513

PACTIV
Employer/Respondent

On 9/19/2014, 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 0.04% 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:

1993 ROMANUCCI & BLANDIN LLC
FRANK A SOMMARIO
321 N CLARK ST SUITE 900
CHICAGO, IL 60654

1872 SPIEGEL & CAHILL PC
MARTIN T SPIEGEL
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 15IWCC0513

Florentino Nunez
Employee/Petitioner

v.

Pactiv
Employer/Respondent

Case # 11 WC 44363

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **August 19, 2014**. 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 **October 4, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**81,751.80**; the average weekly wage was $**1,572.15**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **3** dependent children.

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

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

Respondent shall be given a credit of $**15,676.77** for TTD, $**0** for TPD, $**0** for maintenance, and $**35,841.60** for statutory loss benefits for 100% loss of the use of the middle finger, for a total credit of $**51,518.37**.

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

ORDER

Petitioner is found to have suffered a permanent injury pursuant to Sections 8(e) (2), (3) and (9) of the Act. Respondent shall pay Petitioner permanent partial disability benefits of :

(1) **$943.29** per week for a period of **38** weeks, as provided in Section 8(e)(3) of the Act, because the injuries sustained caused **100%** Statutory loss of the left middle finger; (paid at 60% of the AWW for statutory loss, not subject to the max PPD rate)

(2) **$664.72** per week for a period of **4.05** weeks, as provided in Section 8(e)(2) of the Act, because the injuries sustained caused **15%** loss of use of the left ring finger;

(3) **$664.72** per week for a period of **82.00** weeks, as provided in Section 8(e)(9) of the Act, because the injuries sustained caused **40%** loss of use of the left hand;

(4) **$664.72** per week for a period of **6.45** weeks, as provided in Section 8(e)(2) of the Act, because the injuries sustained caused **15%** loss of use of the right index finger; and

(5) $**664.72** per week for a period of **4.3** weeks as provided in Section 8(e)(2) of the Act because the injuries sustained caused a loss of use of **10%** of the left index finger.

The parties stipulated that Respondent has a credit for the 100% Statutory loss of the left middle finger since Respondent has already paid that to Petitioner.

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.

Deborah L. Simpson
Signature of Arbitrator

Sept 19, 2014
Date

SEP 19 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Florentino Nunez,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 11 WC 44363**
	)	
Pactiv,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on October 4, 2011, the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner sustained an accidental injury or was last exposed to an occupational disease that arose out of and in the course of the employment. They further agree that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act and that the Respondent has paid for all reasonable and necessary medical services.

At issue in this hearing is as follows: (1) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; and (2) the nature and extent of the injury.

STATEMENT OF FACTS

The Petitioner, a 45 year-old married man with three dependents under the age of 18, testified credibly that he was a full-time Electrician, who was hired by Respondent on November 3, 2000 as a full time employee. At the time of his injury he earned approximately $1,572.15 per week. Petitioner was not a union member. Petitioner testified that his job duties as an Electrician consisted of the following: maintaining and cleaning the machinery, frequently lifting, pushing, pulling with both upper extremities, and occasionally operating machinery. Petitioner believed that the work would fall into the heavy labor category. Petitioner testified that on October 4, 2011, while at work, he was cleaning / polishing the shaft of a Jet Bench Lathe when the emery cloth got caught in the lathe and pulled both of his hands into the machine (PX1, p.7). Part of the Petitioner's left middle finger was cut off by the machine. Petitioner immediately reported the injury to his supervisor Louis Quintero. Petitioner was taken by ambulance to Advocate Christ Hospital.

On October 4, 2011, at the Advocate Christ Hospital Emergency Room, x-rays were performed of the left hand (PX1, p.25-28, 45). He was diagnosed with a left third finger amputation at the level of the PIP joint (PX1, p.45). The emergency room sent him for a

consultation with Dr. Gary Kronen, an orthopedic surgeon (PX1, p.7-8). Dr. Kronen noted that in addition to the partial amputation of the left third digit, he also had an open wound more complicated on the fourth digit (PX1, p.7). Dr. Kronen advised that he required emergency surgery and immediately performed surgery, consisting of revision amputation of the left third digit and surgical preparation of wound on the left fourth digit (PX1, p.9-10). He was prescribed some pain medication, advised to remain off of work, and advised to follow-up in Dr. Kronen's office on the next day (PX1, p.15-17).

On October 5, 2011, Dr. Kronen, who saw petitioner in follow-up at his office, MidAmerica Hand to Shoulder Clinic, discussed another surgery to be performed and started petitioner on occupational therapy (PX2, p.19). The Petitioner testified that on October 5, 2011, he complained to the doctor that he was experiencing pain in the index finger of his right hand and that he had trouble bending the finger and the doctor ordered an x-ray of the right hand. On October 5, 2011, x-rays of the right hand were taken, which revealed a distal phalanx fracture of the index finger of the right hand (PX4, p.1). Petitioner testified that he was given a splint for the right index finger fracture. (PX 2, p. 14) Dr. Kronen continued to restrict him from work and also noted that he may need to see a psychologist for post-traumatic stress disorder (PX2, p.19). He did in fact begin occupational therapy at MidAmerica Hand to Shoulder Clinic on October 5, 2011 (PX2, p. 143).

On October 7, 2011, Dr. Kronen performed another surgery, this one consisting of a Ray metacarpal revision amputation of the left third digit, which basically narrowed the left hand by bringing the left index and ring fingers together (PX2, p. 148).

On October 10, 2011, Dr. Kronen started him on occupational therapy and again recommended a consultation for a psychologist or psychiatrist for evaluation for posttraumatic stress disorder (PX2, p. 18). Petitioner testified that he elected not to see a psychiatrist or psychologist because he felt he could deal with it on his own.

On October 19, 2011, Dr. Kronen performed another surgery, this time consisting of incision and drainage to the left hand, this surgery was performed as an out patient with local anesthesia. (PX2, pp. 17, 149-150 and PX4, p.2).

On October 25, 2011, Dr. Kronen advised him to continue occupational therapy, prescribed a blocking splint and a CPM machine, and provided light duty work restrictions (PX2, p.16). Dr. Kronen saw him again on October 27, 2011, but nothing had changed (PX2, p.15).

Petitioner testified that on October 31, 2011 his employer accommodated his light duty work restrictions so he began working light duty and that he was paid temporary total disability ("TTD") benefits from October 5, 2011 through October 30, 2011 (Arb. Ex. #1).

On November 17, 2011, Dr. Kronen prescribed a P1 blocking splint to help restore motion, which would then be converted to an MP joint blocking splint and advised that he may need more surgery (PX2, p.14).

Petitioner testified that on November 28, 2011 he received a permanent partial disability ("PPD") statutory loss payment for 100% of the left middle finger (Arb. Ex. #1).

On December 15, 2011, Dr. Kronen advised him to continue the occupational therapy for range of motion and strengthening (PX2, p.13). On January 12, 2012 and February 9, 2012, Dr. Kronen saw him in follow-up and Dr. Kronen noted that he continued in occupational therapy (PX2, p.11-12).

Petitioner testified that on January 16, 2012 he received an underpayment of the PPD statutory loss payment because respondent had paid at the wrong rate for the 100% loss of the left middle finger (Arb. Ex.#1).

On March 8, 2012, Dr. Kronen prescribed a home exercise program and continued his light duty restrictions (PX2, p.10).

On April 5, 2012, Dr. Kronen released him to full duty work (PX2, p.9).

On June 7, 2012, Dr. Kronen performed x-rays of the right hand, which showed healing of the distal phalanx fracture of the right index finger (PX2, p.8 and PX4, p.1). Dr. Kronen also diagnosed him with arthritis of the right index, middle and ring fingers but opined that this was not causally related to the October 4, 2011 date of accident (PX2,p.8 and PX4, p.1). On June 7, 2012, Dr. Kronen also had prescribed another surgery for the left hand as well as an EMG to determine if he had carpal tunnel syndrome (PX2, p.7).

On June 18, 2012, the EMG was performed but it was negative (PX2, p.65-68 and PX3, p. 73-76). Nevertheless, on June 22, 2012, Dr. Kronen diagnosed him with carpal tunnel syndrome on the left hand and injected the left carpal tunnel (PX2, p.5-6).

On July 31, 2012, Dr. Kronen prescribed another surgery. (PX2, p. 4).

On August 2, 2012, Petitioner testified that he was examined by Dr. John Fernandez for a Section 12 exam at the request of Respondent. Dr. Fernandez agreed that the Petitioner did have carpal tunnel, that it was the result of his injury of October 4, 2011, and that the Petitioner was an appropriate candidate for carpal tunnel surgery. (PX 2, pp. 57-61)

Dr. Kronen performed surgery on August 16, 2012, which consisted of left carpal tunnel release as well as a revision amputation of the left third digit. (PX2, p.145-146). Petitioner testified that he was advised by Dr. Kronen to remain off of work at that time.

On August 24, 2012, he began occupational therapy again at MidAmerica. (PX2, p. 62-63). On August 27, 2012, Dr. Kronen advised him to continue the occupational therapy for range of motion and strengthening and also released him to light duty work. (PX2, p.3).

Petitioner testified that his employer accommodated his light duty restrictions on August 29, 2012 and that he had eventually been paid TTD for August 6, 2012 through August 28, 2012 (Arb. Ex. #1).

On September 20, 2012, Dr. Kronen diagnosed him with left metacarpal syndrome and advised him to continue in occupational therapy while on the light duty restrictions. (PX2, p.2).

On October 18, 2012, Dr. Kronen advised that he had some hypesthesia of the digital nerves and prescribed some desensitization treatment. (PX3, p.44-45).

On November 15, 2012, Dr. Kronen advised him to continue the occupational therapy and to be more aggressive with the desensitization of the digital nerves in the intermetacarpal space. (PX3, p.40-41).

On December 13, 2012, Dr. Kronen injected the left intermetacarpal space. (PX3, p.37-39).

On December 24, 2013, Dr. Kronen prescribed a new EMG and on January 15, 2013, that EMG was performed but again it was negative. (PX3, p.35 and 68-72).

Petitioner testified that on January 23, 2013, he was examined by Dr. John Fernandez for a second Section 12 exam at the request of Respondent.

On January 24, 2013, Dr. Kronen prescribed another surgery. (PX3, p.36).

On January 29, 2013, Dr. Kronen performed surgery, consisting of revision of metacarpal amputation with narrowing of the intermetacarpal space, excision of neuroma, left hand with implantation into muscle, radial, and ulnar sensory digital nerves. (PX3, p. 64). Petitioner testified that he was taken back off of work by Dr. Kronen, at this time.

On January 31, 2013, Dr. Kronen prescribed occupational therapy again. (PX3, p. 34).

On February 14, 2013, Dr. Kronen advised him to continue the occupational therapy. (PX3, p. 33).

On March 7, 2013, Dr. Kronen advised him to continue the therapy and released him to return to work light duty. (PX3, p. 32).

Petitioner testified that on March 12, 2013, he did return to work light duty and that eventually Respondent paid TTD from January 31, 2013 through March 11, 2013. (Arb. Ex. #1).

On March 25, 2013, Dr. Kronen noted his fine motor manipulation issues of the left hand and the numbness and tingling in the radial side of the left ring finger and the ulnar side of the left index finger and referred him to Dr. Anton Fakhouri for a second opinion. (PX3, p. 29-31).

On April 12, 2013, Dr. Anton Fahouri, recommended more therapy as opposed to further surgery in relation to the nerve issues, however, he did recommend a surgery consisting of the transposition of the left index finger. (PX3, p. 26-28). On April 18, 2013, Dr. Kronen advised him to continue the occupational therapy and to continue working light duty (PX3, p. 24-25).

On May 30, 2013, Dr. Kronen performed a diagnostic digital block injection to help eliminate symptoms of cramping in the left thumb. (PX3, p. 22-23).

On June 27, 2013, Dr. Kronen gave him three options to consider: 1) another surgery, 2) a second opinion, or 3) to be released at maximum medical improvement ("MMI") after a functional capacity evaluation ("FCE"). (PX3, p. 20-21).

On July 25, 2013, Dr. Kronen placed him at MMI and prescribed an FCE since he elected to not proceed with another surgery at that time. (PX3, p.19). Dr. Kronen also suggested that

Petitioner should speak to Respondent about a permanent position based on the restrictions in the FCE. (PX3, p.19).

On August 2, 2013, he underwent the FCE at Accelerated Rehabilitation Center. (PX3, p. 77-85)

On August 12, 2013, Dr. Kronen released him at MMI with permanent restrictions per the FCE, which consisted of the following: Right handed duty using the upper extremity in a normal fashion and with material handling ability limitations for bilateral lifting at 40 pounds, frequent bilateral lifting at 20 pounds, bilateral carrying at 40 pounds, bilateral shoulder lifting 30 pounds, pushing 35 horizontal force pounds and pulling 35 horizontal force pounds. (PX3, p.17-18).

Petitioner testified that on December 2, 2013, he went back to see Dr. Kronen to ask Dr. Kronen to correct his notes regarding the right index finger and this report correctly shows that he had a fractured right index finger that was as a result of the October 4, 2011. (PX4, p. 1-2). Petitioner testified that he did not address the right index finger on October 4, 2011 because he was more concerned with his partially amputated left middle finger. Petitioner testified that he went back to Dr. Kronen to correct his notes and for clarification of the right index finger because once he saw the October 5, 2011 report, he noticed that Dr. Kronen did not mention the x-rays or the fracture of the right index finger even though his June 7, 2012 report did in fact mention the x-rays. (PX2, p. 8 and 19, and PX4, p.1).

Petitioner testified that he continues to work for Respondent full time with the permanent restrictions that Dr. Kronen had given. Petitioner testified that he has not seen any other doctors for his left or right hand injuries. Petitioner did see a doctor for an unrelated liver condition for which he was off work in early 2014 but he has been back to work since May 2014. Petitioner testified that he did not have any subsequent injury to his left hand. He did testify that he had a prior left index finger injury, where his finger was cut and he received stitches, but no Workers' Compensation claim was ever filed. Prior to the October 4, 2011 accident, he had been working full duty and had no work restrictions.

Petitioner testified that he still has difficulty at work. He needs someone to help him with heavy items, he has difficulty climbing ladders or getting on top of machines because of his lack of grip strength in his left hand, and he does not work the overtime he used to. Petitioner admitted that with respect to the inability to climb ladders, this was not a restriction placed upon him by Dr. Kronen, but a limitation he placed upon himself because of his lack of grip strength and his desire to not injure himself of endanger others.

Petitioner testified that outside of work, he could not do heavy lifting at home, he had some difficulty dressing and buttoning his shirt due to the lack of fine motor manipulation, he had difficulty holding things with his left hand, and he could not coach basketball or be a trustee in the baseball organization that he had previously been active in, because he could not perform all the duties required that he could perform before the injury. Petitioner testified that he continued to have occasional pain, numbness, tingling, and tenderness in his left hand especially at night after work and that he had some stiffness with the right index finger. Petitioner described hand numbness and tingling along the index and ring finger along the sides where his middle finger is missing, he pointed to the area on his left hand with his right hand to

demonstrate the area he was talking about. Petitioner testified that he had weakness in strength in his left upper extremity but that he was right hand dominant. He continued to work through the pain, occasionally using ice pack and / or heat pads at times when in pain. Petitioner did do home exercises and / or stretches for the left hand. Petitioner testified that Respondent paid all of the reasonable, necessary and related medical expenses regarding this accident.

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). This includes the nature and extent of the petitioner's injury.

In determining the level of permanent partial disability, for injuries that occur on or after September 1, 2011, 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; (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. (820 ILCS 305/8.1b)

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

The Arbitrator finds Petitioner's condition at the time of trial is causally related to the alleged accident. Petitioner testified that both of his hands were crushed in the lathe at the time of the accident. When first brought to the hospital there was more concern with his left hand due to the loss of part of the middle finger. He did report pain with his right index finger as well. It was x-rayed the next day and there was a fracture noted in the right index finger. The injury to the Petitioner's right index finger is causally related to the accidental injuries that Petitioner sustained while working for the Respondent on October 4, 2011.

What is the nature and extent of the injury?

The Arbitrator adopts by reference all prior findings and conclusions into this Section without restating them herein. This claim arose after September 1, 2011, therefore the 5 factors for determining Permanent Partial Disability shall be applied here. The Arbitrator notes the five factors to determine Permanent Partial Disability are: 1) AMA Impairment Rating; 2) Occupation of the injured employee; 3) Age of the employee at the time of the injury; 4) Employee's future earning capacity; and 5) Evidence of disability corroborated by the treating medical records. No one factor shall be controlling but a written explanation is required if an award is greater than the AMA Impairment Rating. 820 ILCS 305/8.1b(b).

It is the claimant's burden to prove all aspects of his claim for benefits. This includes entitlement to Permanent Partial Disability.

1. ***AMA Impairment Rating***: Neither Petitioner nor Respondent presented an AMA Impairment Rating. Based on the failure to submit an AMA Impairment Rating the Arbitrator cannot consider this factor. No weight is given to this factor.

2. ***Occupation of the injured employee***: Petitioner was employed by Respondent as a full time Electrician. He was working full duty with no restrictions at the time of the accident.

Petitioner testified that his job duties as an Electrician consisted of the following heavy level labor work: maintaining and cleaning the machinery, frequently lifting, pushing, pulling with both upper extremities, and occasionally operating machinery. Petitioner testified that he continues to work for Respondent full time, in the same position he had before the accident. He testified that Respondent has accommodated his very restrictive permanent restrictions. Petitioner's job is a heavy level job therefore Petitioner's permanent partial disability will be more significant than an individual who performs lighter work.

In light of the foregoing, the Arbitrator gives significant weight to the foregoing factor.

3. ***Age of the employee at the time of the injury***:

At the time of the accident, Petitioner testified that he was 45 years old. He testified that he is now 48 years old as of the date of trial. No evidence was presented as to how Petitioner's age impacted his injury or created any permanent disability. The Arbitrator considers Petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability will be moderately greater than that of an older individual because Petitioner will have to live and work with the consequence of the injury for a longer period of time.

The Arbitrator places some weight on this factor.

4. ***Employee's future earning capacity***: Petitioner testified that he continues to work full time at his previous position because the Respondent has accommodated his restrictions.

No evidence regarding Petitioner's earning capacity was presented by Petitioner other than the fact that because of the injuries he has sustained and the need for permanent restrictions from this work related accident, he did not believe he would be able to work as long as he thought he would have been able to prior to the accidents. No evidence suggests a diminishment in Petitioner's future earning capacity as a result of his injury except Petitioner's testimony that he is not able to work overtime anymore. Petitioner did not testify to any diminution of his earnings since this accident.

The Arbitrator places little weight on this factor.

5. ***Evidence of disability corroborated by the treating medical records***: The Petitioner sustained an injury to his left and right hands when they were caught in a lathe.

On October 4, 2011, Advocate Christ Hospital Emergency Room performed x-rays of the left hand, where he was diagnosed with a left third finger amputation at the level of the PIP joint. Dr. Kronen noted that in addition to the partial amputation of the left third digit, he also had an

open wound more complicated on the fourth digit. Dr. Kronen immediately performed surgery, consisting of revision amputation of the left third digit and surgical preparation of wound on the left fourth digit. Petitioner underwent three more surgeries between October 5 and October 19 of 2011. He had a fourth surgery in August of 2012 and a fifth surgery in January of 2013. Additionally he had several injections as well.

Petitioner participated in significant physical and occupational therapy over the course of almost two years as a result of the injury.On December 15, 2011, Dr. Kronen advised him to continue the occupational therapy for range of motion, strengthening and desensitization of the digital nerves in the intermetacarpal space.

Petitioner was prescribed a home exercise program.

Dr. Kronen diagnosed Petitioner with carpal tunnel syndrome on the left hand which was a result of the traumatic injury to the left hand.

Petitioner was diagnosed with left metacarpal syndrome and hypesthesia of the digital nerves as well as a result of the injury, and underwent therapy and injections for treatment of these issues.

Dr. Kronen noted that Petitioner's had fine motor manipulation issues of the left hand and numbness and tingling in the radial side of the left ring finger and the ulnar side of the left index finger and referred him to Dr. Anton Fakhouri for a second opinion.

Dr. Fahouri, recommended more therapy as opposed to further surgery in relation to the nerve issues, however, he did recommend a surgery consisting of the transposition of the left index finger. The Petitioner chose to undergo an FCE and return to work, with his hand in its current condition rather than undergo a sixth surgery.

On August 2, 2013, he underwent the FCE at Accelerated Rehabilitation Center and on August 12, 2013, Dr. Kronen released him at MMI with permanent restrictions per the FCE. The restrictions consist of the following: Right handed duty using the upper extremity in a normal fashion and with material handling ability limitations for bilateral lifting at 40 pounds, frequent bilateral lifting at 20 pounds, bilateral carrying at 40 pounds, bilateral shoulder lifting 30 pounds, pushing 35 horizontal force pounds and pulling 35 horizontal force pounds.

Petitioner continues to work for Respondent full time with the permanent restrictions Dr. Kronen had given. Petitioner has not seen any other doctors for his left or right hand injuries.

Petitioner still has difficulty at work in that he needing help him with heavy items, lack of grip strength and the inability to climb ladders or get on top of machines because of his lack of grip strength. Petitioner does not work overtime like he did before.

Petitioner's injury has affected his activities of daily living as well in that he cannot do heavy lifting at home, has some difficulty dressing and buttoning his shirt due to the lack of fine motor manipulation, has difficulty holding things with his left hand, and he cannot be as active with his children coaching basketball or being involved in baseball.

Petitioner continues to have occasional pain, numbness, tingling, and tenderness in his left hand especially at night after work and he has some stiffness with the right index finger. Petitioner is right hand dominant. He continues to work through the pain, occasionally using ice pack and / or heat pads at times when in pain. Petitioner does do home exercises and / or stretches for the left hand.

Petitioner testified that Respondent paid all of the reasonable, necessary and related medical expenses regarding this accident.

The Petitioner's testimony was clearly and unequivocally corroborated by the medical records entered as exhibits. Respondent did not present any convincing evidence or any witnesses to the contrary. Respondent did not present any Section 12 exam reports as to this accident even though they performed two Section 12 exams with Dr. John Fernandez. The Petitioner's complaints, supported by the medical records, evidences a disability as indicated by Commission decisions regarded as precedents pursuant to Section 19(e) of the Act. The Arbitrator places great weight on the foregoing factor when making the permanency determination.

The Arbitrator finds that the Respondent shall pay the Petitioner the sum of **$943.29** per week for a period of **38 weeks**, as provided in Section 8(e)(3) of the Act, because the injuries sustained caused **100% Statutory loss** of the left middle finger, the sum of **$664.72** per week for a period of **4.05 weeks**, as provided in Section 8(e)(2) of the Act, because the injuries sustained caused **15%** loss of use of the left ring finger, the sum of **$664.72** per week for a period of **4.3** weeks as provided in Section 8(e)(2) of the Act because the injuries sustained caused a loss of use of **10%** of the left index finger, the sum of **$664.72** per week for a period of **82.00 weeks**, as provided in Section 8(e)(9) of the Act, because the injuries sustained caused hypesthesia of the digital nerves loss of use of the left hand, and the sum of **$664.72** per week for a period of **6.45** weeks, as provided in Section 8(e)(2) of the Act, because the injuries sustained caused **15%** loss of use of the right index finger.

ORDER OF THE ARBITRATOR

Petitioner is found to have suffered a permanent injury pursuant to Sections 8(e) (2), (3) and (9) of the Act. Respondent shall pay Petitioner permanent partial disability benefits of :

(1) **$943.29** per week for a period of **38** weeks, as provided in Section 8(e)(3) of the Act, because the injuries sustained caused **100%** Statutory loss of the left middle finger;

(2) **$664.72** per week for a period of **4.05** weeks, as provided in Section 8(e)(2) of the Act, because the injuries sustained caused **15%** loss of use of the left ring finger;

(3) **$664.72** per week for a period of **82.00** weeks, as provided in Section 8(e)(9) of the Act, because the injuries sustained caused **40%** loss of use of the left hand;

(4) **$664.72** per week for a period of **6.45** weeks, as provided in Section 8(e)(2) of the Act, because the injuries sustained caused **15%** loss of use of the right index finger; and

(5) **$664.72** per week for a period of **4.3** weeks as provided in Section 8(e)(2) of the Act because the injuries sustained caused a loss of use of **10%** of the left index finger.

The parties stipulated that Respondent has a credit for the 100% Statutory loss of the left middle finger since Respondent has already paid that to Petitioner.

Deborah L. Simpson
Signature of Arbitrator

Sept 19, 2014
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Fletcher Ivory,

Petitioner,

vs. NO: 09 WC 9564

City of Chicago,

15IWCC0536

Respondent,

DECISION AND OPINION ON REVIEW

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

The Commission finds that Petitioner is entitled to maintenance benefits through June 17, 2011. The Respondent is entitled to credit for an overpayment of maintenance benefits in the amount of $72,366.24.

Both of Petitioner's treating doctors, Dr. Diadula and Dr. Heller, found Petitioner at maximum medical improvement on December 7, 2009. (Petitioner Exhibit 2 and Petitioner Exhibit 4)

The Commission finds the testimony of Tina Desanto to be credible regarding the Petitioner's lack of cooperation with the Respondent's job search program. Petitioner's testimony regarding his involvement with Ms. Desanto was not credible.

15IWCC0536

The Commission also finds the testimony of Patrick Conway, the vocational rehabilitation specialist of the Respondent, to be more credible then Joseph Belmonte, the rehabilitation expert of the Petitioner. Mr. Conway credibly testified to Petitioner's lack of cooperation with his job search. Due to the Petitioner's lack of cooperation with Mr. Conway, he was asked to close his file on June 17, 2011. (Respondent Exhibit 6) Mr. Belmonte only interviewed the Petitioner once. (Petitioner Exhibit 6) Therefore, the Commission finds that Petitioner is entitled to maintenance payments through June 17, 2011.

The Commission has considered whether the Petitioner is entitled to a wage differential under §8(d) (1). The Commission finds that Petitioner's lack of credibility regarding his symptoms and his attitude pertaining to his job search to run counter to a §8(d) (1) finding. The Petitioner's FCE performed on December 2, 2009 indicated that he only passed 4 out of 9 validity tests, which indicated questionable maximum effort and possible symptom magnification. (Respondent Exhibit 11) Petitioner offered no evidence of what he would have been making at his old job at the time of his hearing. His rehabilitation expert testified that in his opinion, there was no stable job market for Petitioner and he was therefore a total permanent. (Petitioner Exhibit 6 Pgs. 47-48, 59) Contained in Mr. Conway's deposition was Respondent Exhibit 2 which suggested Petitioner could have an entry job to anywhere from $9.33 an hour to $17.63 an hour. The Commission finds these figures as well as the Petitioner's lack of credibility, too speculative to use in determining a Section §8(d) (1) resolution.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $909.49 per week for a period of 42 3/7 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 sum of $909.49 per week for a period of 79 3/7 weeks, that being the period of maintenance under §8(a) of the Act. Respondent is entitled to a $72,366.24 credit for maintenance paid. This is applied against the permanent partial disability, as the amount of overpayment is in excess of the liability.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 350 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the the 70% loss of use 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.

15IWCC0536

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.

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: JUL 16 2015

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

HSF
O: 5/20/15
049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

IVORY, FLETCHER
Employee/Petitioner

Case# **09WC009564**

CITY OF CHICAGO
Employer/Respondent

15IWCC0536

On 3/11/2014, 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 0.08% 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:

0659 BRILL & FISHEL PC
FRANCINE R FISHEL
180 N LASALLE ST SUITE 3700
CHICAGO, IL 60601

0766 HENNESSY & ROACH PC
ERIN FIORE
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

15IWCC0536

COUNTY OF Cook)

☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Fletcher Ivory
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

Case # 09 WC 09564

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 **David A. Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **January 28, 2014** and **February 26, 2014** 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

15IWCC0536

FINDINGS

On **02/12/2009**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,936.84**; the average weekly wage was $**1,364.17**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **1** 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 $**38,630.72** for TTD, $**0** for TPD, $**194,131.99** for maintenance, and $**0** for other benefits, for a total credit of $**232,762.71**.

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

ORDER

No additional TTD or maintenance is awarded and Respondent is entitled to credit for all amounts it has paid.

Respondent shall pay Petitioner permanent partial disability benefits of $**664.72**/week for **350** weeks, because the injuries sustained caused the **70**% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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.

David A. Kane
Signature of Arbitrator

March 11, 2014
Date

MAR 11 2014

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

15IWCC0536

BEFORE THE WORKERS' COMPENSATION COMMISSION OF ILLINOIS

FLETCHER IVORY,)
)
Petitioner,)
) NO. 09 WC 09564
v.)
)
CITY OF CHICAGO,)
)
Respondent.)

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

GENERAL INFORMATION

Petitioner testified that he was employed as a construction laborer for the City of Chicago since he was 32 years old. R at 9-10. Petitioner testified that his job required him to put in pipes, restore service, shut off service and determine how far down the main is for back hoe operation. R at 10.

Petitioner testified that on February 12, 2009, he had to hook up a 10-ton truck. On one side of the truck there were ladders and on the other there were not. Petitioner testified he had to lift himself into the truck on the side with no ladders, and when he was getting off to step down, his foot slid off the wheel and he went backwards and hit the ground. R at 11-12.

MEDICAL TREATMENT AND CURRENT STATUS

Petitioner testified that he initially treated at Holy Cross Hospital Emergency Room, but those records are not in evidence. R at 12.

Instead, the records indicate that Petitioner treated at Mercy Hospital and Medical Center. PX3. Petitioner testified that he was then seen at the City's clinic, Mercy Works. R at 12.

Petitioner's first visit to Mercy Works was on February 13, 2009, with Dr. Homer Diadula. Petitioner reported that he was getting on the back of a truck with the assistance of another laborer when he reached up, grabbed the top of the truck and caused an injury to his lower back and right shoulder. The doctor noted Petitioner's previous history of a back surgery in 2001. The diagnosis is strain of the right shoulder and lower back. Petitioner was restricted from working. He was eventually referred to Dr. Wehner. PX2.

Petitioner first reported to Dr. Wehner, for this date of accident, on February 20, 2009. PX1. The records indicate that Petitioner treated with Dr. Whener in 2000, PX1A, but no testimony was given regarding same. Petitioner again reported that he needed the assistance of co-workers to climb into the truck, and that he twisted and hurt his right shoulder and low back while doing so. Petitioner was complaining of significant low back pain with radiation down both legs circumferentially and numbness to both legs circumferentially. The doctor ordered an MRI of the lumbar spine. PX1.

Petitioner underwent an MRI of the lumbar spine without contrast on February 25, 2009, at Preferred Open MRI. The impression is: 1) limited evaluation due to Patient motion as well as diffuse loss of signal in all sequences; 2) post-surgical changes of the posterior spinal fixation at L5-S1 with near complete fusion of the intervertebral disc space; and 3) diffuse degenerative changes and degenerative disc disease of the lumbar spine resulting in varying degrees of central canal neural foraminal stenosis.

There was also a marked amount of metallic artifact produced by surgical hardware which obscured the evaluation at L5-S1. There is possibly some mild biforaminal stenosis. The interpreting physician indicated that a lumbar myelogram could be performed for further evaluation if clinically warranted. PX2.

Petitioner presented for follow up with Dr. Wehner February 27, 2009. The doctor noted that Petitioner was complaining he had too much pain, and nobody will do anything for him. He reported that an injection he had previously was two feet long and that therapy tried to torture him in the past. The doctor reviewed the MRI, which showed a well-healed fusion and a trace of listhesis at L4-5, with otherwise only mild degenerative changes. The doctor stated that she was unable to determine any organic etiology from Petitioner's excruciating pain complaints. The doctor noted there was a component of depression and referred Petitioner back to his primary care physician for same. She recommended physical therapy. PX1.

Petitioner continued to follow up at Mercy Works and was referred for an MRI of the right shoulder. This MRI was done on March 3, 2009, at Preferred Open MRI. The impression is: 1) small focal full thickness rotator cuff tear of the distal supraspinatus tendon anteriorly, measuring approximately 8 mm, with mild tendinopathy in the remainder of the distal supraspinatus tendon; and 2) moderate osteoarthritic changes in the AC joint with a mild amount of marrow edema within the distal clavicle and acromium process as well as a small associated AC joint effusion, with superficial soft tissue edema as well. The MRI was reviewed by Mercy Works, and the doctor diagnosed Petitioner with a right rotator cuff tear. Petitioner was then referred to Dr. Heller. PX2.

Petitioner was first seen by Dr. Heller on March 10, 2009. The doctor took Petitioner's history, performed a physical exam and reviewed the MRI reports. The doctor's diagnosis was right shoulder rotator cuff tear and acromioclavicular joint injury with subsequent effusion. The doctor advised that an arthroscopy may be eventually necessary, but that Petitioner could heal with conservative treatment only. Petitioner was administered an injection of Depo Medrol and was referred to physical therapy. It appears that this therapy occurred at Mercy Works, but those records are only contained within Dr. Heller's records in Petitioner's Exhibit 4. PX4.

Petitioner continued to follow up with all three providers. Dr. Heller recommended surgical intervention, but requested a psychiatric evaluation first. Both Dr. Wehner and Dr. Heller were concerned with Petitioner's underlying depression. PX4. Petitioner did see a Dr. Chan, and he cleared Petitioner as being psychologically fit to make decisions. PX2. Petitioner was released from care by Dr. Wehner on March 20, 2009, and she indicated that there was little she could do for his back. PX2. Her diagnosis was a sprain. Id. She also noted some preexisting changes in the spine from Petitioner's previous surgery. Id. The only recommendation for treatment was an FCE. Id.

Dr. Heller then recommended an arthroscopic repair. PX4. On May 27, 2009, Petitioner underwent an arthroscopic repair of the right shoulder rotator cuff, right shoulder arthroscopic subacromial decompression and right shoulder glenohumeral joint arthroscopy with extensive debridement by Dr. Heller at Mercy Works Hospital. PX3.

Petitioner continued to follow up with Dr. Heller and Mercy Works post-operatively. PX2, PX4. Petitioner then attended a post-operative course of physical therapy at Chatham Physical Therapy. PX2. The initial

evaluation occurred on June 19, 2009. Id. Petitioner reported changes in his bowel and his bladder which he states had increased over the past month. Id. The therapist noted that she was unsure whether Petitioner would be able to tolerate the pain well enough to recover any shoulder function. Id. The depression also was noted as a possibility as an increasing factor for pain. Id. Regardless, Petitioner did continue to attend therapy. Id. He also continued to follow up with Dr. Heller at Mercy Works post-operatively. PX2, PX4.

On August 1, 2009, Petitioner was complaining of tremors in his legs when he tries to stand up. PX2. He indicated he was going to obtain a second opinion regarding his back. Id. Petitioner did not testify as to any other treatment to his back, nor seeking a second opinion for his back. R at 33.

On November 23, 2009, Petitioner presented to Dr. Heller for follow up. Dr. Heller noted that Petitioner had plateaued in therapy and that he should be discharged. He recommended an FCE for permanent restrictions and noted that Petitioner will not be able to return to heavy work as a laborer. The doctor stated that from the standpoint of the shoulder he was at MMI and should be released from physical therapy. PX4.

Petitioner underwent an FCE on December 3, 2009, RX11. The therapist noted that Petitioner only passed four out of nine validity tests and questioned whether Petitioner gave maximum effort. Id. Dr. Diadula at Mercy Works reviewed the FCE report, and placed permanent restrictions on Petitioner of: 1) no lifting, pushing and pulling more than 10 lbs., only occasionally, 2) no bending or bouncing repeatedly, 3) no repeated jerking or twisting, 4) no continuous sitting or standing more than 10 minutes and should vary positions, and 5) no prolonged walking more than 5 minutes.

PX2. Petitioner was discharged at MMI as of December 7, 2009. Id. Petitioner testified that he returned for an annual checkup every year thereafter. R at 15-16, PX8, PX9. Petitioner testified that his restrictions have remained the same until the day of the trial. R at 16.

On cross-examination, Petitioner agreed that he had had a subsequent examination with Dr. Goldberg and Dr. Romeo at Midwest Orthopaedics, by agreement of himself and the City. R at 33. Dr. Goldberg's examination took place on July 16, 2012. RX8. The doctor later reviewed a copy of Petitioner's MRI from February 25, 2009, and advised that the only treatment he would recommend is an MRI to determine validity of Petitioner's complaints. RX9. Dr. Romeo's examination took place on August 1, 2012. RX10. Dr. Romeo opined that Petitioner may benefit from a right shoulder arthroscopy with possible revision cuff, distal clavicle resection and open biceps tenodesis. Id. However, Petitioner indicated he did not desire any further surgery. Id. Interestingly, Petitioner testified that the doctors never gave him a recommendation for ongoing treatment. R at 34. He testified that he indicated he wanted additional treatment at Mercy Works, but that no one had recommended anything. Id. This arbitrator notes that none of the Mercy Works records indicate any discussion of additional treatment, nor Petitioner's request for same.

VOCATIONAL REHABILITATION

Petitioner testified that after he was released from the doctors, he was required by Respondent's to start preparing job logs. R at 20. He also attended a course of vocational rehabilitation with Patrick Conway. R at 24. He also testified that he was introduced to a vocational counselor by

the name of Mr. Joseph Belmonte. R at 31. Petitioner testified that he had not applied for any jobs since 2011. R at 47.

A. Regarding Respondent's Job Search Requirements

Petitioner testified that for Respondent, there were pieces of paper where you had to list your contacts where you looked as well as their phone numbers. Id. He testified that he went to the DePaul Center to pick up those papers and drop them off there with a woman named Tina DeSanto. R at 20-21. Petitioner testified that he was never given any training on how to fill out the job logs and that he was never referred to anyone for help in filing out the job logs. R at 21.

Respondent called as its witness, Tina DeSanto, who is employed by the City of Chicago, Department of Water Management. R at 50. Ms. DeSanto testified that her job duties as an Administrative Services Officer I included working in the personnel section and that that included processing hires, fires, retirements, keeping track of leave of absences and anything that entailed the employee's needs. R at 51. She testified that she also oversaw job searches for water employees for the Committee on Finance. R at 51. She was unaware of Petitioner's exact restrictions as it was only her job to accept the job logs. R at 71-72. She did not provide any kind of written reports nor summaries to Petitioner of his job searches. R at 76-77. Ms. DeSanto testified that she been part of this program since it began, which was less than five years, but no more than three years prior. R at 53.

Petitioner was asked how he was notified that he needed to fill out job logs. R at 35. Petitioner testified that the City just told him he had to see Ms. DeSanto and she told him what to do from there. R at 35-36. He testified that there was a one on one meeting with Tina DeSanto and that

she gave him the forms to fill out. R at 36. The record indicates that Petitioner was sent a letter, advising of May 11, 2010, meeting and that he must thereafter submit proof of ten job searches weekly. RX1. Ms. DeSanto's testimony also contradicted Petitioner's, as she testified that all employees must first attend a meeting at the Department of Water. R at 56. Ms. DeSanto testified that the only way a Water Department employee can obtain a job log is by attending the first meeting. R at 83. Ms. DeSanto was not a part of that initial meeting, Id., however, she was told by her supervisor that Petitioner attended the meeting. R at 75.

Petitioner testified that he had to fill out a total of 14 job searches per week. R at 36. Ms. DeSanto, however, testified that the requirements of the job search is that each employee has to submit proof of a search to ten employers, either by Internet, in-person or by phone, listing the name, phone number and contact person, and providing internet receipts if done on the internet. R at 52. This was done on a weekly basis, so 10 searches per week were required. Id. The completed job search logs also indicate a total of ten spaces for employer information. RX2.

Petitioner testified that he applied initially to all jobs by phone or in person. R at 38. He testified that he would find the jobs through the newspaper and his wife would help him. R at 48. He then eventually began submitting job searches through the internet. R at 38. He indicated that he would go to the library to perform those job searches. *id.* Petitioner indicated he went to the library every week to do so, and that the library is five to seven miles away. R at 39.

Ms. DeSanto testified that after she receives the job logs, she picks out at least four employers and calls that employer to confirm that the search was performed. R at 54. She testified that she uses the information

on the form, that is supplied by the employee, to call the prospective employer. R at 55.

Ms. DeSanto testified that although Petitioner submitted the searches on a timely basis, there were other issues with the submission. R at 59-60. She testified that there were times when she called to verify a job search and it could not be verified. Id. She would determine this by calling an employer and they would advise that an employee by that name was not there, or it was a non-functioning telephone number. R at 67. She indicted that those were marked on the job log itself. R at 60.

Ms. DeSanto also testified that Petitioner duplicated job searches. R at 60. She testified that this meant Petitioner would apply to an employer one week and then apply another week. R at 60. Ms. DeSanto testified that she created her own documents to verify how many times he had contacted each employer. R at 60-61. This internally created document was submitted as Respondent's Exhibit 3. Ms. DeSanto testified that she was able to notice these duplicates because they would stand out as familiar names. R at 61. She testified, for example, that Petitioner had contacted Bower Plumbing six times. Petitioner had contacted them on May 28, 2010, June 30, 2010, July 19, 2010, July 18, 2010, August 23, 2010 and May 23, 2011. R at 62. Ms. DeSanto testified that Respondent's Exhibit 3 was a compilation of her review of the job logs of simply how many times he applied to each employer. R at 63. Ms. DeSanto testified that it took her approximately eight hours to compile the log she created in Respondent's Exhibit 3. R at 81. She stated that this was performed "later" and she was not sure when but that there was litigation. R at 81-82. Ms. DeSanto indicated that all of her notations on Petitioner's job logs in Respondent's Exhibit 2 were done contemporaneous to her review of those

job logs. R at 84-85. She further testified that Respondent's Exhibit 3 was simply a list, summarizing the duplicates she had discovered in Respondent's Exhibit 2. R at 85-86.

Respondent's Exhibit 3 was entered into evidence, over Petitioner's objection. This arbitrator notes that the weight of the document is questionable, as it was created at a later date and allegedly while litigation was happening. However, this arbitrator also notes that Petitioner's Application for Adjustment of Claim was filed on March 4, 2009, so litigation had occurred during the entire time Petitioner was engaged in vocational rehabilitation. This arbitrator also discovered some errors within Respondent's Exhibit 3, However, a review of the job logs themselves indicate that multiple employers were contacted at least five or more times, and the correct listing of those employers is as follows:

Company Name	Dates Applied	Total
Lowe's (7971 Cicero Ave)	06/04/10, 06/14/10, 07/02/10, 07/30/10, 08/12/10, 08/20/10, 03/16/11, 05/06/11	8
Ultra Foods (3250 W 87th)	06/04/10, 06/14/10, 07/01/10, 07/28/10, 08/13/10, 03/09/11, 08/15/11,	7
Crawford Material	09/15/10, 10/19/10, 11/08/10, 01/07/11, 01/21/11, 03/04/11, 08/16/11	7
City Furniture	10/15/10, 12/21/10, 12/29/10, 01/18/11, 03/15/11, 08/15/11	6
Gleason Woodwork	11/01/10, 02/08/11, 03/14/11, 05/02/11, 08/11/11, 08/16/11	6
Century Wood Floors	11/04/10, 12/30/10, 02/09/11, 03/02/11, 03/24/11, 08/15/11	6
Kelly Construction	11/15/10, 12/28/10, 03/01/11, 03/21/11, 06/03/11, 08/19/11	6
Thomas Builders	11/18/11, 02/08/11, 03/01/11, 03/24/11, 06/03/11, 08/17/11	6
Bower Plumbing	05/18/10, 05/24/10, 06/15/10, 07/09/10, 08/17/10	5
Consumer Supply	09/8/10, 10/18/10, 03/17/11, 05/06/11,	5

	08/19/11,	
Target (4120 W 95th)	06/04/10, 07/06/10, 07/27/10, 08/26/10, 04/05/11	5
CWS Concrete	05/17/10, 05/26/10, 06/15/10, 06/30/10, 07/09/10	5
Jewels (443 E 34th St)	06/04/10, 06/16/10, 07/27/10, 08/10/10, 03/14/11	5
Michael Construction	09/16/10, 10/08/10, 11/04/10, 12/31/10, 02/14/11	5
Wal-Mart (2301 W 95th)	07/01/10, 07/05/10, 08/18/10, 03/10/11, 06/16/11	5

See RX2.

Ms. DeSanto testified that in her experience in reviewing duplicated job logs, the duplication is from someone copying and pasting the information from a previous search. R at 64. She testified that she did not verify whether applications were submitted each time there was a duplicate. R at 66. She simply noted that Petitioner was duplicating the search. Id.

Ms. DeSanto testified that she told Petitioner to quit duplicating his job searches and he told her that he was not. R at 68. She also stated that this conversation happened more than once. Id. Petitioner denied that he was ever advised by Ms. DeSanto that he was filling out the job logs improperly. R at 27. He testified that she would only take them from him, give him two sheets and turn around and go back inside the door. R at 37-38. He also stated he was never advised that he was duplicating job searches nor that they were inappropriately completed. R at 38, 46. The record indicates that Petitioner was notified through his attorney that benefits were terminated as of August 22, 2010 due to his non-compliance. RX4. This arbitrator notes that there is no dispute as to an underpayment

of benefits and presumes that benefits were reinstated sometime thereafter.

Petitioner testified that Ms. DeSanto was very rude to him. R at 22. He testified that she told him that the Mayor didn't want anyone staying at home getting a check and Petitioner responded that Mayor Daley never came to the hospital with him. R at 22-23. Petitioner testified that Ms. DeSanto is generally very nasty about the job logs and that she would always have something to say, and that he would hear her talking about him as she was going back into her office. R at 23. Ms. DeSanto denied that she ever told Petitioner that the Mayor did not want him sitting at home collecting a paycheck. R at 69.

Regarding Patrick Conway of Genex Services

Petitioner testified that thereafter he was referred to a counselor named Patrick Conway. R at 24. He testified that his first meeting was with Mr. Conway at the library at 95th and Halsted. R at 24. Petitioner testified that Mr. Conway did not do anything with him - he did not set up an email account, he did not ask if he had a computer. R at 25. Petitioner testified that his daughter has a computer and that she brings it home with her from college. R at 25. Petitioner further testified that Mr. Conway generally was in a hurry and always rushed things and did not tell him much of anything. R at 26. Petitioner testified that Mr. Conway went so fast he could not understand anything. Id. Petitioner testified that he was not given assistance in putting together a resume and that he has never had a resume. R at 26-27.

Petitioner further testified that he was obligated to submit a certain number of job applications every week but that he had problems submitting same. R at 27. He stated: "I was okay until I filled out the application itself

because when people would ask me do I have any physical problems, once I started telling people what kind of physical problems I had, that was the end of the interview. That was the end of nobody calling back. Nothing." R at 27-28. Petitioner then testified he never had a person-to-person interview. R at 28. He stated that he was only referring to filling out his restrictions on the applications. Id. On cross examination, Petitioner was asked to provide more detail regarding issues with listing his physical restrictions in applications. He stated he had no problems filling out the application, but the problem was:

> when people found out what my physical problems were because they would ask you do you have any physical problems. And that's when I'd tell them what kind of problems I had, and then I'd have to worry about having an interview after that.

R at 41. He was further asked if employers advised they would not talk to him because of his restrictions and Petitioner answered that no one ever called him back. Id. Petitioner was questioned as to whether he was guessing if employers did not call him back due to his restrictions. Id. He stated that no one ever called him back, but when he told them of his physical problems, he would not hear from anyone. R at 41-42.

Petitioner testified that he met with Mr. Conway seven or eight times and that he had to cancel one time due to a death in the family. R at 29. He testified that Mr. Conway had given him a list of jobs. R at 29. He lastly testified that Mr. Conway did not perform any testing on him. R at 30.

Petitioner confirmed that Mr. Conway was never to perform a job search for him, but that he was only to aid in the job search. R at 39. Petitioner was unable to remember whether he had any "homework" to do

between meetings. R at 40. He testified that he was never advised of job fairs occurring nor to attend them. Id.

Patrick Conway's deposition was taken and his testimony and records are contained within Respondent's Exhibit 6. Mr. Conway testified that he was aware of Petitioner's work and educational history. RX6 at 7. He identified Petitioner's vocational strengths to be: good communication skills, valid driver's license with reliable transportation, steady work history, experience in the construction labor field, experience as a forklift driver, experience as a camp counselor, and his ability to direct others and train others. Id. at 5-8. The barriers to employment were that Petitioner had permanent restrictions, no GED, a lack of personal computer skills, and being accustomed to high wages. Id. at 8.

Mr. Conway determined that Petitioner was a vocational candidate after their meeting on January 11, 2011, based on his evaluation and a transferable skills analysis (TSA). Id. Mr. Conway explained that the TSA was performed by entering identifying data into a computer system which generated results of potential vocational alternatives, and then the results were whittled down by Mr. Conway to ensure all fit within Petitioner's physical restrictions. Id. At 9-10. Those results were summarized in the TSA. *id.* at RX2. Based on those results, Mr. Conway opined that Petitioner could earn entry level wages of $8.26 - $17.63. Id. The median wage range for those same jobs is $9.83 - $30.30. Id.

On cross-examination, Mr. Conway was questioned as to various job listings in the TSA and whether Petitioner was qualified for same. Id. at 36. Three of the jobs identified – code clerk, classification clerk and cardiac monitor technician – listed preferences for additional education or skills. Id. at 36-38. Mr. Conway testified that they did not require such skills or

credential, though. Id. Mr. Conway was also questioned whether two additional jobs required that Petitioner be a member of the military, but he was unsure. Id. at 38-39.

Mr. Conway drafted a vocational rehabilitation plan that outlined Petitioner's and Genex's responsibilities. Id. at 27, RDX4. Petitioner's obligations were to (1) contact 15-20 employers per week, five of those being in person, (2) follow up on job leads within 24 hours, (3) engage in independent job search efforts, (4) attend monthly meetings, and (5) sign up for assistance with the State of Illinois Job Search Match. Id. at 28. Mr. Conway was to identify vocational goals, provide job seeking instruction, resume and cover letter development, identify potential employers and provide job leads, and follow up on job interviews. Id. at RDX4.

As part of Genex's responsibilities, Mr. Conway was to meet with Petitioner on a regular basis to assist in the job search process. What follow is a summary of the meetings:

- February 14, 2011: Mr. Conway advised what jobs Petitioner should be seeking, considering his restrictions and experience. Id. at 13.
- February 25, 2011: Petitioner was still completing job searches from the City of Chicago and logs were not being faxed to Mr. Conway as required. Petitioner was given lob leads to follow up on. Petitioner was to sign up for a computer class. Id. at 13-14.
- March 16, 2011: Petitioner did not appear. Id. at 16.
- March 23, 2011: Petitioner had created an email account but could not access it as he forgot his password. Petitioner had not signed up for the computer class. Petitioner was given additional job leads. Mr. Conway was unable to verify whether Petitioner had followed up on the previous leads.

- March 30, 2011: Petitioner provided job search logs. He inquired into the computer class but had not signed up. Id. at 19.
- April 13, 2011: Petitioner went to a computer class but did not stay as he did not feel well. Petitioner handed in job searches, insufficient as to the number applied to, in person, and some were outside of his restrictions. Petitioner followed up on 29/40 lob leads. Advised to attend job fairs and register with the Illinois Employment & Training Center (IETC). Id. at 19-21.
- May 4, 2011: Petitioner did not appear due to a funeral. Id. at 22.
- May 16, 2011: Petitioner confirmed he attended a computer class but did not have proof of same. Petitioner completed his job logs. Petitioner did not attend any job fairs. Petitioner had not followed up on lob leads. Petitioner had not registered with the IETC. Id. at 23-24.
- June 8, 2011: Petitioner provided job logs. He had only responded to some employer inquiries as evidenced by his email. Petitioner had not registered with the IETC. Id. at 24.
- June 17, 2011: Mr. Conway received a group of job logs, dating from February 2011, and his review of same showed that Petitioner had never contacted the sufficient number of employers in person. Id. at 24-25.

Mr. Conway testified that he was thereafter advised to close his file by the City of Chicago. Id. at 25.

Petitioner's testimony differed substantially from that of Mr. Conway and of the reports Mr. Conway generate. Petitioner testified that he did not take any computer skills courses and that he was not recommended to take any courses. R at 45. Petitioner testified that Mr. Conway helped him

create an email account. R at 43. Petitioner had testified that he was able to submit job searches through the internet, but he testified it was only with the help of his daughter. R at 43. Petitioner testified that his daughter was living outside of the home at that time, as she was away in school. R at 44. When asked if the daughter came home every week from school to help with the job searches, Petitioner testified that she did not. R at 44. He was then asked to confirm that he could use the internet to submit job searches, and he stated he was not good at it. R at 44-45.

Mr. Conway testified that Petitioner had not complied with the vocational rehabilitation plan. Id. at 27. He opined that Petitioner was not incapable of participating in a vocational rehabilitation program, nor was he incapable of reeducation or training. Id. at 30. He opined that Petitioner had not participated in a meaningful job search and that his biggest barrier to same was Petitioner's own attitude. R at 29. He also testified that Petitioner noted several times that he did not feel the necessity to be involved in the vocational rehabilitation process. Id. at 27. Petitioner denied ever stating that he did not want to search for jobs, nor that he thought he was not capable of working again. R at 46-47. Lastly, Mr. Conway was not of the opinion that Petitioner was permanently and totally disabled. Id. at 30.

Regarding Julie Bose of MedVoc Rehabilitation, Ltd.

Ms. Julie Bose was retained by Respondent to prepare a labor market survey. Her findings are contained within a report dated September 21, 2011. Ms. Bose conducted a telephonic survey in August and September 2011. She determined that Petitioner was able to work in positions such as a call center clerk, greeter, telemarketer and dispatcher. She was able to identify 51 prospective employers, 36 of whom refused to

participate in the survey. Of the remaining 15 employers who responded, ten indicated they were currently hiring or anticipate hiring in the near future. The remaining five were not hiring. Ms. Bose was able to determine that the hourly wages Petitioner could earn with those prospective employers is $8.25 - $16.25, with an average wage range of $11.37 – $13.37, and a mean hourly wage of $12.37. RX5.

Regarding Joseph Belmonte of Vocamotive, Inc.

Joe Belmonte testified that he is a Certified Rehabilitation Counselor who met with Petitioner on September 12, 2011. PX6 at 8-9. Mr. Belmonte reviewed the information provided to him regarding Petitioner's educational and work background. He noted that Petitioner had attended all four years of high school, but did not complete same, nor has received a GED. PX6 at 14. Mr. Belmonte noted that during his interview, Petitioner seemed to be a bit agitated, distressed and did become tearful. PX6 at 19. Mr. Belmonte also advised that Petitioner indicated he had not been engaged in a home exercise program, was not in pain management services and that he had brought outdated containers of medication with him. PX6 at 19-20. Mr. Belmonte testified that he had also reviewed reports from Dr. Goldberg and Dr. Romeo. PX6 at 24. Mr. Belmonte also reviewed a Labor Market Survey authored by Julie Bose. PX6 at 26-27. Mr. Belmonte testified that he had various issues with the Labor Market Survey, including: 1) it was unclear if the prospective employers contacted were aware of Petitioner's specific restrictions, and 2) whether any of the employers required a minimum skill set. PX6 at 28-30. He testified that he had contacted two of the prospective employers, and both indicated computer proficiency requirements for typing. Mr. Belmonte went on to state there could be issues with the Labor Market Survey due to: 1) Petitioner's lack of

a GED, 2) Petitioner's inability to use a computer, and 3) Petitioner's mathematical skills. PX6 at 38-39.

Mr. Belmonte also reviewed a Transferrable Skills Analysis and explained the function of same. PX6 at 41. He testified that it is a vocational assessment based on a scientific protocol that looks at the skill level of a job as articulated by the U.S. Department of Labor and finds other similar jobs, now done through a computer program. Id. at 41-42. He testified that you add in the work history, make adjustments for physical function or educational background and then move on to find further occupations that are remotely related. Id. at 42-43. Mr. Belmonte reviewed the process by which he presumed Mr. Conway performed the transferrable skills analysis, noting that he was not able to speak with him and determine exactly how the data was manipulated. PX6 at 44-46. Mr. Belmonte doubted the data provided in the report and stated that many of the job targets are uncertain and may be somewhat speculative. Id. at 47-48. He further testified that the factors which are fundamental to a vocational analysis are age, education, work experience, physical capacity and transferability of skill. Id. at 49. He noted that Petitioner does not have a high school diploma, has a predominantly unskilled work history, his physical capacity is in a true sedentary level and he is not computer literate. Id. at 49-50. He testified that only 1% of all jobs in the U.S. economy are unskilled sedentary work, or approximately 135,000 jobs. Id. at 51.

Mr. Belmonte took issue with the first job listed in Transferable Skills Analysis, which was a cardiac monitor technician, and he noted that the U.S. Department of Labor indicates an Associates' Degree is required for same. Id. at 51-52. Mr. Belmonte also questioned the reliability of a job in

the medical voucher clerk position. He noted that employers prefer a high school diploma and some college training and that there needs to be the ability to use computers, billing software program and reaching and handling requirements. Id. at 52-53. He also identified a tactical air controller occupation as a questionable occupation. Id. at 54. He also identified the position of a pallet assembler, and questioned Petitioner's physical ability to do same as the operation of an arbor press is typically done in a seated position where you grasp at shoulder level and pull down. Id. at 54. However, he noted that he would need to see additional measures to confirm same. Id. He lastly questioned the job of a yard clerk, noting that: "This is not appearing to be the kind of job we would expect of an individual who is in charge of, say, an equipment construction storage yard or, you know material storage yard or things along those lines." He also testified that the job requires frequent reaching, handling and fingering. Id. at 55. He summarizes his opinions by stating that fundamentally, he is not in agreement with the Transferrable Skills Analysis as a viable assessment, noting that Petitioner has no functional clerical capacities, no administrative, sales, supervisory, managerial or customer service experience. Id. at 55-56. He stated that the testing would have been more reliable if Petitioner had undergone occupational testing. Id. at 56. Mr. Belmonte could not opine as to whether Petitioner is trainable to do computer work. Id. at 57. It was Mr. Belmonte's opinion that based on Petitioner's physical restrictions, limited education, very narrow work experience, lack of transferrable skills, lack of computer literacy, etc., there is no readily available stable labor market offering gainful employment for Petitioner. Id. at 59.

On cross examination, Mr. Belmonte testified that as part of his review of the Labor Market Survey, he had to speculate as to what Ms. Bose included in her analyses. Id. at 61-62. He also testified that he did not take a random sampling of the employers listed in the Transferrable Skills Analysis, but instead chose five jobs to review. Id. at 62-63. He confirmed that he did not perform his own Labor Market Survey nor Transferrable Skills Analysis. Id. at 61-63. He further confirmed that he chose to review only five of the occupations listed out of the 352, which would be just short of 1% of all of the occupations. Id. at 64-65.

Mr. Belmonte testified that he did not do vocational testing, did not refer vocational testing out, and that despite same, he could still opine that some of the jobs within the Transferrable Skills Analysis were inappropriate vocational alternatives. Id. at 65-66. Mr. Belmonte admitted he had never seen a copy of Petitioner's FCE. Id. at 66-67.

On cross examination, Mr. Belmonte clarified that his examination of Petitioner's skills were regarding what skills he currently possessed, but that it was not his opinion that Petitioner could not learn how to use a computer, could not learn how to answer phones, and could not learn how to perform basic office tasks. Id. at 68-69. When asked if it was his opinion that Petitioner could learn additional skills through vocational rehabilitation, Mr. Belmonte declined to answer. Id. at 69. Instead, he stated that vocational testing would be needed to determine same. Id.

CURRENT COMPLAINTS

Petitioner testified as to his typical day. He testified that when he gets up, his wife helps him, helps him get dressed and helps him take a shower. He states that it is hard to drive because it makes his legs numb. He also testified that he uses the bathroom on himself. He also testified

that his wife has to help him every time he goes to the bathroom. R at 16-17.

As to Petitioner's pain, he indicated that the pain is in his lower back going down both of his legs. He also reported headaches, through his neck, up the right side. R at 17-18.

CONCLUSIONS OF LAW

K. In Support Of The Arbitrator's Decision As It Relates To What Amount of Maintenance Petitioner is Entitled To, The Arbitrator Finds The Following:

The Arbitrator notes that Respondent requests that all payments of maintenance benefits be credited due to Petitioner's lack of a diligent job search. The Arbitrator finds that Petitioner's job search was not diligent, but that Respondent's vocational assistance was barely adequate. While Petitioner does bear the responsibility for performing a diligent job search, noting the difficulties in securing a suitable position outlined by Mr. Belmonte, the Arbitrator declines to order the repayment of maintenance to Respondent.

L. In Support Of The Arbitrator's Decision As It Relates To The Nature And Extent Of The Injury, The Arbitrator Finds The Following:

This Arbitrator finds that Petitioner is unable to return to his original job as a construction laborer. Petitioner failed to prove he is permanently

and totally disabled under the "odd-lot" theory because the facts presented do not support this finding and the opinion of Joe Belmonte is not persuasive. Instead, this arbitrator finds that Petitioner is entitled to compensation under Section 8(d)(2) of the Act.

It is Petitioner's burden to establish the permanency of his disability or condition. In Valley Mould & Iron Company v. Industrial Commission, the court stated that if the claimant's disability is so limited in nature that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden of proof is upon the claimant to establish the unavailability of employment to a person in his circumstances. 84 Ill 2d 538, 419 N.E.2d 1159, 1163 (1981). "It was incumbent upon him to show that considering his present condition, in light of his age, training, and education, he is permanently and totally disabled." Id. Petitioner, here, has failed to make this showing.

The Valley Mould court explained that one way of finding that a petitioner is permanently and totally disabled is by establishing a diligent but unsuccessful attempt to find work. Id. Here, Petitioner testified to a general job search, but his efforts were not even made in good faith, as discussed above. Therefore, Petitioner cannot establish that he is permanently and totally disable based on a diligent, yet unsuccessful, job search.

The Valley Mould court held that the second way to establish "odd-lot" permanent total disability was to establish that because of the petitioner's age, training and education, he is unfit to perform any but the most menial tasks for which no stable labor market exists. Id. Three factors to be considered in determining if a petitioner is employable in a stable labor market are (1) the results of a labor market survey, (2)

attempts to find the claimant a position, and (3) a functional capacity evaluation. Westin Hotel v. Industrial Commission, 372 Ill. App. 3d 527,545 (Ill. App. Ct. 1st 2007).

With regard to whether a stable labor market exists, this Arbitrator finds that one does exist. Respondent presented the opinions of Julie Bose and Patrick Conway, both of whom found that a stable labor market exists for Petitioner. Ms. Bose's telephonic sampling indicated that there were at least ten employers who were hiring within Petitioner's restrictions. Mr. Conway also testified as to the availability of job leads and job fairs, but Petitioner did not regularly follow through on the job leads, nor did he ever attend a job fair. Mr. Belmonte was the only expert of the opinion that no stable labor market exists. However, his testimony was based on one meeting where he was not fully apprised of the background and facts of this case. The arbitrator finds the opinions of Mr. Conway and Ms. Bose to be more credible than those of Mr. Belmonte.

As to attempts to find a position, the arbitrator again refers to Petitioner's diligence in searching for a job. As discussed in Section K, above, Petitioner did not fully cooperate with any of the vocational rehabilitation services offered to him.

Lastly, as to the results of a functional capacity evaluation, those results were admitted into evidence and Petitioner was found to be able to function at a sedentary physical demand level. Petitioner's restrictions have never been changed despite annual follow up visits. Nor had Petitioner opted to undergo any additional treatment, despite the recommendations for additional treatment by Dr. Romeo. Therefore, the FCE results do not make Petitioner so obviously unemployable that no stable labor market exists.

In conclusion, Petitioner has not established that he is permanently and totally disabled under the odd-lot theory. Therefore, Petitioner is entitled to an award based on the loss of use of the person as a whole under Section 8(d)(2). This arbitrator finds that Petitioner suffered a loss of 70% of the person as a whole under section 8(d)2 of the Act..

N. In Support Of The Arbitrator's Decision As To Whether Respondent is Entitled to Any Credit, The Arbitrator Finds The Following:

The Arbitrator has already found in section (K) that Respondent is not entitled to repayment of the maintenance paid to Petitioner.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Raquel Housley,

Petitioner,

vs. NO: 10 WC 23950

15IWCC0538

Chicago Transit Authority,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2014, is hereby affirmed and adopted.

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

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

15IWCC0538

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: JUL 16 2015
TJT:yl
o 7/14/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOUSLEY, RAQUEL
Employee/Petitioner

Case# **10WC023950**

CTA/CHICAGO TRANSIT AUTHORITY
Employer/Respondent

15IWCC0538

On 4/3/2014, 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 0.06% 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:

0996 WILLIAM B MEYERS LTD
NICHOLAS A RUBINO
100 W KINZIE ST SUITE 325
CHICAGO, IL 60654

0515 CHICAGO TRANSIT AUTHORITY
BARRETT LONG
567 W LAKE ST
CHICAGO, IL 60661

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

15IWCC0538

☐ 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

Raquel Housley
Employee/Petitioner

v.

CTA/Chicago Transit Authority
Employer/Respondent

Case # 10 WC 23950

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Chicago**, on **March 6, 2014**. 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 15IWCC0538

On **5-9-10**, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of the asserted 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 $**59,571.20**; the average weekly wage was $**1,145.60**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **1** dependent child.

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

Respondent ***is not liable for*** appropriate charges for all reasonable and necessary medical services.

Respondent would be entitled to credit of $_____ for TTD, $**1,527.46** for TPD, $_____ for maintenance, and $_____ for other benefits, for a total credit of $**1,527.46**.

Respondent would be entitled to a credit of $**5,580.00** in non-occupational disability benefits under Section 8(j) of the Act, as well as any benefits for medical benefits paid to the providers via group insurance.

ORDER

For reasons set forth in the attached description, benefits under the Act are denied.

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 — Date: March 31, 2014

APR 3 - 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RAQUEL HOUSLEY,	)	
	)	15IWCC0538
Petitioner,	)	
	)	
vs.	)	No. 10 WC 23950
	)	
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner, a right-hand-dominant woman, 45 years old as of the date of trial, works as a CTA bus driver. She testified that her job duties involve operating the vehicle and using the fare box and door controls. She asserts repetitive trauma with an effective date of loss of May 9, 2010, producing left-sided carpal tunnel syndrome.

The claimant had been actively treating for some time with Dr. Birnie at the University of Chicago. Their records show that she presented to them for hand complaints on July 13, 2006, complaining of right hand pain and numbness. She was given a wrist support. Her left hand noted lesser impairment in sensation, but the primary treatment was to the right hand at that time. PX3, RX5. EMG testing confirmed carpal tunnel syndrome and an injection was performed at that time. PX3. She followed up for persistent complaints in November 2006. PX3, RX5.

On March 8, 2010, she had presented to Dr. Birnie noting tingling and numbness in both hands, right greater than left, with a history of splint usage and persistent and progressing numbness, tingling and pain. Dr. Birne provided bilateral wrist injections and noted the claimant was scheduled for a follow-up EMG test. He had instructed her to follow up at that time. See PX3, RX5.

The Arbitrator notes that at trial, the claimant acknowledged the prior right sided condition but could not recall any left sided complaints.

On May 9, 2010, the petitioner was at work driving the route from Chicago State University to Roosevelt Road, which had a detour due to a foot race that day. She described turning the wheel and feeling pain in the left wrist with numbness. She called the control facility. See RX4. An ambulance was sent at her request, and she was brought by ambulance to Northwestern hospital. The ambulance report notes left wrist pain without trauma. See PX1 p.2. She was brought to Northwestern Hospital

emergency room, where she reported a history of right carpal tunnel syndrome and now reported acute nontraumatic pain in the left hand with numbness and tingling in the left thumb. She did not report any prior history of left hand complaints. See PX2 pp 6-11. She was given medication and a wrist brace and was told to follow up with the hand specialist she was already treating with. See PX2 p.16.

On May 11, 2010, the bus was inspected. It demonstrated no history of steering defects. See RX3.

On May 12, 2010, the claimant returned to the University of Chicago. At that time, she saw Dr. Hall. She reported pain and numbness in the left hand and fingers; notably, she reported having previously seen an orthopedist for bilateral carpal tunnel syndrome, but denied having had these symptoms in the left hand before. PX3. The history of the injections was noted and the EMG test remained pending at that time. She was pending follow-up exams with Dr. Birnie and Dr. Glunz. PX3.

On June 3, 2010, Dr. Birnie saw the petitioner. She noted one to two weeks improvement from the injections, but recurrent and progressive symptoms thereafter. She was given ibuprofen and the EMG prescription. PX3, RX2.

On June 11, 2010, she saw Dr. Glunz. The claimant was noted to have chronic carpal tunnel for which Dr. Birnie had recommended surgical release. Dr. Glunz filled out disability forms for the claimant and concurred with the EMG prescription, and opined the claimant would likely require surgery. PX3.

The petitioner underwent the EMG test on June 17, 2010. It demonstrated mild right sided carpal tunnel syndrome, which was slightly deteriorated compared to the 2006 EMG. The left side showed no pathology of any kind. See PX3 p.75.

On June 24, 2010, Dr. Birnie saw the petitioner. He recommended carpal tunnel release given the deterioration on the EMG. On June 28, 2010, he performed carpal tunnel release surgery on the left side. PX3 p.68-70.

On July 15, 2010, Dr. Birnie noted her symptoms had resolved, and she was provided home exercise and light duty work. PX3 pp. 67-68. On August 12, 2010, Dr. Birnie noted the petitioner reported doing well and the right carpal tunnel surgery was scheduled for September. PX3 pp 66-67.

On August 30, 2010, Dr. Glunz saw the petitioner and extended the disability note until following the right-sided carpal tunnel surgery. PX3 pp64-66.

On September 22, 2010, Dr. Birnie performed right-sided carpal tunnel release surgery. PX3 pp 59-60. On October 7, 2010, the sutures were removed and she was recommended home exercise; no impairment was noted on the left side. PX3 pp.57-58.

On October 20, 2010, the petitioner saw Dr. Glunz. She reported persistent pain on the right side. Dr. Glunz noted that she would defer further care to Dr. Birnie relative to the CTS but would see the claimant back in four months for other issues. PX3 p.56.

On November 18, 2010, Dr. Birnie noted significant pain complaints in the right hand and the claimant stated she could not drive given those problems. No treatment or complaints were noted for the left hand. PX3 p.54. On January 6, 2011, Dr. Birnie noted ongoing complaints on the right hand but found no specific reason to restrict her activities any further, and noted the pain complaints were "not consistent with the examination." She was released to work full duty. PX3 p.53.

The petitioner did return to work after that time. The claimant saw Dr. Glunz several times thereafter, primarily for unrelated concerns. However, due to persistent wrist complaints, a new EMG was performed on April 26, 2011. It demonstrated mild right carpal tunnel as well as a mild right cervical radiculopathy. No issues were notable regarding the left side. PX3 pp.45-46.

On May 10, 2011, Dr. Birnie noted the claimant now reported no pain in the right wrist and discharged her from treatment. PX3 p.44.

On November 7, 2011, the claimant attended a Section 12 exam with Dr. Heller at the request of respondent, having previously seen Dr. Heller in 2008 for a Section 12 examination regarding the right wrist. At this time, she reported being symptom free and had no subjective impairment. Dr. Heller noted no active diagnoses. Dr. Heller noted the petitioner's work duties did not involve prolonged or awkward positioning, pneumatic equipment, or direct trauma to the wrist. Moreover, she used her right wrist more than her left. Dr. Heller opined that the claimant's work duties would not have caused or aggravated carpal tunnel syndrome, and noted on May 9 the petitioner might have had a flareup of symptoms but no significant injury occurred that day. He also noted non-work related factors which could cause the condition, including morbid obesity (approximately 5'4", 315#) and cigarette smoking.

OPINION AND ORDER

Accident and Causal Relationship

The petitioner is claiming accidental injury to her left hand. The parties concurred the right side is not presently at issue and is not related to this date of loss. While the petitioner's sudden spike in symptoms is in some ways more suggestive of an acute trauma, the Arbitrator notes no significant injury on that date. The vehicle the petitioner was driving had no mechanical defect and while the petitioner described a spike in her symptoms, she does not describe any particular significant incident, such as a fall or a lifting incident. Moreover, the petitioner reported to both the ambulance and the emergency room that no such incident occurred, and Dr. Heller inquired as to that and she did not refer to a traumatic occurrence. Her report of injury also does not describe a

particularly acute injury. Moreover, while not necessarily binding, the Application for Adjustment of Claim asserts repetitive trauma as its asserted injury. This Arbitrator believes it more appropriate to review this matter as an allegation of repetitive trauma which manifested on May 9, 2010.

When performance of the employee's work involves constant or repetitive activity that gradually causes deterioration of or injury to a body part, the case may be compensable, provided it can be medically established that the origin of the injury was the repetitive stressful activity. However, it is required that the claimant prove that the injury is related to the employment and not the result of the normal degenerative aging process, as simply performing work over a period of years is not legally sufficient to prove an increased risk to the petitioner. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953).

In this case, regardless of the asserted trauma, the claimant has failed to prove either a causal link or an aggravation of her prior condition to the Arbitrator's satisfaction. While she testified she did not recall any prior left-handed complaints, the medical records show that she was diagnosed with left-sided carpal tunnel syndrome and received an injection to the left wrist two months before the alleged date of loss. Moreover, it was suggested that she undergo an EMG test and that surgery was a potential option for her prior to the date of loss. The EMG took place and demonstrated, first, that no discernible carpal tunnel syndrome was present in the left wrist, and second, that while the right wrist had progressed since the prior EMG, the left wrist had not. Furthermore, the petitioner had several significant non-work-related conditions which are known to be linked to the development and progression of carpal tunnel syndrome, as Dr. Heller credibly observed.

Taken as a whole, there is a paucity of evidence that her employment made her physical condition any worse that it already was, or any worse than it would have been absent her employment. The right to recover benefits cannot rest upon speculation or conjecture. *County of Cook v. Industrial Commission*, 68 Ill.2d 24 (1977). The evidence is legally insufficient to prove a causal link between the petitioner's employment and her claimed injuries. The claim for compensation is denied.

Medical Services, TTD, and Nature and Extent

Having found a failure of proof relative to accidental injury that arose out of and in the course of employment by respondent, these issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Patricia Hoit,
Petitioner,

vs. No: 12 WC 17304

Illinois State University,
Respondent.

15IWCC0542

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and nature and extent of the permanent disability, and being advised of the facts and law, modifies the Arbitrator's award of permanent partial disability and otherwise affirms and adopts the July 14, 2014 Decision of Arbitrator Gregory Dollison, which is attached hereto and made a part hereof.

On August 4, 2011, Petitioner, a 53 year old building service worker, had been employed by Respondent for eight months. During that time, Petitioner cleaned restrooms, auditorium seats, classroom floors, vents, and windows and removed trash. In July 2011, she noted problems with grip and cramping in her hands, as well as numbness and tingling in her fingers. Petitioner testified that during that summer of 2011, she spent about four hours a day waxing floors. Respondent was short a worker, so the two remaining employees needed to hurry to complete the stripping and waxing processes before classes started back in the fall. Petitioner testified that on August 4, 2011, her hand pain required her to seek treatment. She filed a Notice of Injury with Respondent on September 6, 2011, alleging repetitive stress injuries to both hands from mopping and waxing.

15IWCC0542

By order of her primary care physician, Petitioner underwent an EMG/NCV test on August 26, 2011. The test revealed moderate bilateral carpal tunnel syndrome. At Respondent's request, Dr. James Williams performed a Section 12 examination on February 1, 2012. Dr. Williams concluded that Petitioner suffered from bilateral carpal tunnel syndrome, but that this condition was neither caused nor aggravated by Petitioner's work activities, because the mopping and waxing activities had only lasted one month. He did not feel that her job as custodian involved the use of vibratory equipment for sufficient duration to cause or aggravate carpal tunnel syndrome. Dr. Williams attributed Petitioner's condition to her alternative employment doing remodeling work with her husband, or to other idiopathic causes. However, he agreed that surgery would be appropriate.

Dr. Larry Nord performed a right carpal tunnel release on May 2, 2012 and a left release on May 16, 2012. After completing post-operative physical therapy, Petitioner was released to return to work full duty on July 16, 2012. Dr. Nord provided a causation opinion causally relating her condition to her work activities as a building service worker. However, he admitted being unaware of Petitioner's participation in her husband's remodeling business. This information might have affected his causation opinion, because hand and wrist movements can cause tendon membranes to swell and elicit symptoms, aggravating carpal tunnel syndrome.

Petitioner admitted that before and during her employment with Respondent, she worked in the remodeling business, averaging about 30 hours per week between 2008 and 2012. However, she asserted her participation was primarily engaging in communications with customers rather than the physical labor of the remodeling business.

Arbitrator Dollison found Dr. Nord's causation opinion more persuasive than Dr. Williams' and concluded that Petitioner's bilateral carpal tunnel syndrome was causally related to her work for Respondent. He awarded medical expenses, temporary total disability and 12% loss of use of the left hand and 15% loss of use of the dominant right hand.

The Commission affirms the Arbitrator's findings of accident and causal connection and his awards of medical expenses and temporary total disability, but modifies his award of permanent partial disability. The Commission notes that Petitioner returned to full duty work for Respondent as a building service worker. Arbitrator Dollison did not discuss Section 8.1b of the Act in weighing each of the five listed considerations in his Decision. The Commission supplements that Decision with the following findings:

1. AMA rating: Neither party provided an AMA rating.

2. Occupation: The Petitioner testified she was able to return to her full duty job as a building service worker, although she described occasional discomfort that she treated with medication.

3. Age: Petitioner was 53 at the time of the accident, too young for age to be a significant contributing factor in causing her to develop carpal tunnel syndrome, according to Respondent's Section 12 examiner, Dr. Williams.

15IWCC0542

4. Future earning capacity: No evidence suggests impact to Petitioner's future earning capacity. She was able to return to her previous occupation, and Dr. Williams noted that Petitioner should be able to continue so working indefinitely.

5. Evidence of disability corroborated by medical records: Dr. Nord testified at deposition that six months after her surgeries, Petitioner was very happy with the results. A NCS on November 15, 2012 revealed normal results on the right hand and only a slight delay on the left.

After weighing these factors, the Commission finds that Petitioner suffered a loss of use of 7.5% of each hand as a result of the surgeries to correct bilateral carpal tunnel syndrome. The Arbitrator's award of 15% for the right hand and 12% for the left is hereby modified.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the July 14, 2014 Decision of the Arbitrator is modified with regard to the award of permanent partial disability, as described above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $290.39/week for a period of 11 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 shall pay to Petitioner all reasonable and necessary medical expenses of $350.00 to Eastland Medical Plaza Surgicenter, $7,804.00 to Central Illinois Orthopedic Surgery, and $900.00 to Normal Bloomington Anesthesiology, as provided in §§8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $261.35/week for a period of 28.5 weeks, as provided in §8(e)9 of the Act, because the injuries sustained caused the permanent partial disability to Petitioner to the extent of 7.5% loss of use of the left hand and 7.5% loss of use of the right hand.

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 injuries.

15IWCC0542

Pursuant to §19(f)(1) of the Act, claims against the State of Illinois shall not be subject to judicial review. Therefore, no appeal bond is set and no provision for filing a Notice of Intent to File for Review in Circuit Court is included in this decision.

DATED: JUL 16 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-06/09/15
jdl/dak
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOIT, PATRICIA
Employee/Petitioner

Case# 12WC017304

ILLINOIS STATE UNIVERSITY
Employer/Respondent

15IWCC0542

On 7/14/2014, 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 0.06% 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:

0564 WILLIAMS & SWEE LTD
STEVE WILLIAMS
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

5300 ASSISTANT ATTORNEY GENERAL
CODY KAY
500 S SECOND ST
SPRINGFIELD, IL 62706

0903 ILLINOIS STATE UNIVERSITY
JULIE RICH
1320 ENVIRONMTL HEALTH SAFETY
NORMAL, IL 61790

0904 STATE UNIVERSITY RETIREMENT SYS
PO BOX 2710 STATION A*
CHAMPAIGN, IL 61825

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JUL 14 2014

RONALD A. HARDIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

☐ 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

Patricia Hoit
Employee/Petitioner

v.

Illinois State University/State of Illinois
Employer/Respondent

Case # **12** WC **017304**

Consolidated cases: _____

15IWCC0542

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 **Gregory Dollison**, Arbitrator of the Commission, in the city of **Bloomington, Illinois**, on **May 30, 2014**. 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 _____

15IWCC0542

FINDINGS

On **8/4/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**15,054.00**; the average weekly wage was $**435.59**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**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 $**9,870.59** under Section 8(j) of the Act. Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**290.39**/week for **11** weeks, commencing **5/1/12** through **7/16/12**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule of $**350.00** to Eastland Medical Plaza Surgicenter and $**7,804.00** to Central Illinois Orthopedic Surgery/Dr. Nord and $**900.00** to Normal Bloomington Anesthesiology, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**261.35**/week for **51.3** weeks, because the injuries sustained caused the **15%** loss of use to the right hand and **12%** loss of use to the left hand, as provided in Section 8(e) of the Act.

Signature of Arbitrator

7/10/14
Date

JUL 14 2014

FINDING OF FACTS:

On August 4, 2011, Petitioner was employed by Illinois State University. She started working as a building service worker which is a custodian or janitor on December 5, 2010.

Petitioner described performing job duties such as cleaning bathrooms, cleaning auditorium seats, cleaning classrooms, waxing and stripping floors, using a scrubber, mopping, cleaning vents, washing windows and taking out the trash. Her job duties involved gripping, wiping, bending and twisting. She would have to squeeze, grip and bend and twist her hands and wrist. She testified she performed these job duties about 6½ hours during her day.

Petitioner testified that as she performed these job duties she noticed that her hands would be sensitive and tight. She described problems with grip and cramping in her hands. Petitioner provided that her symptoms started in July of 2011. She was mopping at work when her symptoms started. She noticed numbness and tingling in her fingers.

Petitioner indicated that during the summer of 2011, when the students were not in school, she was spending about four hours a day waxing floors. She testified that on August 4, 2011, she had pain in her hands to the point she had to seek medical treatment.

On August 25, 2011, Petitioner presented to Dr. Jyotir Jani with bilateral hand numbness that began about six weeks prior. Petitioner provided that her symptoms had worsened two weeks prior as she was stripping and waxing floors. Dr. Jani assessed left and right arm paresthesia and ordered EMG/NCV testing. (PX 3, RX 5)

Petitioner underwent the prescribed EMG testing on August 26, 2011. The records show Petitioner reported complaints of numbness of both hands of about two months which had gotten worse for the past 2-3 weeks. Also noted was that Petitioner did janitorial work at night and remodeling during the day. The EMG revealed Petitioner had moderate bilateral median neuropathy at the wrists or carpal tunnel syndrome. Both right and left median nerves were equally involved. There was a recommendation for surgical evaluation for carpal tunnel syndrome (CTS) management. (PX 3, RX 5)

On September 8, 2011, Petitioner completed a Notice of Injury indicating she sustained injury to both hands and arms on August 4, 2011. Petitioner reported that she was mopping at the time of the injury and that the injury occurred with repetitive motion from mopping and waxing. (PX 4, RX 2)

Petitioner testified she continued to work following filling out the report. At Respondent's request she saw Dr. James Williams for a Section 12 examination on February 1, 2012. (RX 4). Dr. Williams report dated same indicates that he reviewed multiple job description forms and Petitioner's medical records, took a history from Petitioner, and performed a physical examination. Dr. Williams opined Petitioner had bilateral carpal tunnel syndrome. The doctor also opined that Petitioner's condition of bilateral carpal tunnel syndrome was neither caused nor aggravated by her job duties. Dr. Williams stated, "I cannot contribute the development or worsening of carpal tunnel syndrome to 1 month of activity for which the patient has worked for the employer for a total of 9 months." The doctor believed her condition was more likely due to her previous job of doing

remodeling and/or her female sex and/or idiopathic in nature. Although Dr. Williams felt that her condition was not casually related to her job duties, he felt that surgical intervention would be appropriate. (RX 4, dep #2)

Petitioner testified that she continued with pain and numbness. She provided that she had trouble opening jars. As a result she saw Dr. Larry Nord on March 15, 2012. Dr. Nord noted that Petitioner reported weakness and numbness in both hands that began while working as a custodian at ISU in June of 2011. At that time she was stripping floors at ISU when she started noticing weakness and numbness in her hands. During Dr. Nord's examination, he noted a positive Tinel's and Phalen's sign and diagnosed carpal tunnel syndrome. Surgery was recommended. (PX 5)

On May 2, 2012 Dr. Nord performed a right median nerve decompression with a diagnosis of right carpal tunnel syndrome. (PX 6)

On May 8, 2012 Dr. Lawrence Nord authored a letter opining that a causal relationship existed between Petitioner's history of injury while working as ISU and her diagnosis of bilateral carpal tunnel syndrome. (PX 2)

On May 16, 2012 Dr. Nord performed a left median nerve decompression for left carpal tunnel syndrome. (PX 7)

Post-surgery, Petitioner underwent a course of physical therapy through July 13, 2012. On May 25, 2012, there is a reference in the therapist notes wherein Petitioner reported she experienced soreness when she tried to do things with her wrist she knows she shouldn't, like use a drill. Petitioner testified the reference was her brief attempt to help with her daughter's wedding. On July 11, 2012, the physical therapist noted Petitioner's left hand was pretty sore. Her right hand was almost completely healed. She had a few complaints of pain and discomfort and she had pain in the left wrist with PROM. At her last visit on July 13, 2012, Petitioner reported to her physical therapist that her left hand was still sore but felt better. (PX 14, RX 8)

Dr. Nord released Petitioner to return to work on July 16, 2012. (PX 12) Petitioner returned to work July 17, 2012.

On November 15, 2012, Petitioner underwent a nerve conduction velocity exam six (6) month post-op. The results demonstrated normal median nerve sensory velocity at the right wrist. There was a delay of the median nerve sensory velocity of the left wrist. (PX 10) Petitioner also underwent a grip strength test on November 15, 2012. The test indicated deficits in the left wrist with flexion and extension. (PX 11)

Dr. Nord saw Petitioner on October 24, 2013. He noted she was status post carpal tunnel release. During an examination, the doctor noted there was mild discomfort to palpation over the surgical incision area. The range of motion of strength was described as improving and the sensory changes were described as resolving. (PX 17)

Petitioner returned to Dr. Nord on May 20, 2014. The doctor noted Petitioner's visit was at the request of her attorney. At that visit, Petitioner rated her pain a 1 out of 10. She noted that her symptoms are exacerbated at work. Petitioner reported that her left hand felt weaker than her right and there was tightness in the palmar aspect of the left hand. Dr. Nord described a near normal grip strength on the right. The left demonstrated about 75% of that on the right. Dr. Nord felt Petitioner's prognosis was improved from her preoperative status.

Petitioner testified that she takes the medication Meloxicam for pain. Regarding her right hand, Petitioner testified she has good grip and will feel pain when not taking her medication. Regarding her left hand, Petitioner testified it feels sore and like something is in the middle of her hand. Work causes her pain, specifically mopping, and by the end of the night, wiping things down causes pain to left hand.

Petitioner testified that prior to and while working for ISU, she worked together with her husband, Mark Hoit, for a remodeling business, PM Restoration & Remodeling (PMR&R). She testified their work as not doing any big jobs. She described her role as communicating with clients, lining up everything that is going on, and being a "gopher." She testified the work with her hands consists of holding things up and some driving.

On cross-examination, Petitioner testified she first tried to help out with the restoration and remodeling business 18 years ago, but due to children and her daycare, she wasn't able to work as much as she wanted until after her daycare closed in 2009. Throughout her time co-owning the remodeling company, Petitioner periodically had employees consisting of some of her children and occasionally drywallers. She testified the work with her remodeling business changed depending on the time with a dead period around Christmas until things would pick around March. She continued that following the period of business picking up, they "would be good; middle of summer we would be pretty bad, slowing down a little bit after that, could use the kids a whole lot more during the summer." She then testified she put August 2010 as an end date for doing work for PMR&R on application because she "wasn't doing anything on the job. I was more talking to people and everything so I really wasn't there." When asked to differentiate how that was different than the period before then, Petitioner testified about being a gopher, talking to clients and making sure employees (her children) did something.

Petitioner's husband, Mark Hoit, also testified at hearing. Mr. Hoit testified that he owned the business and Petitioner helped. He provided that her primary responsibilities were to "deal with clients." He guessed that Petitioner worked 30 hours a week for their remodeling business from 2008 to 2012, with 10 percent of that being with her hands.

Petitioner's treating surgeon, Dr. Lawrence Nord, testified via deposition in this matter. Dr. Nord testified that Petitioner's job duties were a causative factor in her developing bilateral carpal tunnel syndrome. He testified he examined Petitioner on March 15, 2012 and diagnosed her with bilateral carpal tunnel syndrome based on her previous EMG/NCV study and a positive Tinel's and Phalen's sign. He testified to her following up, continuing to have a weak grip, and then how he performed the two procedures described above. He then explained how he recommended physical therapy until she returned to work on July 16, 2012. He then saw her on a November 15, 2012 for a six month follow up where she stated she was very happy with the results of the surgery. A nerve conduction velocity was done on both hands at that time and Dr. Nord found improvement in both hands with her right hand being completely normal and her left hand showing a slight delay. (PX 1)

Dr. Nord was presented with a hypothetical regarding Petitioner's work duties as being causative factor with her bilateral carpal tunnel syndrome. Dr. Nord was asked to assume that "Petitioner worked for Respondent as a building service worker, or janitor, since December 5, 2010. Her job duties included cleaning bathrooms, cleaning auditorium seats, cleaning the classrooms, mopping the floor, cleaning vents, dusting, washing windows, using a high speed burnisher, like a floor buffer..." He was asked to further assume "she would lift one to ten pounds a day, four to six hours per day, lift eleven pounds up to two hours a day, and lift twenty-one to a hundred pounds less than three times a month. She would use her hands for gross manipulation, grasping, twisting, and handling four to six hours per day. She would pull and push to twenty-five pounds at least five times a day. She would climb ladders up to two hours per day. She would use her hands for gross

manipulation four to six hours a day." Dr. Nord testified that to a reasonable degree of medical and surgical certainty that Petitioner's carpal tunnel was causally related to the duties described. (PX 1)

On cross-examination, Dr. Nord testified Petitioner would be able to continue with her janitorial work indefinitely. Dr. Nord confirmed he had taken a record where Petitioner stated she began to notice becoming symptomatic in June of 2011 when she was stripping floors. Dr. Nord testified he had no knowledge as to her employment outside of ISU. When asked a hypothetical about whether remodeling homes previous to working for ISU could have cause Petitioner's carpal tunnel, Dr. Nord testified only if she was having symptoms. (PX 1)

Dr. James Williams , an orthopedic surgeon, testified via deposition regarding his independent medical examination of Petitioner. Dr. Williams testified that although he agreed Petitioner had bilateral carpal tunnel syndrome and needed surgery, he did not feel her work duties were either aggravated or caused her condition. He reasoned that "mainly because of her short period of work being a period of only nine months, as well as based on the fact that she related this primarily to an activity that she really did for one month. Dr. Williams stated that Petitioner's remodeling business could be a possible aggravating factor and "even more so most commonly it's idiopathic in origin." (RX 4)

On cross-examination, Dr. Williams testified he did not know how many hours per day Petitioner worked remodeling homes. He did not know how many days per week she spent remodeling homes and stated that the information could be helpful in making a determination for causal connection. Dr. Williams testified that hand and grip wrist movements can aggravate the membranes of the tendons, causing them to swell into carpal tunnel. He provided that this can be a factor that can bring about elicitation of symptoms and maybe aggravate carpal tunnel. He stated that it was possible cleaning auditorium seats could aggravate or cause swelling in the tendons. He stated it was possible that cleaning of classrooms could cause some swelling in the tendons. He further stated it was possible that mopping could cause some swelling of the tendons. (RX 4)

With respect to issues (C.) Did an accident occur that arose out of and in the course of Petitioner's employment with Respondent; (F.) Is Petitioner's current condition of ill-being causally related to the injury; and (L.) What is the nature and extent of the injury, the Arbitrator finds as follows:

Petitioner's unrebutted testimony was that prior to working for Illinois State University she had no problems with her hands. Petitioner started working as a building service worker which is a custodian or janitor on December 5, 2010. Petitioner described performing job duties such as cleaning bathrooms, cleaning auditorium seats, cleaning classrooms, waxing and stripping floors, using a scrubber, mopping, cleaning vents, washing windows and taking out the trash. Her job duties involved gripping, wiping, bending and twisting. She would have to squeeze, grip and bend and twist her hands and wrist. She testified she performed these job duties about 6½ hours during her day. Petitioner testified that as she performed these job duties she noticed that her hands would be sensitive and tight. She described problems with grip and cramping in her hands. Petitioner provided that her symptoms started in July of 2011. She was mopping at work when her symptoms started. She noticed numbness and tingling in her fingers. During the summer of 2011, when the students were not in school, she was spending about four hours a day waxing floors. She testified that on August 4, 2011, she had pain in her hands to the point she had to seek medical treatment.

On August 25, 2011, Petitioner presented to Dr. Jyotir Jani with bilateral hand numbness that began about six weeks prior. Petitioner provided that her symptoms had worsened two prior as she was stripping and waxing floors. Dr. Jani assessed left and right arm paresthesia and ordered EMG/NCV testing.

Petitioner underwent the prescribed EMG testing on August 26, 2011. The EMG revealed Petitioner had moderate bilateral median neuropathy at the wrists or carpal tunnel syndrome. Both right and left median nerves were equally involved. There was a recommendation for surgical evaluation for carpal tunnel syndrome management.

On September 8, 2011, Petitioner completed a Notice of Injury indicating she sustained injury to both hands and arms on August 4, 2011. Petitioner reported that she was mopping at the time of the injury and that the injury occurred with repetitive motion from mopping and waxing.

Petitioner's testimony is corroborated by the job description contained in Dr. Williams report. It shows Petitioner lifts 1-10 pounds 4-6 hours a day. She uses her hands for gross manipulation, grasping, twisting and handling 4-6 hours per week.

Petitioner saw Dr. Lawrence Nord on March 15, 2012. Dr. Nord noted Petitioner had weakness and numbness in both hands while working as a custodian at ISU. He noted a positive Tinel's and Phalen's sign. He diagnosed right carpal tunnel syndrome and on May 2, 2012, performed a right median nerve decompression.

On May 8, 2012 Dr. Lawrence Nord authored a letter stating that a causal relationship existed between Petitioner's history of injury while working as ISU and her diagnosis of bilateral carpal tunnel syndrome. The doctor subsequently performed a left median nerve decompression for left carpal tunnel syndrome.

On November 15, 2012, Petitioner underwent a nerve conduction velocity exam six (6) month post-op. The results demonstrated normal median nerve sensory velocity at the right wrist. There was a delay of the median nerve sensory velocity of the left wrist. Petitioner also underwent a grip strength test on November 15, 2012. The test indicated deficits in the left wrist with flexion and extension.

Petitioner returned to Dr. Nord on May 20, 2014. The doctor noted Petitioner rated her pain a 1 out of 10. She noted that her symptoms are exacerbated at work. Petitioner reported that her left hand felt weaker than her right and there was tightness in the palmar aspect of the left hand. Dr. Nord described a near normal grip strength.

Petitioner testified that she still continues to have symptoms of pain, numbness and weakness in her hands. She is working. She described decreased grip strength. She described soreness in her hand.

Dr. Nord testified by evidence deposition. The doctor testified to a reasonable degree of medical and surgical certainty that Petitioner's carpal tunnel was causally related to her job duties. Conversely, Dr. Williams testified that there was no causal relationship between Petitioner's job duties and her condition of ill-being. He stated that her remodeling business could be a possible aggravating factor. However, he did not know how many hours per day she would spend doing this. He did not know how many days per week she spent remodeling homes and admitted that that information could be helpful in making a determination for causal connection. Dr. Williams did state that hand and grip wrist movements can aggravate the membranes of the tendons, causing them to swell into carpal tunnel and this could be a factor that can bring about elicitation of symptoms and maybe aggravate carpal tunnel. He stated that it was possible cleaning auditorium seats could aggravate or cause swelling in the tendons. He stated it was possible that cleaning of classrooms could cause some swelling in the tendons. He stated it was possible that mopping could cause some swelling of the tendons.

The Arbitrator notes that Petitioner did have a prior remodeling business with her husband. Petitioner and her husband both testified that the job duties were more of a customer service function for their business not repetitive or hand intensive in nature.

Based on the above, including Petitioner's testimony, the job description in the record and Dr. Nord's persuasive opinion, the Arbitrator finds that Petitioner sustained an accidental injury manifesting on August 4, 2011. The Arbitrator finds that Petitioner's condition of ill-being, that being bilateral carpal tunnel syndrome is causally related to her job duties and as a result she suffered a loss of 15% of the left hand and 12% of the right hand under Section 8(e) of the Act.

With respect to issue (K.) What temporary benefits are in dispute, the Arbitrator finds as follows:

Petitioner testified that she did not work between May 1, 2012 and July 16, 2012. On July 26, 2012 Dr. Nord stated Petitioner was not able to work between May 1, 2012 and July 16, 2012. (PX 13) There are also off-work slips for May 15, 2012, May 16, 2012, and June 12, 2012 and on July 26, 2012 Dr. Nord released Petitioner to return to work with no restrictions on July 16, 2012.

Based on the above, the Arbitrator finds Petitioner was temporarily and totally disabled from May 1, 2012 through July 16, 2012.

With respect to issue (J.) Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary services, the Arbitrator finds as follows:

Having found the requisite causal relationship the Arbitrator finds Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule of $350.00 to Eastland Medical Plaza Surgicenter and $7,804.00 to Central Illinois Orthopedic Surgery/Dr. Nord and $900.00 to Normal Bloomington Anesthesiology, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $9,870.59 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 Section 8(j) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Workers' Compensation Commission,
Insurance Compliance Division,
Petitioner,

vs. NO: 11 INC 479

15IWCC0532

John A. Wease, Individually and d/b/a
John's Landscaping Company a/k/a Wease Landscaping,
Respondent.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the Illinois Workers' Compensation Commission, Insurance Compliance Division, brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondent, alleging violation of Section 4(a) of the Illinois Workers' Compensation Act. Proper and timely notice was provided to the Respondent and a hearing was held before Commission Basurto in Springfield, Illinois on March 26, 2015.

Petitioner alleges that Respondent knowingly and willfully lacked workers' compensation insurance coverage a minimum period of 2,065.00 days from July 20, 2005 to March 16, 2011, that being the period from the date an employee of the National Council on Compensation Insurance, Inc., (NCCI) attested to the certified report that Petitioner had no workers' compensation insurance and as outlined in an article issued by the Illinois Attorney General's Office.

After considering the entire record, the Commission finds that Respondent knowingly and willfully violated Section 4 of the Act during the period in question and shall pay a fine of $253,009.01 under Section 4(d) of the Act.

15IWCC0532

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Joseph Stumph, a compliance investigator for Petitioner, testified at the March 26, 2015 Insurance Compliance hearing.

2. Investigator Stump testified he received an e-mail on September 8, 2011 from Attorney Kennedy, who was representing an injured worker in Claim No. 11 WC 14644. Attorney Kennedy requested an investigation into the Wease Landscaping business in Auburn, Illinois.

3. Investigator Stumph checked accurint, Google and 411.com and found a John's Landscape Company a/k/a Wease Landscaping located at 1203 Commanche Road, Auburn, Illinois. with an owner by the name of John Wease who had no insurance according to POC. Dun and Bradstreet lists a start year of 2002 for the business and lists John Wease as the owner.

4. Investigator Stumph testified that he checked the Illinois Secretary of State Office site and found no LLC certificate of good standing and found nothing related to the above captioned business. He also checked IDES and found nothing related to the business. Additionally he checked with the Workers' Compensation Commission Self Insurance Administrator who found no records for John Wease, Individually and d/b/a John's Landscape Company a/k/a Wease Landscaping. Copies of the same were submitted into the record as Petitioner's PX4-5. He also checked with the Illinois Attorney General's and Sangamon County State's Attorney's offices and the Springfield Police Department which indicated that there was a separate fraud filing that has been made against John Wease. On April 19, 2012 Assistant Attorney General Heimlick notified Investigator Stumph that Petitioner has entered into a settlement agreement on the fraud claims.

5. On September 14, 2011 a letter of inquiry and notice of non-compliance was mailed to JohnWease and John's Landscape Company a/k/a Wease Landscaping. A copy of the same was submitted into the record as Petitioner's PX2.

6. On April 19, 2012 John Wease called Investigator Stumph and stated he was now running Landscape Creations, which has no employees. He indicated a willingness to settle with the Petitioner in Claim No. 11 WC 14644 and to proceed to trial if no settlement could be reached.

7. Investigator Stumph checked ICNI and found that Petitioner James Eiskant claims he was injured on March 16, 2011, Claim No. 11 WC 14644 was assigned to the claim and the case was docketed to appear on Arbitrator White's October 3, 2011 call. According to Petitioner's PX1,Claim No. 11 WC 14644 was ultimately heard by Arbitrator Zanotti on December 11, 2013. Mr. Wease failed to appear at said hearing and a decision on behalf of the Petitioner was issued on or about February 13, 2014.

8. Investigator Stumph made several telephone calls to Mr. Wease leading up to the formal Non-Compliance hearing, which was set for May 29, 2014. Notification of the hearing date was sent via both regular and certified mail and a copy of the same was submitted into the record as Petitioner's PX3. In preparation for the hearing, Mr. Stump obtained Mr. Wease's 1040 tax filings for 2002-2011 from the Illinois Department of Revenue. Said records were submitted as Petitioner's PX 6. Investigator Stump indicated he spoke with Mr. Wease on May 28, 2014 and Mr. Wease, among other things, stated he had received notice of the May 28, 2014 hearing and although he had not signed for the certified mail, he would appear at the hearing.

9. On May 28, 2014 the Non-Compliance hearing was postponed due to a death in the Assistant Attorney General's family. Investigator Stump met with Mr. Wease and after further discussion, Investigator Stump made a settlement offer to Mr. Wease. The case was continued to June 26, 2014. On June 26, 2014 a meeting was held with the Assistant Attorney General, Investigator Stump and Mr. Wease in which Mr. Wease indicated that he did not have the money to settle the case and he did not have an attorney representing him. The parties appeared before Commissioner Basurto and the Commissioner advised Mr. Wease to obtain an attorney. The case was continued to October 23, 2014.

10. On October 23, 2014, a formal hearing was held before Commissioner Basurto. Mr. Wease
indicated that he did not agree with the dates of non-compliance and he had proof of when he was in business at his residence. The case was continued to December 18, 2014 to allow Mr.Wease time to obtain his records. On December 18, 2014, a meeting was held with the Assistant Attorney General, Investigator Stump and Mr. Wease in which Mr. Wease indicated that he was not able to pay the Insurance Non-Compliance fund. A tentative settlement agreement was reached and a new hearing was set for March 26, 2015. Between December 22, 2014 and March 25, 2015 Mr. Stump attempted to contact Mr. Wease six separate times. On February 9, 2015 notices of the upcoming March 26, 2015 were sent by Investigator Stump to Mr. Wease via certified mail.

11. On March 26, 2015 a formal hearing was held before Commissioner Basurto. Mr. Wease did not attend the proceedings. Investigator Stump was called as a witness. He testified as to the above events along with submitting Petitioner's PX1-9 into the record. In addition to the above noted exhibits, Investigator Stump submitted PX7 and PX9, records of the dates in which Mr. Wease did not comply with the insurance requirements along with calculation of the insurance premiums that were not paid and the amount of money that was paid out by the Illinois Workers' Benefit Fund in regard to Claim No. 11 WC 14644. In addition, he submitted PX8, a chronological abstract of the dates and events that had transpired in regard to the above captioned claim since his initial contact by Petitioner's

15IWCC0532

attorney in Claim No. 11 WC 14544. At the March 26, 2015 hearing, Investigator Stumph noted that although he has attempted to contact Mr. Wease on several occasions since they reached a tentative settlement agreement, Mr. Wease has not responded to his calls and he has not made any payments at that time. Based on the information contained within the exhibits Mr. Stump has requested that a fine of $253,009.01 be levied against Mr. John A. Wease, Individually and d/b/a John's Landscaping Company a/k/a Wease Landscaping,

Based on the above, the Commission orders Respondent to pay $253,009.01 under Section 4(d) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to the Illinois Workers' Compensation Commission the sum of $253,009.01, pursuant to Section 4(d) of the Act.

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

DATED: JUL 13 2015

Maria Basurto

David L. Gore

Stephen Mathis

MB/jm

R: 3/26/15

43

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☐ 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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rick Donath,
Petitioner,

vs. No: 11 WC 34165

American National Red Cross,
Respondent.

15IWCC0541

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by both Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and temporary total disability, and being advised of the facts and law, modifies the November 25, 2014 Section 19(b) Decision of Arbitrator Douglas McCarthy, 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 Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980).

Arbitrator McCarthy found that Petitioner proved he sustained an accident that arose out of and in the course of his employment with Respondent on December 23, 2010 and also proved that a causal connection existed between the conditions of ill-being of his left shoulder and cervical spine and the accident. However, the Arbitrator found that Petitioner failed to prove that his left cubital tunnel was causally connected to his work accident. Arbitrator McCarthy awarded Petitioner reasonable and necessary medical expenses related to his cervical spine and left shoulder and 180 weeks of temporary total disability. After considering the entire record, and for the reasons set forth below, the Commission modifies the Decision of the Arbitrator as stated below.

15IWCC0541

Petitioner alleged that on December 23, 2010, he fell while at work after tripping on some boxes and landed on his left side with his arm extended. He testified that he did not seek treatment immediately, because of the pending holidays and because he believed that his complaints might resolve without medical attention. On January 16, 2011, Petitioner sought treatment at OSF Prompt Care, reporting immediate pain and swelling and constant symptoms in his left arm which radiated to the left side of his neck. The doctor ordered a left shoulder x-ray, which was negative, and advised Petitioner to rest and follow up with his primary care doctor if his complaints persisted.

On January 25, 2011, Petitioner provided his primary care physician, Dr. Lawless, with complaints of left shoulder and neck pain and stiffness. Dr. Lawless ordered physical therapy on February 7, 2011 for both the shoulder and neck complaints. Petitioner continued to participate in therapy through March 24, 2011, but his pain complaints persisted.

Shoulder. A left shoulder MRI performed on March 30, 2011 revealed a complete tear of the supraspinatus tendon and rotator cuff tendinosis. The parties agreed that the left shoulder injury is causally connected to Petitioner's December 23, 2010 accident. Dr. Johnson at Midwest Orthopedic Center performed left rotator cuff surgical repair on May 12, 2011, and Petitioner underwent additional physical therapy for his shoulder. Arbitrator McCarthy awarded medical and lost time benefits related to Petitioner's shoulder injury. The Commission concurs with the Arbitrator's finding of causal connection and affirms his award of benefits related to Petitioner's left shoulder injury.

Left Elbow. Dr. Mulconrey, an orthopedic surgeon also with Midwest Orthopedic Center, ordered an EMG for Petitioner's continued left arm complaints and referred Petitioner to his associate, Dr. Williams. Dr. Williams diagnosed Petitioner with left cubital tunnel and performed a surgical release on October 9, 2012. Petitioner admitted that he did not experience symptoms of cubital tunnel until after his cervical spine surgery, and Dr. Mulconrey confirmed, noting that he saw signs of cubital tunnel for the first time on June 27, 2012, six months after Petitioner's accident. Despite this delay in onset of symptoms, Dr. Williams opined that Petitioner's cubital tunnel was causally related to his work accident, attributing Petitioner's delayed onset of symptoms to a period of latency between the trauma and when symptoms developed. Respondent's Section 12 examiner, Dr. Verma, found that there was no proximal relationship between Petitioner's cubital tunnel and his fall on December 23, 2010. Arbitrator McCarthy found Dr. Verma's causation opinion more persuasive than Dr. Williams' and denied Petitioner all expenses related to treatment of his cubital tunnel condition. The Commission concurs with the Arbitrator's finding.

Cervical Spine. Petitioner continued to complain of left-sided neck pain, and Dr. Lawless ordered a cervical MRI, which was performed on July 15, 2011. He then referred Petitioner to Dr. Mulconrey for a surgical consult. Dr. Mulconrey assessed Petitioner with cervical spondylosis and radiculopathy and recommended anterior cervical decompression and fusion from C5 to C7. Surgery was performed on August 30, 2011, and although he enjoyed improvement initially, Petitioner complained of continued pain and complications. Therapy proved ineffective, and Dr. Mulconrey referred Petitioner to Advanced Pain Management of Illinois, where Dr. Howard administered epidural steroid injections, with little effect. Dr. Mulconrey diagnosed Petitioner with multi-level cervical spondylosis, multi-level cervical facet arthropathy, and pseudoarthrosis at C5-6 and C6-7. On May 15, 2012, Dr. Mulconrey performed a revision anterior cervical corpectomy at C5-6 and C6-7 with anterior cervical decompression and fusion at C4-5. At the time of hearing, Petitioner reported that he had recently undergone a third cervical procedure by Dr. Mulconrey and remained off work under the doctor's care. Dr. Mulconrey causally related Petitioner's cervical

15IWCC0541

condition and need for the first surgery to his work accident. The doctor related the need for all subsequent surgeries and treatment to the failure of the first surgery.

Dr. Kern Singh performed a Section 12 examination to evaluate Petitioner's cervical condition at Respondent's request. He concluded that Petitioner had suffered a mere muscular strain and the disc degeneration addressed by Dr. Mulconrey was a pre-existing condition not aggravated by the accident. Dr. Singh noted that Petitioner had not sought treatment for cervical complaints immediately after the accident and at his presentation on January 16, 2011 described his neck pain as running from his shoulder up the left side of his neck, suggesting that the pain was coming from shoulder pathology rather than cervical nerve pathology. Dr. Singh testified at deposition that Petitioner had failed five out of five Waddell tests and complained of intractable neck pain at a level of 10/10, which was alleviated by nothing. Dr. Singh explained that the delayed onset of cervical symptoms could have been explained if the symptoms included radiculopathy. However, Dr. Singh found that Petitioner complained of no active radicular symptoms, merely axial pain. Axial pain, according to Dr. Singh, would have produced immediate symptoms.

Arbitrator McCarthy was not persuaded by Dr. Singh's causation opinion and concluded the Petitioner had demonstrated a causal connection between the original accident on December 23, 2010 and his cervical condition. He awarded Petitioner related medical and lost time benefits.

The Commission views the evidence differently and finds Dr. Singh's causation opinion more persuasive than Dr. Mulconrey's. The Commission notes that Dr. Mulconrey did not examine Petitioner until August 1, 2011, seven months after his fall. He relied on Petitioner's verbal history as to the onset of symptoms and the absence of any cervical complaints prior to this incident, but he agreed that failing five out of five Waddell tests, as Petitioner did during his Section 12 exam by Dr. Singh, would be consistent with an inaccurate historian. The record also contains evidence of pre-existing degeneration in Petitioner's cervical spine, as documented by a CT scan from 2008. The Commission is persuaded by Petitioner's failure to seek treatment for his neck for several months after the fall and by his failure to mention neck pain to Dr. Johnson or the physical therapists who worked to alleviate his shoulder complaints. On April 4, 2011, Dr. Johnson noted that Petitioner had full range of motion in his neck "without any pain or tenderness."

The Commission finds that Petitioner failed to prove that his cervical condition was causally connected to his work accident on December 23, 2010. The Arbitrator's award of those medical expenses and temporary total disability related to Petitioner's cervical condition is reversed.

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 25, 2014, is hereby modified.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of $497.74 per week for 33-5/7 weeks, commencing May 12, 2011 through January 2, 2012, when he was released to return to work full duty by Dr. Johnson, that being the period of temporary total incapacity for work under Section 8(b) of the Act. Respondent is to receive credit for benefits that have been paid.

15IWCC0541

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner for reasonable and necessary medical expenses related only to Petitioner's left shoulder injury, as provided in Sections 8(a) and 8.2 of the Act. Medical expenses for treatment of Petitioner's left cubital tunnel and cervical spine condition are excluded from this award.

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 with the Commission a Notice of Intent to File for Review in the Circuit Court without the filing of such a notice, or after the time of completion of any judicial proceedings, if such a notice has been filed.

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 injuries.

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

Bond for removal of this cause to the Circuit court by Respondent is hereby fixed at the sum of $17,000.00. 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 the Circuit Court.

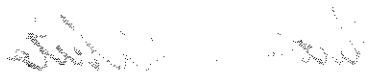
DATED: JUL 16 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-06/09/15
jdl/dak
68



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

DONATH, RICK
Employee/Petitioner

Case# 11WC034165

AMERICAN NATIONAL RED CROSS
Employer/Respondent

15IWCC0541

On 11/25/2014, 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 0.07% 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:

0225 GOLDFINE & BOWLES PC
ATTN: WORK COMP DEPT
4242 N KNOXVILLE AVE
PEORIA, IL 61614

0075 POWER & CRONIN LTD
RORY McCAIN
900 COMMERCE DR SUITE 300
OAK BROOK, IL 60523

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RICK DONATH
Employee/Petitioner

v.

AMERICAN NATIONAL RED CROSS
Employer/Respondent

Case # **11** WC **34165**

Consolidated cases: _____

15IWCC0541

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 **DOUGLAS McCARTHY**, Arbitrator of the Commission, in the city of **PEORIA, ILLINOIS**, on **10/21/2014**. 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **12/23/2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being ***is*** causally related to the accident with respect to his left shoulder and cervical conditions; causation for the left cubital tunnel is denied..

In the year preceding the injury, Petitioner earned $**38,823.72**; the average weekly wage was $**746.61**.

On the date of accident, Petitioner was **56** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**53,329.29** for TTD, $**32,701.81** for PPD, $**-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 reasonable and necessary medial services, pursuant to the fee schedule contained in Petitioner's Exhibit 9, with the exception of treatment for cubital tunnel, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $497.74/week for 180 weeks, commencing 05/12/2011 through 10/21/2014, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $86,031.10 for temporary total disability benefits and partial permanent disability benefits that have been paid.

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.

D. Dyle McCarthy
Signature of Arbitrator

November 20, 2014
Date

ICArbDec19(b)

NOV 25 2014

ATTACHMENT TO ARBITRATOR'S DECISION

Rick Donath vs. American National Red Cross

IWCC No.: 11 WC 34165

In support of the Arbitrator's decision regarding **(F) is Petitioner's current condition of ill-being causally related to the injury**, the Arbitrator notes as follows:

The Petitioner testified at Arbitration that he was employed by the Respondent. The Petitioner testified that on December 23, 2010, while at work he fell and landed on his left side with his arm extended. The Petitioner sought medical attention at OSF Prompt Care with Dr. Dejan Maksimovic on January 16, 2011. He testified that he waited to obtain treatment because the accident occurred right before the holidays and he wanted to see if his symptoms would resolve on their own.

He gave a history to Dr. Maksimovic that he had tripped over some boxes at work, breaking his fall with his outstretched left arm. The Petitioner told the doctor that he had immediate pain and swelling and that his symptoms had been constant since that time. He said the pain was worse with certain movements of arm and radiates up into left neck. (Petitioner Exhibit 1) Dr. Maksimovic recommended to rest the area, had an X-Ray done of the shoulder, and to follow up with a primary care physician if there was no progress. (Petitioner Exhibit 1) The X-Ray taken on January 16, 2011 was negative. (Petitioner Exhibit 1)

After the condition did not improve the Petitioner next saw his primary care physician Dr. Timothy Lawless on January 25, 2011 and gave a history consistent with his testimony at Arbitration. Dr. Lawless' records show that the Petitioner complained of left shoulder and neck pain. He said that he could not turn his neck. Dr. Lawless ordered physical therapy on his next visit, February 7, 2011, and the prescription note contained a diagnosis of a left shoulder and neck injury. (PX 2)

The Petitioner had therapy at IPMR for the first time on February 18, 2011. The Petitioner provided IPMR with a history consistent with his testimony at Arbitration. (Petitioner Exhibit 3) In the initial therapy evaluation form, the medical diagnosis lists the Petitioner's injury as left shoulder and neck injury with a history of pain in neck and left upper extremity. (Id) In the same note, in the history of present illness, the Petitioner states "pulling a cart down a hallway and it got caught on another cart and fell on left arm and states that he has pain in left arm to elbow and in neck and around side of head to the front of head". (Id) He also explained to the therapist that he was right handed and that he was able to ignore his pain and work through it. (Id) The Petitioner had physical therapy on a regular basis through March 24, 2011. On February 21, he reported pain in the neck with cervical rotation and lateral flexion. On March 3, he said that it felt like there was something torn in his neck. On March 15, the therapist noted myofascial dysfunction, and on March 24, the Petitioner reported cervical paraspinal and upper trapezious tenderness. (Id)

After the Petitioner complained of continued pain in the left shoulder and the left side of the neck, Dr. Lawless scheduled an MRI with the Peoria Imaging Center on March 30, 2011. (Petitioner Exhibit 2) This MRI revealed a complete tear of the supraspinatus tendon and rotator cuff tendinosis. (Petitioner Exhibit 4) The parties agree that the shoulder injuries are causally related to the Petitioner's accident.

Following the MRI the Petitioner was referred to Dr. Brent Johnson at Midwest Orthopedic Center. The Petitioner first saw Dr. Johnson on April 4, 2011. Dr. Johnson recommended surgery for left shoulder rotator cuff repair. That surgery was performed on May 12, 2011. (Petitioner Exhibit 5)

Following the surgery the Petitioner testified to having cervical pain. His treatment consisted of physical therapy for his shoulder. He was seen by Dr. Lawless on July 11, 2011, again complaining of left shoulder and let sided neck pain. Dr. Lawless ordered an MRI of the neck that was conducted on July 15, 2011 at Peoria Imaging Center. (Petitioner Exhibit 4)

The Petitioner was then referred to Dr. Mulconrey at Midwest Orthopedic Center. Dr. Mulconrey, after reviewing the MRI, assessed the Petitioner with cervical spondylosis and cervical radiculopathy and recommended anterior cervical decompression and fusion C5 to C7. (Petitioner Exhibit 5) The surgery was performed on August 30, 2011. (Petitioner Exhibit 5) Initially, the Petitioner has post-operative improvement. However, the Petitioner returned to Dr. Mulconrey on November 7, 2011 with continued pain and complications. After therapy proved ineffective a CT scan was ordered on February 15, 2012. After reviewing the CT scan Dr. Mulconrey referred the Petitioner to the Advanced Pain Management of Illinois.

The Petitioner saw Dr. Demaceo Howard and was given epidural steroid injections on March 27, 2012. (Petitioner Exhibit 6) After receiving the injections and receiving no relief the Petitioner returned to Dr. Mulconrey. Dr. Mulconrey concluded that the Petitioner had multilevel cervical spondylosis, multiple level cervical facet arthropathy, and pseudoarthrosis C5-6 and C6-7 and would proceed with revision anterior cervical corpectomy at C5-6 and C6-7 with anterior cervical decompression and fusion at C4-5. (Petitioner Exhibit 5) This second procedure was done on May 15, 2012.

While following up with Dr. Mulconrey on September 12, 2012 for continued pain the Petitioner was given an EMG evaluation and was to follow up with Dr. James Williams at Midwest Orthopedic Center regarding that evaluation. The Petitioner followed up with Dr. Williams and it was revealed he had cubital tunnel syndrome and was recommended for a cubital

tunnel release. (Petitioner Exhibit 5) The cubital tunnel release was performed on October 9, 2012.

The Petitioner testified that he did not notice symptoms of cubital tunnel until sometime after his cervical spine surgery. Dr. Mulconrey testified that the petitioner did have signs of cubital tunnel for the first time during his examination on June 27, 2012. (PX 7 at 21)

The Petitioner continued to treat with Dr. Mulconrey because of continuing cervical problems. Due to these continued problems, Dr. Mulconrey ordered a repeat CT myelogram to be done of the Petitioner's cervical spine. The result of this test showed a collapsed of the corpectomy in the C7 vertebral body. Dr. Mulconrey stated that this was at the same site that the Petitioner had already had his pseudarthrosis. (Petitioner Exhibit 7, pp.22-23) Given that the surgical site had collapsed and therefore failed for a second time, a third surgery involving a fusion from C3 to T2 was discussed.

In his evidence deposition, Dr. Mulconrey opined that while the fall in question did not cause the Petitioner's degenerative findings, nor spondylolisthesis, in his opinion it did aggravate those conditions and cause the need for the first surgery which was performed on August 30, 2011. Dr. Mulconrey went on to state that but for the failure of the first surgery, the second and third surgeries would not have been necessary and the need for those surgeries flowed directly from the failure of the first surgery. (Petitioner Exhibit 7, pp.34-37)

In his evidence deposition, Dr. James Williams, after being given an exhaustive hypothetical which included each and every complaint that the Petitioner had with regards to his left elbow, and the date on which said complaint was made, Dr. Williams was asked whether or not he felt that accident in question caused the Petitioner's cubital tunnel syndrome. Dr. Williams responded, "I think that it is possible". (Petitioner Exhibit 8, pp.14-15) Later on cross-

examination, Dr. Williams changed his opinion stating there was a causal relationship. (Id at 26) He was asked how that could be his opinion when the Petitioner did not appear to have problems in his left elbow immediately after the fall, Dr. Williams testified that there could be a latency period between the trauma and the time when symptoms would develop. Dr. Williams then testified that he has seen this in his practice before and he felt that the Petitioner's presentation in this case was within an acceptable time range for the latency period to have occurred.

At the request of the Respondent, the Petitioner was examined by a Dr. Kern Singh with regard to his neck treatment. It was Dr. Singh's opinion that the Petitioner had merely suffered a soft-tissue muscular strain from the work accident and that the disc degeneration was a preexisting condition not aggravated by the accident. The primary reason for Dr. Singh's opinion on this matter was that the Petitioner did not have immediate pain in his cervical area which was documented. In fact, on direct examination, Dr. Singh was asked if there is nothing which substantiates pain complaints within say the first month after injury, would that affect your causation opinion at all? ...let's assume that there wasn't pain for the first month, let's assume there is no medical records indicating pain for the first month. Would you maintain, 100%, your causation opinions here today? Dr. Singh responded, "I would stand by my causation opinions for the reasons I gave previously." (Singh Deposition, pp.17-19) Petitioner's treatment records show that the Petitioner clearly complained of neck pain to Dr. Lawless on January 25, 2011, which was his second treatment by any physician following his accident.

Dr. Nikhil Verma, had examined Petitioner on March 6, 2013 at the Respondent's request. He opined in his deposition that Petitioner suffered a work-related injury to his left shoulder and found the treatment rendered by Dr. Johnson to be causally related and reasonable. Dr. Verma opined that the cubital tunnel procedure performed by Dr. Williams was

not causally related (Dr. Verma Deposition Transcript, p. 10). Dr. Verma explained that there was no proximal relationship for an elbow event. He noted that to substantiate a traumatically-caused cubital tunnel syndrome, one looks for 1) an injury mechanism commensurate with the diagnosis; and 2) the onset of symptoms with a temporal relationship to the injury (p. 10-11). Dr. Verma also explained that the most common etiology for cubital tunnel syndrome is an idiopathic one, and noted comorbidities that correlate, including: diabetes, hypertension, obesity, steroid use, etc.

The Petitioner testified at Arbitration that he had remained off of work while awaiting authorization for the third surgical procedure under Dr. Mulconrey. The Petitioner testified that due to the fact he had received an approval for a medical card, he underwent said procedure a few weeks prior to the Arbitration. The Petitioner testified that he continues to be off work and under the care of Dr. Mulconrey, post-operatively from this third surgery. The Petitioner testified at Arbitration that prior to the accident in question, he had never experienced any problems or complaints with his left shoulder, neck, or left elbow. The Petitioner further testified at Arbitration that subsequent to his fall on December 23, 2010, he had not experienced any other accidents or injuries to those areas.

The Petitioner presented the Arbitrator with complete records regarding Dr. Maksimovic, Dr. Lawless, IPMR, Peoria Imaging Center, Dr. Johnson, Dr. Mulconrey, Dr. Howard, and Dr. Williams. These records document the Petitioner's medical care from the time of the injury and are consistent with his testimony at Arbitration. Based upon the foregoing, The Arbitrator finds the Petitioner to be credible.

As stated above, the Respondent agrees that the left shoulder injury is causally related to the Petitioner's accident. It is clear with respect to the cervical spine that the Petitioner had

longstanding degeneration at multiple levels prior to the accident. The absence of medical records documenting any prior treatment supports the Petitioner's testimony that those problems were asymptomatic. The Petitioner did not seek immediate treatment for either of his conditions, and Dr. Singh emphasized that in explaining his opinions against causation. However, the Petitioner's testimony that he wanted to try and work through his problems before seeking treatment are credible in light of he fact that he did clearly have substantial injuries to the left shoulder. While he may not have identified his neck to the emergency room doctor he saw on January 16, 2011, he clearly identified it as a source of pain to Dr. Lawless nine days later. He also referenced it to his therapists over the course of the following six weeks. He had a traumatic fall. He had no evidence of symptomatic cervical injuries prior to the fall. When he finally decided to begin treatment, he referenced the neck to his medical providers. The Arbitrator finds Dr. Mulconrey's reliance on the Petitioner's history to be reasonable and more persuasive than the testimony of Dr. Singh.

On the other hand, the Arbitrator finds the facts and testimony of Dr. Verma support the Respondent's claim that no causation exists between the accident and the Petitioner's left cubital tunnel. Causation for that condition has not been established.

In support of Arbitrator's decision regarding **(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,** the Arbitrator notes as follows:

In light of the Arbitrator's findings with respect to causation, the Arbitrator finds that the medical expenses as listed in Petitioner's exhibit 9 are both reasonable and necessary, with the

exception of those incurred for treatment of the petitioner's cubital tunnel, and orders the Respondent to pay said medical expenses pursuant to the applicable fee schedule.

In support of the Arbitrator's decision regarding **(L) What temporary benefits are in dispute, T.T.D.**, the Arbitrator notes as follows:

The Petitioner had surgery on May 12, 2011 with Dr. Johnson and it was noted he would be off work. (Petitioner Exhibit 5) The Petitioner has been unable to work since this time. The Respondent continued to pay the Petitioner's temporary total disability benefits from May 12, 2011 through May 30, 2013 (107 weeks) at the rate of $497.74. Since that time, the Respondent has paid the Petitioner P.P.D. benefits at the rate of $447.97 a week. These payments began on May 31, 2013 and have continued through the date of Arbitration (10/21/2014). Respondent has therefore paid $53,329.29 in T.T.D. benefits and an additional $32,701.81 in P.P.D. benefits.

Having found that the Petitioner sustained an accident which arose out of and in the course of employment with the Respondent, and having further found that the Petitioner's current condition of ill-being with respect to the left shoulder and cervical spine are causally related to said accident, the Arbitrator finds that the Petitioner was temporarily and totally disabled from May 12, 2011 through October 21, 2014 (the date of Arbitration) and orders the Respondent to pay 180 weeks of T.T.D. benefits at the rate of $497.74.

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

☒ 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

Roman Sanchez,
Petitioner,
vs.
Great Dane Trailers,
Respondent,

NO: 06 WC 028976

15IWCC0535

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 23, 2014 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $46,700.00. 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: JUL 15 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:5/28/15
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SANCHEZ, ROMAN
Employee/Petitioner

Case# 06WC028976

15IWCC0535

GREAT DANE TRAILERS
Employer/Respondent

On 6/23/2014, 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 0.07% 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:

2249 HARVEY & STUCKEL
DAVID STUCKEL
101 S W ADAMS ST SUITE 600
PEORIA, IL 61602

1872 SPIEGEL & CAHILL PC
MILES P CAHILL
15 SPINNING WHEEL RD SUITE 107
HINSDALE, IL 60521

STATE OF ILLINOIS)
)SS.
COUNTY OF Rock Island)

15IWCC0535

☐ 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

Roman Sanchez
Employee/Petitioner

v.

Great Dane Trailers
Employer/Respondent

Case # **06** WC **28976**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Rock Island**, on **May 6, 2014**. 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 _____

15IWCC0535

FINDINGS

On **March 10, 2006**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**27,894.36**; the average weekly wage was $**536.43**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **3** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

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

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

Respondent is entitled to a credit of $**15,858.58** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $357.62 /week for 4 1/7 weeks, commencing August 10, 2006, through September 6, 2006, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $28,783.57, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $15,858.58 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 Section 8(j) of the Act.

Respondent shall pay the Petitioner 20 % Person as a Whole in disability benefits which represents 100 weeks at a rate of $321.86 per week.

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.

D. Dylan McCarthy
Signature of Arbitrator

June 18, 2014
Date

JUN 23 2014

06 WC 28976

The Arbitrator makes the following findings of fact and conclusions of law on all issues in dispute.

C. Accident.

Mr. Sanchez is a non-English speaking person so his testimony was presented through a translator. An interpreter was also used at virtually all of the doctor's appointments and meetings with the Respondent, as shown by the various exhibits accepted into the record. Petitioner worked for the Respondent as a welder beginning on May 28, 2002. (RX 1) He had no known symptoms involving his right knee prior to March 10, 2006, except for possibly receiving treatment on one occasion in 2004 at the Kewanee Hospital. Records from that visit show that it primarily involved epigastric problems, and the Petitioner testified that he did not recall the visit. (RX 13)

Petitioner testified that he was injured on March 10, 2006 when he was performing his job for Respondent as a welder. He knelt down on a screw or other object which he testified penetrated his knee. When he tried to get up his lower body moved around and he felt pain in his right knee. He described it as a "nasty movement." He said the accident occurred near the end of his shift on a Friday. He said that his knee hurt and was hard to move. He asked a co-worker in Spanish if she could report it to his supervisor.

Records from the supervisor, Scott Murphy, were admitted into evidence. Murphy indicated that the Petitioner in fact told him of the accident on the date that it occurred. His report says that the Petitioner came down on a screw with his right knee on March 10, 2006 at around 2:00 pm. The report was dated March 24, 2006. (RX 2)

Petitioner testified that he returned to his regular job the following Monday and had ongoing pain in the knee. On March 15, 2006, he was seen by his family doctor for his knee, but no records from the visit were offered into evidence except for the doctor's return to work slip. (PX 3) It was dated March 15, and said that the Petitioner needed to change positions and avoid bending for long periods of time due to severe right knee pain. At his deposition, the physician, Dr. Ramos, did explain that he saw the Petitioner for right knee pain which began suddenly three days earlier, and was getting worse. (PX 13 at 28,29) He also testified that the Petitioner told him it was a job injury, but nothing was written down by the doctor concerning the facts of the occurrence. (Id) Dr.Ramos testified that he ordered an MRI of the knee following that visit.

Petitioner was sent by the Respondent to Dr. Potaczek, an orthopedic surgeon, on March 24, 2006. Petitioner testified that he was sent to the doctor because he continued to complain about the knee to a co-worker named Melissa, who in turn notified the Respondent. Lynette Lempke, who at the time was in charge of workers compensation investigations for the Respondent, testified that Melissa could have notified her of the Petitioner's problems. In any event, it is clear from the doctor's notes that Ms. Lempke made the referral to Dr. Potaczek. (RX 11) It is also apparent to the Arbitrator that she began investigating the accident on that date, as that was the date that the Petitioner's supervisor completed his aforementioned report. (RX 2) It is unclear as to why, or if, the supervisor notified Ms. Lempke of the accident over the course of the prior two weeks.

On March 24, 2006, Dr. Potaczek placed Petitioner on light duty and diagnosed a possible meniscus tear. His history noted that when Petitioner was squatting and kneeling at work and came up he had discomfort on the medial side of his knee and it had been swollen since that time. (Pet. Ex. 2, noted dated 3/24/06). An interpreter was present for the visit. On examination, the doctor noted mild to moderate effusion, pain on the medial joint line and a positive McMurray's sign. He diagnosed a possible meniscal tear. (Id) He ordered light duty and Respondent accommodated the light duty restriction and assigned Petitioner to work as a bathroom monitor beginning 4/27/06. (Resp. Ex. 11).

Dr. Potaczek also ordered an MRI which found a meniscus tear in the right knee and he performed surgery on April 13, 2006. The surgical report notes a history of a twisting injury to the right knee. The doctor found effusion and mild synovitis of the right knee joint, along with a complex tear of the posterior medial meniscus, which he repaired. He further noted that the Petitioner's lateral meniscus looked pristine. (PX 2) Petitioner returned to his light duty job April 17, and physical therapy was ordered. On June 26, 2006, the Petitioner was again seen by Dr. Potaczek. The doctor noted the Petitioner walking normally with no effusion. He told him he could return to full duty work but to try and avoid kneeling. (Id)

Petitioner said that he returned to welding but at a position where he did not have to bend or stoop. He testified that he performed that job well, but that on one occasion he had to return to his old type of welding and had right knee pain.

Petitioner did not see Dr. Potaczek again until August 17 and by that time he had been sent home from work for a back injury which Respondent said was not work related. It is the subject of a worker's compensation claim that is still open. On August 17 Dr. Potaczek said he did not order any work restrictions because Petitioner was already off work but he did administer cortisone shot in the right knee. His exam was negative. (Pet. Ex. 2, note dated 8/17) On 8/24 Dr. Potaczek said he wanted another MRI because of continuing problems and would allow Petitioner to work light duty. On 9/7/06, Dr. Potaczek reviewed the MRI, which he said showed some arthritis, and performed an examination. He said the Petitioner showed good strength and was able to bend the knee easily, with no effusion. He released the Petitioner from his care concerning the knee, but said he needed a

referral to a neurosurgeon for his lower back. The Petitioner went back to Dr. Potaczek on October 23, 2006 complaining of right knee pain. The doctor prescribed Ultram. Those notes showed that Dr. Potaczek considered returning Petitioner to work on restricted duty because of his knee but did not do so because of Petitioner's need for therapy. His note said: "when the doctor releases him for his back I can then release him for his knee". (PX 2)

The Petitioner did not return to Dr. Potaczek is until 02/01/10. Petitioner still had complaints related to his knee and received another cortisone injection. Dr. Potaczek said he was still off work from his back problem so there was nothing he could do with his knee. On 3/8/10 he gave Petitioner another cortisone shot, told him to use a cane, and take anti-inflamatories. Petitioner was also complaining of left knee problems at that time. Dr. Potaczek said he was too young for a knee replacement, and there is no indication that the Petitioner has followed up with the doctor.

Mr. Sanchez testified without contradiction that he has not had any injury to his right knee either before or after his accident at work. The Respondent's argument that the accident did not occur is rebutted by the report of its own supervisor who says the Petitioner told him of the accident the day that it happened. Respondent also argues that the Petitioner's credibility is in question because he claimed at arbitration that the nail penetrated his skin, while not reporting that fact to any of his treating doctors. The Arbitrator is not persuaded by that argument. First of all, it is clear that the Petitioner does not speak nor understand the English language. His histories were all obtained through interpreters. Secondly, it is clear from Dr. Potaczek's initial exam notes that the Petitioner had acute problems with his right knee. Whether there was penetration by the nail or screw or just a contusion, as was reported in the Petitioner's own accident report dated March 28, it is clear that something happened to his knee around the time he saw Dr. Potaczek. (RX 3)

For the reasons referenced above, the Arbitrator finds that the Petitioner sustained an accidental injury to his right knee at work on March 10, 2006.

F. Causal Connection.

The timeline before and after the accident through October 23, 2006 supports a finding that the Petitioner's knee injuries were causally related to his accident. A bigger issue is whether the Petitioner's ongoing problems for which several doctors have suggested a total knee replacement are also causally connected.

Four physicians hired to examine the Petitioner provided opinions on the issue. Dr. Eilers, a physical medicine and rehab specialist who examined the Petitioner on July 31, 2007 and performed a subsequent record review in 2010, testified that there was a causal connection. He said that his exam showed an

altered gait and pain on flexion, which he attributed to arthritic changes which progressed since the accident and surgery. (PX 8) He further testified that his review of later diagnostics, including an MRI and plain films taken in March 2010, supported his opinion that the accident produced an aggravation which was ongoing and in need of further surgical care. (PX 15 at 12,18) Dr. Watson, an orthopedist who examined the Petitioner in September 2012, opined that the Petitioner had severe preexisting arthritis and a degenerative tear of the meniscus which were aggravated by the accident resulting in an acceleration of the need for treatment, including a knee replacement. (PX 9) Dr. Cole, also an orthopedic surgeon, examined the Petitioner for the Respondent on August 9, 2011. He agreed that the accident aggravated the pre existing condition, but that the aggravation basically ended sometime in 2009. He cited the lack of ongoing treatment as the reason for his opinion, but went on to say that his exam findings supported the treatment recommendation for a knee replacement. (RX 15) Finally, Dr. Martin, an occupational medicine specialist, opined that the accident did not cause any of the Petitioner's knee injuries. He said there was no report by the Petitioner of any twisting when his knee came in contact with the screw or nail, and twisting was a prerequisite for a meniscal tear. He attributed the Petitioner's problems to arthritis. (RX 14 at 20, 28)

The Arbitrator is persuaded by the opinions of Dr. Eilers and Watson. First of all, the Petitioner obviously did twist his knee when he unexpectedly knelt on a screw or nail. The fact that he didn't report the exact mechanism of his injury to his physicians is meaningless, given his language difficulties and especially the findings of Dr. Potaczek consistent with internal derangement. Secondly, while he did not continue to treat on a steady basis after Dr. Potaczek released him in late 2006, he did treat sporadically with Dr. Ramos, always reporting right knee symptoms. He complained of his knee during his after therapy in February 2007. He complained again to Dr. Ramos during office visits in August 2009, March 2010 and May and November of 2011. (PX3, 5) Dr. Watson's opinion that he will need a new knee earlier in his life than he would if he was not involved in his accident makes perfect sense. There was no evidence of an intervening accident and it is clear that the Petitioner, 47 years old, has severe degenerative arthritis of the right knee.

Clearly, the accident need not be the sole or even primary cause of the Petitioner's condition of ill being, so long as it is a cause. The above evidence shows that the accident is causally related to the Petitioner's current condition of ill being in the right knee.

J. Medical Treatment

In light of the above findings on accident and causal connection, Respondent is liable for incurred medical bills as shown in Pet. Ex. 16, pursuant to the Fee Schedule, with credit for amounts paid to date.

K. TTD

On the issue of TTD benefits, the Arbitrator must determine when the Petitioner's injuries involving his right knee reached a point of stabilization. Shortly after his surgery, the Petitioner returned to light duty work. According to Dr. Potaczek's records, the Petitioner was allowed to work without restrictions sometime in early June. The Petitioner testified that he was given a welding job which was less strenuous than his regular job. On June 26, he complained of pain to Dr. Potaczek and was told to try and avoid kneeling.

The Petitioner saw Dr. Ramos on July 26, 2006 with complaints of severe back pain with radiation to the legs. He was diagnosed with a herniated disc at L5-S1, and given work restrictions of standing no more than one to two hours while working. (PX 11) He was taken off work by the Respondent on August 10, and has not returned to work since that date. Ms. Lempke testified that he was taken off work due to his lumbar condition. He was, however, still treating with Dr. Potaczek for his right knee. The doctor's notes indicate he was given a cortisone injection on August 17. One week later, a new MRI was ordered. On September 7, 2006, Dr. Potaczek met with the Petitioner for an examination. His office notes indicate that he felt the MRI was consistent with arthritic changes in the medial femoral condyle, a finding he said was no surprise. His exam was normal with respect to strength and motion. He released the Petitioner from care concerning his right knee. There is no indication that he ever lifted his restriction of avoidance of kneeling. He saw the Petitioner again on October 23, 2006, and noted complaints of knee discomfort. He suggested a release to the tool room, but noted that the Petitioner was in therapy for his lower back and unable to work. (PX 2) As is referenced earlier in this decision, the Petitioner has continued to see doctors periodically for knee pain, and a suggestion has been made for a possible future knee replacement.

Based upon the above evidence, the Arbitrator believes the Petitioner's right knee reached a point of stabilization on September 7, 2006. He is thus entitled to TTD benefits from August 10, 2006 through that date.

L. Nature and Extent

The Petitioner testified that his regular welding job required him to squat and work with his knees in a bent position. His testimony was unrebutted. Since the accident, the Petitioner has only tried his regular job on one occasion, sometime in July 2006. He reported an increase in knee pain when kneeling and Dr. Potaczek instructed him not to kneel. There is no indication that the restriction has ever been lifted.

The evidence established that the Respondent had a light duty program, and the Petitioner was provided light duty both before and after his knee surgery. Ms. Lempke testified that the welding job he was given after surgery did not require him to squat, and the Petitioner testified that he was able to perform that job. He was taken off the job because of his lower back.

Petitioner is now requesting vocational rehabilitation. The Arbitrator does not believe that voc rehab is warranted. The Petitioner was provided a job in the same field he was in before the accident. He was able to perform that job. Since he was taken off work because of his lower back he has not produced any evidence that he's tried to find work within his restrictions. When asked about his work attempts on cross-examination, the Petitioner provided a very vague response.

His right knee is post medial meniscal repair with aggravated degenerative arthritis. As the evidence establishes that he is partially incapacitated from pursuing his usual and customary line of employment, and award under Section 8 (d) 2 is appropriate. Accordingly, the Arbitrator awards 20 % Person As A Whole disability.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Wolnik,
Petitioner,
vs.

NO: 98 WC 68392

Die-Tech Industries,
Respondent.

15IWCC0533

DECISION AND OPINION ON REVIEW

Petitioner appeals the decision of Arbitrator Williams finding that Petitioner sustained an accidental injury on February 26, 1998. As a result Petitioner proved a causal relationship existed through May 9, 2003 but failed to prove a causal relationship thereafter. The Arbitrator found Petitioner was temporarily totally disabled from February 29, 1998 through November 13, 1998 and November 12, 2002 through May 1, 2003 for 61-3/7 weeks, is entitled to medical expenses through May 9, 2003 and is not entitled to vocational rehabilitation. Furthermore, Petitioner is permanently partially disabled to the extent of 40% man as a whole under Section 8(d)2 of the Illinois Workers' Compensation Act. The issues on Review are whether a causal relationship exists between Petitioner's present condition of ill-being and the February 26, 1998 work accident and/or need for medical services, the extent of Petitioner's temporary total disability, the nature and extent of Petitioner's permanent disability, the amount of reasonable and necessary medical expenses and whether Petitioner is entitled to additional compensation under Sections 19(l) and 19 (k) of the Act and attorneys' fees under Section 16 of the Act. The Commission, after reviewing the entire record, affirms and expands the Arbitrator's decision as set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner, a tool and die maker, underwent surgery on April 13, 1987 which consisted of a lumbar hemilaminectomy at the L4-5 level on the right. After the surgery, he returned to full duty work. Petitioner testified that he did not undergo any medical treatment for his back after his release to return to work in 1987 through 1998.

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2. On February 26, 1998, Petitioner was a vice president/co-owner of Respondent's company. He was a working officer/partner of a company and performed tool and die duties.

3. Petitioner testified that on February 26, 1998 he was transferring 200-300 steel plates which weighted 15-20 pounds from one skid to another when he noticed a pain in his back. Petitioner said a few days later the pain radiated down his left leg and into his calf. Petitioner remained off of work from February 29, 1998 through November 13, 1998.

4. On April 10, 1998 Petitioner underwent a lumbar MRI which showed left paracentral extrusion of L5-S1 disc measuring 1 cm with impingement of the left S1 nerve root, a mild posterior bulging of L3-4 and L4-5 discs with borderline spinal stenosis of the dural sac measuring 8mm, minimal peridural scar at the L4-5 level on the left and minimal scar or small annular tear at the L3-4 level. On June 1, 1998 Petitioner underwent surgery consisting of a lumbar hemilaminectomy at L5-S1 on the left.

5. Petitioner testified he left Respondent in November of 1998 because he was not getting along with his partner and he opened RMB Precision Tools, his own company, which did the same type of work. He had part-time help which consisted of two to three employees and an apprentice. Between November 13, 1998 and November 2002, he worked at RMB. He was performing the same responsibilities he had at Respondent's company. He saw customers, performed sales and he worked production.

6. On March 4, 1999 Petitioner underwent a lumbar MRI which showed degenerative and post-operative changes, but no focal disc herniation.

7. Petitioner said when he worked at RMB from 1998 through 2003 he worked his own hours and he work on a limited basis. He worked in 2 hour increments and then he would go to his house six blocks away and lay down. Periodically, after lunch, he would go back to work and work until about 4:00 p.m.; he would then go home and return again to the shop and work until 6:00 before going home. If he had more work, he would go back again to the shop and work until 10-11:00 p.m. When he drove to see customers he was able to sit and stand as needed.

8. On March 28, 2002 Petitioner underwent a lumbar MRI which showed that Petitioner had previously undergone a left side L5 laminectomy and it showed he had soft tissue thickening encasing the left S1 nerve root which showed an enhancement consistent with scar formation. The L4-5 level showed a posterior central bulging with moderate spinal stenosis and no evidence of scar formation. The L3-4 disc show posterior central bulge with mild spinal stenosis and small amount of granulation tissue. There was also a minimal posterior central bulging of the T11-T12 level. On November 12, 2002 Petitioner underwent surgery consisting of a lumbar hemilaminectomy and a

decompression at the L5-S1 level. Petitioner was off of work from November 12, 2002 through May 1, 2003.

9. On April 10, 2003, Dr. Kranzler recommended that Petitioner return to work in a gradual fashion. Petitioner testified that after he returned to work he found it was difficult to work prolonged hours. He further said that after working an hour and a half he would go home and lay down because the pain was too severe and he could not function. He experienced pain down his hip, through his thigh and down his left calf.

10. On May 9, 2003 Petitioner was evaluated by Dr. Zelby. At that time Petitioner reported he continues to improve and has more good days than bad days with no complaints of low back pain. He did have intermittent numbness and tingling in the left anterolateral foreleg and foot with an occasional left leg weakness. He reported standing is his worse position. His examination revealed diminished sensation in the left L5 distribution at the foot and diminished muscle reflexes at the knees and both ankles. Dr. Zelby opined that Petitioner's recent surgery was not appropriate. Dr. Zelby acknowledged that Petitioner had returned to work part time and he felt that Petitioner had reached maximum medical improvement and Petitioner could resume all vocational and avocational activities without any restriction. He did not recommend a functional capacity evaluation based on the fact that Petitioner was performing his regular job duties, albeit only two hours a day.

11. On June 5, 2003, Petitioner followed up with Dr. Kranzler. Petitioner reported that his left foot was partially numb and this occurs off and on. He also experiences left ankle and leg pain off and on, but it was not present that day. Dr. Kranzler noted that Petitioner works approximately two hours a day. Petitioner reports he is unable to stand for more than one hour at a time. Dr. Kranzler noted that although he still has some symptoms from time to time it was his impression that Petitioner was doing much better. He instructed Petitioner to return to work in a graduated fashion and to continue to take Vicodin. From June 6, 2003 through August 26, 2010, a seven year period, Petitioner testified he did not receive any treatment for his low back.

12. Petitioner testified he stopped working in July of 2003 because he could not honor his commitments; he could not work and he could not function. He said he was the main worker and was working 12-14 hours a day with a few part-time employees. He could not work for more than a couple of hours. RMB closed when he decided he could not work anymore. Petitioner agreed that none of his doctors said he could not work at that time.

13. In 2005 and at his attorney's request, Petitioner said he was evaluated by Dr. Blonsky. Dr. Blonsky noted that Petitioner had a second surgery on November 11, 2002 to remove scar tissue, but the Petitioner did not experience any relief of his symptoms after the second surgery. Initially, he felt some slight improvement, but it took him about five months to return to work. Following that time his pain progressed and he was unable to continue working. He had returned to tool and die making but he was only able to work 3

to 4 hours at a time and then he would have to go home and lie down. He owned his own shop so he was able to set his own hours. He eventually closed down his business because of his inability to perform the functions of a tool and die maker. A functional capacity evaluation was recommended but it has not yet been approved. Currently, Petitioner reports occasional pain in the left sacroiliac joint area but the pain is mainly in the center of the left buttock. He reports that all activities increase his pain. He experiences a cramping sensation in the back of his thigh. His calf pain is dull and his muscles spasm. He also feels spasms and twitching in his heel tendon and his foot is numb. He reports that if he is on his feet for more than three hours, the pain worsens and he had to sit or lie down. If he sits, the pain is constantly present. It is not as intense as when he stands. Petitioner reports he spends a great deal of time in a hot whirlpool at home. When he lays down it also helps. He reports his left leg feels weak and he often trips when he walks upstairs. He reports he can no longer ride a bike, ski or play baseball. In the past, he has been diagnosed as being depressed and he had received medication from his primary physician. He reports he is also a recovering alcoholic and he attends AA meeting twice a week. He reports he relapsed after the first surgery but he has been sober since. He is currently taking Vicodin. Dr. Blonsky opined that Petitioner's history and current physical evaluation are consistent with a left S1 radiculopathy with a possible L5 involvement which is most likely secondary to post-operative fibrosis. In addition, there are findings consistent with a myofascial pain syndrome involving the left hip girdle muscles, most prominently the piriformis and to a lesser extent the gluteus maximum. Dr. Blonsky testified that he has reviewed Petitioner's numerous medical records and he believes Petitioner's current condition is directly related to the February 26, 1998 injury. Dr. Blonsky further opined that because of the nature of his work, which requires him to stand at a press and/or other machines all day, he is significantly disabled and his current condition will prevent him from doing so. Dr. Blonsky testified that Petitioner could possibly perform sedentary work activities so long as he is given the option to change positions periodically. He recommended that Petitioner be enrolled in an inter-disciplinary chronic pain management program with the goal being that Petitioner would to be able to return to some type of gainful employment which is not as physically demanding as that of a tool and die maker.

14. On September 11, 2006 Petitioner saw Dr. Lofland a psychologist. During the interview, Petitioner ranked his pain as being a 6 out of 10 with the worse being 6 and best being 2. He stated he is only able to sit comfortably for 20 minutes before his pain becomes intolerable. However, he is able to drive for a couple of hours. He was unable to answer how long he is able to stand and initially responded that he does not walk but then stated he can walk for 10-15 minutes before becoming overwhelmed with pain. He reports problematic sleep patterns. He stays in bed for 17 hours per day on average but while asleep he wakes every hour. He cites depression and his physical limitations as reasons for his hypersomnolence. He states that sitting, laying down and activities increase his pain while sitting in a whirlpool, swimming or stretching improves his pain. He reports the surgery after his 1998 injury was unsuccessful and that the corrective surgery for scar

15IWCC0533

tissue was delayed so long his doctors believe it caused his permanent nerve damage. He is not currently on any medication because he does not have insurance or financial means to pay for doctors' appointments. He expressed frustration and said he has no life and cannot do anything. He sleeps all day and night having to awaken every 2 hours to stretch his back out and to avoid unbearable pain. He attempted to return to work after his injury and surgery but he has become increasingly unable to honor his commitments due to his limited physical functioning. Current psychological tests reveal he is mildly to moderately depressed. He rates his area of occupational and physical activity as 10/10 indicating he perceives complete disability in those areas. Based on this assessment, it is felt that Petitioner is experiencing at least a moderate degree of depressive symptomatology and that he would benefit from mental health services as soon as possible. He would also benefit from an interdisciplinary chronic pain management program.

15. On December 4, 2006 Petitioner reported to Dr. Blonsky that his back pain is getting worse. He reported experiencing a flare up of sciatic pain a week or so ago. He does very little in the way of activity. He reported that if he does anything physical the pain increases the next day. Dr. Blonsky noted that it has been recommended that Petitioner be in a chronic pain management program for his emotional and physical problems. Dr. Blonsky opined that Petitioner is not currently employable in any capacity. Although he suggested last year that Petitioner could possibly work in a sedentary capacity for up to three hours, he no longer believes Petitioner could sustain even this short period of activity. He strongly recommended that Petitioner be enabled to enroll in a multidisciplinary intensive chronic pain program as soon as possible.

16. On April 24, 2007, Petitioner treated with Dr. Newman after he fell and sustained a fracture of the distal fibula of his right foot. The week after Petitioner treated with Dr. Newman, Petitioner saw Dr. Surath for chronic back issues consisting of a herniated disc and sciatic nerve which are both cause his pain to worsen. Petitioner reported he is not currently taking any medication and occasionally a friend gives him Methadone to help him sleep. Dr. Surath prescribed Trazadone, Vicodin and Tylenol. On December 4, 2007 Dr. Surath noted Petitioner was addicted to cocaine and alcohol over 15 years ago. During the past 5-6 years, Petitioner has started drinking and this may be affecting his sleep. Petitioner has chronic back pain from a work injury. He reports that three years ago he started using cocaine occasionally with friends but he has stopped. Five years ago, after his wife left him and he lost his business, he started drinking a 6 pack a day. He reports his last use of alcohol was earlier today. On January 10, 2008, Dr. Surath noted that Petitioner is restless while sitting in the chairs. He is sucking on multiple lifesavers and smells slightly of possible ETOH, but he denies drinking any ETOH today. Petitioner reports drinking three beers since his last visit with psychologist in December and he reports he is not going to AA. He states that he has not had any recent falls. Lastly, he reports he feels alive again after his Trazodone dose was increased and now he sleeps 8 hours a night. On March 26, 2008, Dr. Surath noted that Petitioner has requested Tyco

No. 4 and Flexiril refills. Both medicines were given as a 15 day supply at the last visit. The Petitioner's request has been denied and he was counseled that if he needs refill of Narcotic or Flexiril he needs to see doctor first. It was further noted that Petitioner has been counseled on this topic repeatedly.

17. On April 18, 2008 Petitioner was evaluated by Dr. Ghanayem. He noted that Petitioner last worked in 2003 and stopped working because he was in too much pain. On physical examination, there is a strong smell of both cigarette smoke and alcohol on Petitioner's breath. Dr. Ghanayem states that a L4-5 disc herniation typically involves the L5 nerve root and on occasion can interfere with the S1 nerve root as well. Dr. Ghanayem noted that Petitioner has subjective complaints of left sided pain which is in multiple areas of distribution and which do not fit the anatomic pattern of the residuals pain resulting from an L4-5 discectomy or scar removal. He had problems in the L3, L4, L5 & S1 dermatomes. In addition, he currently has bilateral symptoms, but he only had one sided pain after his 1998 work injury. Dr. Ghanayem stated that if Petitioner was fine after the first surgery, he should have no basis for any bilateral symptoms at this time. Therefore, he opined that Petitioner has articulated significant subjective complaints which are not substantiated with a presumed lumbar disc that may have occurred in 1998. Dr. Ghanayem opined that there is a component of non-organic pain behavior in this case. He opined that Petitioner has reached maximum medical improvement and a chronic pain program this late after an allege work injury simply has no chance of providing Petitioner with any demonstrable benefit. Assuming he did sustain a second lumbar disc herniation in 1998, Petitioner should be able to function at least at the light to light-medium work capability. If necessary a functional capacity evaluation should be obtained.

18. On August 9, 2008 Dr. Blonsky issued a letter to Petitioner's attorney in which he stated that he disagreed with Dr. Ghanayem and opined that perhaps Dr. Ghanayem does not truly understand the nature of chronic pain management program. He further stated that it continues to be his opinion that Petitioner would benefit from psychological services and an interdisciplinary chronic pain management program.

19. On April 5, 2009, Dr. Blonsky again saw Petitioner. Petitioner reported recently his left knee buckled and he fell down some stairs and injured to his right elbow. About two years ago, he fell and fractured his right ankle. At this time, Petitioner continues to experience pain in his left buttock which radiates down the back of his thigh to his lateral calf and the ankle. His left foot is numb. He wakens with pain and it is present constantly. He leg feels irritated lying in bed and he constantly has to shift around to try to get comfortable. Petitioner reports he is no longer able to walk the dog and because the dog is too big and strong he pulls him. He is getting about ten hours of sleep throughout the day and night but it is interrupted. He feels constantly fatigued. He experiences more pain in his legs at night and wakes frequently with pain in the calves. He gets cramps and spasms in his calves. His hips are also painful, especially on the left side. His left knee gave out abruptly about two years ago resulting in a fracture of his right ankle. This

occurred again a week before the exam when he fell on some steps. It was his perception that he has a meniscal injury that required an arthroscopy of his right knee. Dr. Newman suggested a possible total knee replacement but he declined that surgery. He has a lot of pain in his left knee but he is holding off treating it at this time. The pain has eased since his right knee surgery. He was recently hospitalized for COPD. He has developed cellulitis of his foot from where they casted his ankle. He is depressed over the death of his mother. He is taking medication for his high blood pressure, has COPD and has trouble sleeping. He states he gave up smoking and has not had alcohol for four months. Dr. Blonsky noted that the findings on the physical examination are similar to those that have been noted previously. One of the unfortunate consequence of his lack of care is that he resumed drinking after being sober for several years. Dr. Blonsky opined that Petitioner's current complaints result directly or indirectly from the February 26, 1998 work injury. He further stated that Petitioner's ability to work is unchanged from his December 4, 2006 opinion. It is his opinion that Petitioner's current condition is permanent in nature and it will not allow him to function at more than a sedentary level of physical activity.

20. On June 4, 2010 Petitioner was evaluated by Dr. Obolsky, a psychiatrist. The doctor noted that Petitioner exhibits the following psychiatric conditions: alcohol dependence, cannabis abuse, cocaine dependence, hallucinogen abuse, substance induced mood disorder with anxiety and sleep dysfunction and substance related disorder. Dr. Obolsky opined that the above conditions are not causally related to the February 26, 1998 work event. In his opinion, Petitioner does not now exhibit any mental, emotional or cognitive impairment that prevents him from gainful employment. Petitioner reported 12 years of sobriety, but since the age of 50 he has been drinking off and on. Additionally, his reported history of 12 years of sobriety is contradicted by the medical records from St. Joseph that indicated he reported he stopped using alcohol in November of 1997. In addition to alcohol, Petitioner reported using LSD, other hallucinogens including marijuana and mushrooms. He also regularly used cocaine and pills, including both uppers and downers. According to the Resurrection Hospital's records, Petitioner reported a history of intravenous drug abuse. He reported alcohol and drug rehabilitation treatments and participating in AA. He reports he has seen six psychiatrists throughout his life which is contradicted by his history to Dr. Blonsky that he said he never saw a psychiatrist or psychologist. Petitioner reports he developed depression in his thirties. Although Petitioner reported current alcohol use and he denied use of other substances, this examiner cannot take his statement at face value. Dr. Obolsky opined that Petitioner is not mentally impaired from gainful activities consistent with his education, training experience and skills. Petitioner has indicated that his physical limitations have affected him emotionally and that is why he is on an anti-depressant. He reported that he does drive but not very often. He reports he has seen approximately six psychiatrists over the years. He also reports his company is no longer active and he basically gave everything up. He stopped paying rent on the building around 2003 when he finally realized he could not do it anymore because of the pain.

21. In a June 30, 2010 vocational rehabilitation report from Mr. Rascati, Petitioner reports his overall condition is poor. His left leg is "dead" to his foot. He must change positions approximately every 10-15 minutes. He explained that he is disillusioned about his condition and about working, noting that his overall condition is poor. During the evaluation, Petitioner took frequent breaks approximately every 15 minutes. He appeared to be easily distracted and had difficulty concentrating and had to be redirected throughout the meeting. The consultant repeatedly had to repeat questions because it appeared he was having difficulty processing and/or concentrating on the questions. Petitioner reports he uses a cane on occasions. He is taking Trazodone. He reported that as a result of the weakness in his leg, he fell and broke his right ankle approximately three years ago. He reported his back injury led to two knee surgeries and now he needs a third. He reported he is unstable in the shower and he uses a whirlpool and massage chair frequently. He does what he can, but he must take frequent breaks approximately every five minutes. He reports he can walk about 4 blocks, but he can stretch it to 6 blocks. He can sit and stand for 10-15 minutes before he has to change positions. Dr. Blonsky's December 4, 2006 and April 5, 2009 reports indicates Petitioner is not currently employable in any capacity. In the second report Dr. Blonsky also said that Petitioner's physical limitations are permanent and he will not allow Petitioner to function in more than a sedentary level. Petitioner reported he does not have an Illinois driver's license as it expired four years ago. He denies presently drinking alcohol. He has a high school education and completed a four year vocational program. Petitioner does not have a computer and does not know how to use one. He loved his job tremendously. He reads blueprints in order to manufacture dies. He worked in sales and has trained employees in this position. He worked his entire adult career as a tool and die maker. He would be classified as a highly skilled employee with 4 to 10 years of specialized training. It can be expected that his reasoning, math, language abilities would fall at the 9-12 grade level. In terms of his physical labor, he would be classified as at a medium level. Based on his work history, Petitioner would present the following transferable skills: performing a variety of duties, attaining precise limits and tolerances, making judgments and decision, analyzing data, speaking and signaling and setting up. Petitioner reported he was very disturbed about the process of not being able to return to his former work. He states he would love to work but cannot imagine functioning in any employment where he needs to sit or stand in one position for any length of time. He stated he feels frustrated and he spends most of his day watching T.V. and pacing around his apartment. He adds that he is pretty much homebound as he does not drive and can only walk a few blocks. He tried to use public transportation but he had difficulties doing so as a result of his current physical state. Petitioner presented a solid and consistent work history but it is also a singular work history having worked solely in the tool and die industry. Thus, Petitioner presents minimal transferable skills. According to Dr. Blonsky, Petitioner is incapable of working and he cannot function at more than a sedentary level. From a vocational standpoint when looking at Petitioner's singular work history, minimal transferable skills and overall presentation along with the fact that he does not drive, had difficulty

ambulating greater than 4-6 blocks, has limited lifting tolerance, had very limited sitting/standing tolerance of 10-15 minutes and appears to have significant difficulty concentrating, it is this consultant's opinion that he is not a candidate for vocational rehabilitation and is not employable.

22. On July 21, 2010, Dr. Kranzler completes a disability certificate for a parking placard. He diagnosed Petitioner as being permanent disabled due to back surgery and he checked a box which stated that there are severe limitations in this person's ability to walk due to an arthritic, neurological or orthopedic condition. On August 26, 2010, Dr. Kranzler noted Petitioner reported his left leg buckled and he broke his right ankle. He ordered studies of the lower extremity. The August 31, 2010 clinical dermatomal and mixed nerve testing of Petitioner's lower extremity showed evidence of the S1 left 1.3 sd//right 1.0 sd. The September 27, 2010 lumbar MRI ordered by Dr. Kransler showed Petitioner's back condition is post laminectomy at L4-5 and L5-S1 on the left. There is a minimal enhancing anterior epidural scar at these two levels. There is a posterior bulging disc with moderate spinal stenosis at L3-4 and mild spinal stenosis at L4-5 level. There are foraminal stenosis bilateral bulging discs at multiple levels with mild foraminal stenosis. The findings are worse at L5-S1 on the left with compromise of exiting left L5 nerve root.

23. Mr. Rascati, a certified rehabilitation consultant, was deposed on February 16, 2011. He testified he was provided the medical reports from Drs. Blonsky and Lofland and referenced her doctors as well. According to Dr. Blonsky, Petitioner is not currently employable in any capacity. He opined that Petitioner is not a vocational rehabilitation candidate based on his medical information, his overall presentation and his lack of concentration. Mr. Racati opined that Petitioner is not employable based on a lack of a return to work release, his minimal transferable skills, his lack of a driver's license and his overall presentation as someone who sees himself as being disabled. On cross-examination, Mr. Rascati stated he does not know how long Petitioner owned his own company after February 26, 1998. His file consists mainly of reports from Dr. Blonsky. He agreed that other than the antidepressant that Petitioner takes Petitioner was not under any treatment from any other doctor for his back. Mr. Rascati testified he was not aware of the fact that Dr. Obulsky determined that Petitioner had alcohol dependence, that he has a history of marijuana abuse, cocaine dependency, hallucinogen abuse, substance induced dysfunction. Petitioner did not tell him he was participating in AA. He does not know if Petitioner's difficulty in concentrating was related to his work accident. He does not have an opinion as to whether Petitioner's problems resulted from his 1998 work accident. He would agree that parts of Petitioner's present vocational problems are the result of his mental or emotional state. He does not have an opinion as to whether or not Petitioner's mental or emotional states are related to his work accident. He is unaware of the fact that Petitioner left Respondent and starting his own business. Petitioner gave him no history of looking for work. He did not know that Dr. Ghanayem found Petitioner could return to work at the light/medium work level.

24. Sharon Babat, a certified vocational rehabilitation counselor was deposed on March 9, 2011. She interviewed Petitioner on November 18, 2010 and was asked to complete a vocational assessment. She had Dr. Blonsky's April 8, 2008 evaluation in which he indicated Petitioner could return to sedentary work. She knew that Dr. Kranzler recommended light duty work while Dr. Obolski on June 4, 2010 stated Petitioner could return to work full time. She did not review any other medical records. She opined that Petitioner does not need vocational rehabilitation to return to his last employment, which was at a light to medium range. He could return to his employment as a machine shop owner. She is not aware of Petitioner attempting to find any employment. She opined that Petitioner has not suffered an impairment of earning potential as a result of his low back restrictions and she opined that there are jobs available to Petitioner. She said Petitioner could be a Tool and Die Company owner/supervisor, a die salesperson, a warehouse manager and lathe machine operator. She noted that Petitioner does not have a driver's license but he is not physically restricted from driving. Petitioner did not say he was under active medical treatment for his low back. Petitioner did not give her a history of past or present substance abuse problems, spending any time in jail, seeing a number of psychiatrists or being diagnosed for depression. Petitioner also did not report to her that he was receiving Social Security Disability benefits (SSDI). Based on Drs. Ghanayen and Obolski's opinions, she opined that Petitioner would be capable of full-time employment in his usual and customary field of machine shop manager or owner. She was not asked to perform a labor market survey.

25. A May 22, 2012 lumbar MRI ordered by Dr. Kransler showed moderate spinal stenosis seen at L3-4 and L4-5 with severe bilateral neural foraminal narrowing at L5-S1 level. On October 31, 2012 Petitioner underwent surgery consisting of a lumbar decompression laminectomy on L5 on the left side. On December 18, 2012, Dr. Kranzler indicated Petitioner was last seen on November 13, 2012. At that time, Petitioner reported he occasionally has shooting pain in the back of his legs. He is now six weeks out from the surgery and he is gradually increasing his activity. He is walking two times a day after using a stationary bicycle. On physical examination, his back reveals no spasm. His wound is healed. He walked well, including on his toes and heals. His sciatic notch was not tender. It was his impression that Petitioner was doing as well as could be expected at this point in time.

26. On January 17, 2013 Dr. Kranzler indicated Petitioner reports he feels the same. He has pain in his left hip, ankle and both calves and numbness in the top and bottom of his foot. He can raise his left leg up to 90 degrees. On exam, his back reveals no spasm. He walked with a limp favoring his left leg. It is his impression that Petitioner is recovering but he still needs four Vicodins a day.

27. On February 21, 2013 Dr. Kranzler indicated Petitioner reports pain in left hip, ankle, foot and toes, which causes him to limp on occasion. Petitioner reports he walks the dog

four times a day. He is walking faster and the pain has improved. He can live with this level of discomfort. All in all, he feels improved. On physical examination there are no spasms. He walks well on toes and heels. His wound is healed. Dr. Kranzler noted that it is his impression that Petitioner is still in pain so he prescribed Norco and opined that Petitioner remains totally disabled from work.

28. On June 6, 2013, Dr. Kranzler diagnosed Petitioner as having chronic pain syndrome, cervical degenerative disc disease and cervical radiculopathy. He noted that Petitioner has been complaining of a stiff neck for the last two months along with numbness in the left arm and occasionally the bottom of the left foot. He recommended that Petitioner be seen at the pain clinic.

29. On June 28, 2013 Petitioner saw Dr. Kiokemeister and reported chronic low back pain with radicular pain for many years. Dr. Kiokemeister noted that Petitioner has chronically use narcotic medications and presently he is on Vicodine or Norco. His pain score is 7 out of 10. He denies the use of alcohol. Dr. Kiokemeister prescribed Advinza and Norco.

30. On January 2, 2014 Dr. Kranzler sent Petitioner's attorney a letter in which he opined that Petitioner's June 1, 1998 surgery seemed directly related to his work accident while the November 11, 2002 and October 31, 2012 surgeries were more likely related to the scar tissue.

31. On February 14, 2014, Dr. Kiokemeister prescribed Methadone and Norco for the Petitioner. Dr. Kiokemeister indicated that Petitioner reported he feels he has improved significantly. With the use of medication, he would estimate his improvement as a 40% since his first visit. On April 11, 2014, Dr. Kiokemeister indicated that Petitioner's cervical MRI that shows significant cervical degenerative disc disease with marked spinal stenosis at C3-C7 most severe at C4-5 and C5-6. There was prominent disc bulging as well as disc osteophytes noted throughout those areas. Petitioner was instructed to continue taking the same medication, follow up on physical therapy and to consider cervical epidural steroid injections. On July 7, 2014, Dr. Kiokemeister refilled the prescription for methadone and Norco.

32. Petitioner testified that Dr. Kiokemeister has provides him pain management treatment on a monthly basis since June of 2013. He prescribes Vicodin and Methadone. Petitioner said he also takes Trazodone for his depression. Currently, he is in bed for a considerable amount of time every day. He can only stand for a couple hours before he experiences severe pain and has to go to bed. In a 24 hour period, he spends approximately 20 hours in bed. He can sit for an hour at a time before he has to adjust his position due to pain. He can walk a couple of blocks at a time. He walks his dog 3 to 4 times a day for 10 minutes at a time. After he returns from the walks, he goes back to lie down in bed. He experiences pain in his low back, left leg and right ankle. He experiences back spasms. His left leg still gives out. During an average day, he wakes up at 1:00 or 2:00 p.m. He

sleeps 12 hours at night and gets up 4-5 times a night. The Trazodone does not work as a sedative. It puts him asleep, but it does not keep him asleep. He is constantly repositioning himself due to the pain. He can only lay on his left side with his legs straight out. He gets the majority of his food from Meals on Wheels. His son also takes him grocery shopping and he likes to make spaghetti, barbecue and roasts. Petitioner testified he has a current driver's license, but he does not feel safe driving because his left leg gets numb when he sits and drives. He does do some minimal driving to his AA meeting twice a week. He is currently sober and has been for the last four years. He used cocaine a long time ago and he used to smoke pot. He used to be an avid skier, coach football and baseball, fish, bowl and shoot pool. He cannot do these activities with his five grandsons. He gets aggravated easily due to his current life circumstances. It took him a long time to reach his level of success in business and then it was all taken away after the accident. Since he stopped working he had become severely depressed and he started drinking again. He also got divorced and was self-medicating. He had been sober for twelve years prior to the accident. He attributes his depression to his low back injury. He is presently receiving SSDI benefits. He has not been offered any vocational rehabilitation. He was born on February 6, 1950. His highest level of education is high school. He is not computer literate. He was trained in the tool and die field for over five years. He has not held any other jobs outside the tool and die field in the last 30 years. He used to be proficient in math. He is good at reading blueprints and he had trained people to work in tool and die. He also has experience in sales and tool design. He has not sought any employment or vocational training on his own. Currently, he is "permanently disabled" and he has grown accustom to being in bed for 20 hours a day. Dr. Kranzler has not released him to return to work in any capacity. While he has not been told by any doctor that he has a "dead" leg, Petitioner said his left leg is dead and it has no value for him. While testifying today, he is depressed, aggravated, agitated and irritated. He did not drive himself to the hearing because it would have been irritating and he could not handle it mentally. He did not have any physical concerns about driving. A friend drove him to the hearing. This is the same friend that brings him cigarettes.

Based on the above, the Commission finds that Petitioner is not credible. The Commission finds that the record is replete with numerous inconsistencies between Petitioner's overall testimony and the information he provided to the medical and vocational rehabilitation personnel alike. These inconsistencies all factor into what weight to place on Petitioner's subjective pain complaints and the extent the permanent disability that arose out of the February 26, 1998 work accident. More specifically, Petitioner provides varied information as to whether he is currently capable of driving and/or whether he owns a vehicle. On the one hand, Petitioner tells both vocational rehabilitation personnel that he does not have a current Illinois driver's license and/or car. Yet, he acts in a contradictory manner when he asks Dr. Kranzler, at/around the same time he is interviewed by both the vocational rehabilitation personnel, to complete a disability certificate for a parking placard. When this is viewed along with the fact that he also tells Dr. Obolsky he drives and he testified at Arbitration that he specifically drives

to AA meetings, the Commission had to question the veracity of the statement he provides to the vocational rehabilitation counselors. A similar contradiction arises when Petitioner reports to Dr. Blonsky on April 5, 2009 that he is no longer able to walk his dog but he tells Dr. Kranzler on February 21, 2013 and the Arbitrator on August 21, 2014 that he walks his dog three to four times a day. Obviously, the latter scenario shows that Petitioner is more active than he led some of the doctors to believe and this factors into the issue of permanent disability. Yet, a further contradiction arises when Petitioner tells Dr. Obosky that he has seen six psychiatrists over his life time. However, he tells Dr. Blonsky that he has not seen any psychiatrist/psychologist before. Furthermore, in 2008, both Drs. Surath and Ghanayem notice that Petitioner is using alcohol during their examination/treatment. Yet, Petitioner tells Dr. Obolsky in 2010 that he has been sober for the last 12 years and he tells Dr. Blonsky on April 5, 2009 that he has not used alcohol in the last four months. The earlier statement is questioned by Dr. Obosky at the time he is taking Petitioner's history and he notes that the St. Joseph's Hospital records contract Petitioner's history that he is not abiding in alcoholic beverages. In addition to the contradictions, it appears that Petitioner is overusing prescribed narcotic medication. More specifically, this is noted in the March 26, 2008 entry from Dr. Surath's office when Petitioner requested his medication earlier than usual and it was noted that he has been repeatedly counseled that he cannot have his medication early. The Commission finds that all of these inconsistencies lead the Commission to question Petitioner's credibility as a whole and it requires the Commission to place additional scrutiny on Petitioner's subjective pain complaints in relationship to the extent of Petitioner's permanent disability. Furthermore, Petitioner's inconsistencies require the Commission to take a closer look at the foundation bases for both the doctors' and vocational rehabilitation personnel's causation opinions.

Having reviewed both vocational rehabilitation counselors' reports and depositions, the Commission finds that both reports are lacking vital medical information which is needed to correctly assess Petitioner's current condition. More specifically, Mr. Rascati was only provided with Drs. Blonsky and Loflands records and not Drs. Ghayayem and Obolski records. While Ms. Babat was provided Dr. Blonsky's April 5, 2009 evaluation, she did not indicate she was provided his subsequent December 4, 2006 and April 5, 2009 evaluations where his recommendation changed from Petitioner being able to work sedentary employment to not being able to work at all. Furthermore, a review of Mr. Rascati's cross-x testimony and Ms. Babat's direct testimony demonstrates that they were not given Petitioner's complete medical history and as such their opinions on Petitioner's ability to work/not work are incomplete.

In terms of the doctors themselves, Drs. Blonsky and Lofland find that Petitioner is medically permanently and totally disabled while Drs. Ghayayem and Obolski find that Petitioner is capable of working in some capacity. This case is further complicated by the fact that Petitioner owned his own business and he voluntarily removes himself from the job market by quitting/ceasing the operating his business. On or about that time, in

addition to closing down his business, Petitioner was dealing with personal matters such as his divorce and he became depressed and started drinking again. The Commission notes that after May/June of 2003 Petitioner does not receive treatment, other than prescription drugs, for his low back again for an additional period of 7 years. While Petitioner treats with Dr. Surath some time on/around April of 2007 and Dr. Surath notes Petitioner has a chronic back issue. Dr. Surath's treatments consist solely of prescribing Trazadone, Vicodin and Tylenol. When Petitioner receives back treatment again he does so at the behest of his attorney some seven years removed from his last treatment. Additionally, while Petitioner has yet another surgery in 2012, post-surgery Petitioner still has the same complaints and is provided the same treatment he had prior to the latest surgery. Additionally, while the origination date was not specified, it is also clear that at some point on/around 2010 Petitioner starts receiving SSDI and as such he further removed himself for the job market. Given Petitioner's addictive personality, the fact that his treatment is based solely on his subjective pain complaints, his general lack of veracity as evidenced by the facts in this case, the lack of treatment for seven year period and failure of any additional treatment to alleviate Petitioner of his pain complaints, the Commission finds that the chain of events does not support Petitioner's claim that his subjective low back/leg pain complaints are sufficient to support the claim that his current condition is causally related to the February 26, 1998 accident. The Commission combines all of these findings to the previous findings of the Arbitrator and affirms the Arbitrator's decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $666.67 per week for a period of 61-3/7 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 sum of $600.00 per week for a period of 200 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 40% loss of a man 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 $21,478.68 paid to or on behalf of Petitioner on account of said accidental injury.

15IWCC0533

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75.000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUL 15 2015

Mario Basurto

MB/jm

David L. Gore

O: 6/4/15

Stephen Mathis

43

STATE OF ILLINOIS)
) SS.
COUNTY OF MC LEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Miller,

Petitioner,

vs. NO: 11 WC 10155

Bridgestone/Firestone
North American Tire,

15IWCC0539

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 29, 2015, is hereby affirmed and adopted.

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

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

15IWCC0539

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: JUL 16 2015
TJT:yl
o 6/23/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MILLER, ROBERT
Employee/Petitioner

Case# **11WC010155**

BRIDGESTONE
Employer/Respondent

15IWCC0539

On 1/29/2015, 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 0.07% 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:

0564 WILLIAMS & SWEE LTD
JEAN SWEE
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

0481 MACIOROWSKI SACKMANN & ULRICH
JEREMY SACKMANN
10 S RIVERSIDE PLZ SUITE 2290
CHICAGO, IL 60606

15IWCC0539

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Robert Miller
Employee/Petitioner

v.

Bridgestone
Employer/Respondent

Case # 11 WC 10155

Consolidated cases: _____

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **McCarthy**, Arbitrator of the Commission, in the city of **Bloomington, Illinois**, on **December 22, 2014**. By stipulation, the parties agree:

On the date of accident, **February 6, 2011**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **$26,520.00**, and the average weekly wage was **$510.00**.

At the time of injury, Petitioner was **55** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of **$1,069.55** for TTD, $ for TPD, $ for maintenance, and **$11,638.44** for other benefits **(for statutory 50% loss of use of a thumb)**, for a total credit of **$12,708.19**.

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

ORDER

Respondent shall pay Petitioner the sum of **$306.00**/week for a further period of **38** weeks, as provided in Section **8(e)(1)** of the Act, because the injuries sustained caused **50% loss of use of the Petitioner's left thumb**.

See Attached.

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

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

D. Daniel McCarthy
Signature of Arbitrator

Dec 29, 2014
Date

JAN 29 2015

FACTS

The Petitioner testified that on February 6, 2011 he was employed with the Company as a tire service person. His main job duty was driving forklift trucks. On February 6, 2011 the Petitioner was maneuvering material and his left thumb tip was cut off when a door came down. The door only struck his left thumb and no other portion of his body.

The Petitioner was taken to St. Joseph Medical Center in Bloomington. Petitioner's Exhibit No. 3 reflects that the Petitioner only complained of pain in his left thumb. No other body part was injured or treated.

The tip of the Petitioner's left thumb was cleaned and debrided.

Thereafter, the Petitioner followed up and treated with Dr. Novotny. The records reflect the Petitioner was first seen by Dr. Novotny on February 9, 2011. The Petitioner only complained of left thumb pain.

On February 18, 2011 Dr. Novotny reported the Petitioner complained of pain in his left thumb with numbness and tingling in the left index finger. The Petitioner admitted that Dr. Novotny told him that the numbness and tingling in the left index finger was because the dressing on his thumb was too tight. He was advised that this sensation would resolve when the dressing was adjusted.

The Petitioner continued to be seen by Dr. Novotny. As of April 5, 2011 the Petitioner had returned to his regular full duty job. He was working twelve-hour shifts. The Petitioner's only complaint to Dr. Novotny after February 18, 2011 was of thumb pain. He did not have any follow up complaints involving the index finger through July 26, 2011 at which time the Petitioner was discharged from care and treatment.

The Petitioner was released for full duty without any restrictions on May 3, 2011. He continued working for the Company until August of 2012 at which time he moved to Kentucky. While residing in Kentucky, the Petitioner engaged in construction work consisting of concrete work.

The Petitioner claimed that he lacked grip strength and his left hand was not as strong as his right hand. He complained of numbness in the index finger.

On cross-examination, the Petitioner testified that during the course of treatment his only complaint of pain was in the left thumb. He admitted that the only time he ever complaints of numbness in the index finger

was on February 18, 2011 and admitted he was told by the treating physician that the numbness was due to the wrap on thumb being too tight.

The Petitioner testified that he had difficulty with his thumb while playing catch with his children. He admitted that when he had been seen by Dr. Novotny on July 26, 2011 he did not have any complaints of finger numbness or pain other than in the left thumb.

The Petitioner admitted that after he was released for work without restrictions in May of 2011, he returned to full duty which required driving a forklift truck and lifting. He lifted items weighing 50 to 100 pounds while employed with the Company. He performed that job until he resigned in August of 2012.

The Petitioner was last seen by Dr. Novotny on May 15, 2012. At that time, the Petitioner was released for work without any restrictions. He was not given any medication and was discharged from treatment. The only recommendation by Dr. Novotny was that if the left thumb nail continued to grow back abnormally, he might have to have the nail removed. He was to trim the nail with a nail clipper. The Petitioner's only complaint of pain when seen on May 15, 2012 was thumb pain.

The transcript of Dr. Novotny's deposition was entered into evidence as Petitioner's Exhibit No. 1.

On cross-examination, Dr. Novotny testified that the only body part injured during the work incident was the left thumb (Pet. Ex. No. 1, p. 13). The thumb was amputated before the distal interphalangeal joint. All the Petitioner's thumb joints were viable. (Pet. Ex. No. 1, pp. 14 & 15) The surgery performed did not extend into the distal interphalangeal joint, but was only the tip of the thumb. (Pet. Ex. No. p. 15)

Dr. Novotny admitted that the only complaint the Petitioner had on February 9, 2011 was to the tip of his left thumb. (Pet. Ex. No. 1, p. 16) The only restriction he imposed on the Petitioner was no use of the left thumb and he was to return to a clean environment. (Pet. Ex. No. 1, p. 17)

Dr. Novotny testified that on February 18, 2011 the Petitioner complained of numbness and tingling in the index finger. Dr. Novotny testified this was because the thumb had been wrapped too tight. (Pet. Ex. No. 1, p. 18) Dr. Novotny testified that when the wrapping was removed the symptoms would resolve. (Pet. Ex. No. 1, p. 18) Dr. Novotny admitted that there were no prior or subsequent complaints involving numbness and tingling to the index finger. (Pet. Ex. No. 1, pp. 18 & 19)

Dr. Novotny admitted that when he released the Petitioner for work on May 3, 2011, his only complaint was sensitivity in the tip of the left thumb. (Pet. Ex. No. 1, p. 20) The Petitioner was released for work without any restrictions. (Pet. Ex. No. 1, p. 21)

Dr. Novotny admitted that he never tested the Petitioner's grip strength and never noted that he dropped objects. (Pet. Ex. No. 1, p. 23) Dr. Novotny testified that the only loss of strength or grip was in the thumb. (Pet. Ex. No. 1, p. 23) The only abnormality Dr. Novotny ever observed was in the thumb. Loss of strength and hypersensitivity was only in the thumb. Dr. Novotny admitted that when he last saw the Petitioner at the time of his deposition, it was in July of 2011. At that time, the Petitioner did not have any complaints involving his index finger. (Pet. Ex. No. 1, p. 24) Dr. Novotny admitted that he never provided treatment to any area other than the Petitioner's left thumb. (Pet. Ex. No. 1, p. 24)

The only sensitivity the Petitioner had from the injury was to the thumb from the amputation. (Pet. Ex. No. 1, p. 25) Dr. Novotny explained that the Petitioner's decreased grip was the result of losing torque from shortening of the thumb. (Pet. Ex. No. 1, p. 26) Dr. Novotny admitted that he never tested the Petitioner's grip strength to determine whether or not there was any loss of grip. (Pet. Ex. No. 1, p. 26) Dr. Novotny's deposition was taken on April 12, 2012.

The Petitioner attended physical therapy at McLean County Orthopedics (Pet. Ex. No. 2). Those records reflect that the only treatment he received was for stretching and desensitization for the left thumb. No other body part was ever treated.

The Arbitrator rules and finds as follows:

The Petitioner is entitled to $1,069.55 in temporary total disability benefits from February 7, 2011 through February 28, 2011.

Respondent is entitled to a credit of 50% loss of use of a thumb, totaling $11,638.64. The parties agreed and stipulated that the Petitioner had received this amount as advance payment for permanency.

Based upon the Arbitrator's review of the testimony and the records submitted, the Arbitrator finds that the Petitioner's injury is 50% loss of use of the left thumb. The Arbitrator further finds that the Respondent has paid the full amount for the statutory 50% loss of use of the left thumb and is entitled to credit for the same.

Petitioner argues that he is also entitled to permanency for the partial loss of use of the left hand because the accident was causally related to an injury to the left index finger which has not resolved itself. He cites as authority the Commission decision of Westhoff v. Alton Steel, 13 IWCC 969. The Arbitrator believes the facts in Westhoff are distinguishable from the facts in the instant case and, as such, the case does not provide support to the Petitioner's position. In Westhoff, the petitioner's foot was run over by a vehicle. Here, only the Petitioner's left thumb was injured by the side wall tray. In Westhoff, the petitioner received treatment to his entire foot in the form of orthotic devices. Here, the Petitioner did not receive any treatment for the subjective complaints of paresthesias of the index finger, and his treating doctor testified that he never made those complaints after his office visit of February 18, 2012 when the dressing on the hand was loosened by the doctor. (PX 1 at 19)

Finally, Dr. Novotny testified that the Petitioner's loss of grip in the hand was related only to him missing part of his thumb and not his subjective numbness of the left index finger. (Id at 11)

No additional permanency is awarded.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cato Karabegovic,
Petitioner,

vs. NO: 09 WC 31878

Marina Cartage, Inc.,
Respondent.

15IWCC0544

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 accident, causal connection, temporary total disability and permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 18, 2013 is hereby affirmed and adopted.

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: JUL 16 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-07/14/15
jdl/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KARABEGOVIC, CATO
Employee/Petitioner

Case# 09WC031878

MARINA CARTAGE INC
Employer/Respondent

15IWCC0544

On 11/18/2013, 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:

4998 LAW OFFICE HUGO A ORTIZ PC
4440 S ASHLAND AVE
CHICAGO, IL 60609

1596 LAW OFFICES OF MEACHUM STARCK & ET AL
DEBORAH A BENZING
225 W WASHINGTON ST SUITE 1400
CHICAGO, IL 60606

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

CATO KARABEGOVIC
Employee/Petitioner

Case #09 WC 31878

v.

15IWCC0544

MARINA CARTAGE, INC.
Employer/Respondent

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 Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on October 29, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

A. ☐ Was the 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 the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☐ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☐ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?

L. ☒ What is the nature and extent of injury?

M. ☐ Should penalties or fees be imposed upon the respondent?

N. ☐ Is the respondent due any credit?

O. ☐ Prospective medical care?

FINDINGS

- On July 17, 2009, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned $47,840.00; the average weekly wage was $920.00.
- At the time of injury, the petitioner was 45 years of age, married with one child under 18.
- The parties agreed that there is no dispute regarding the medical bills.

ORDER:

- The petitioner's claim for benefits is denied and the claim is dismissed.

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.

Robert E. Williams

Signature of Arbitrator

November 18, 2013

Date

NOV 18 2013

FINDINGS OF FACTS:

On July 17, 2009, the petitioner, a truck driver, was pushed backwards by Paul Morris, a mechanics shop manager. He tripped on oil containers and fell, getting oil over his face and eyes. He was transported by ambulance to St. Bernard Hospital, where he reported headaches and neck pain. Their diagnosis was cervical strain and minor head injury. X-rays of his neck, chest and lumbar spine were negative. A CT scan of his head was normal. On July 20th, the petitioner sought care at Union Health Medical Center and reported lower and upper back pain, headaches, left leg numbness, weakness and tingling, left eye pain and blurriness, and coccyx bruising. The diagnosis was back and neck strain/sprain. He followed up the next day with complaints of blurriness in his left eye. On July 23rd, the petitioner started treatment at Midway Clinic for a head trauma, visual disturbances, cervical, low back and left shoulder strains, a left leg radiculopathy and a lumbosacral contusion. MRIs on July 24th revealed grade I spondylolisthesis from L2-3 through L4-5 and lumbar disc bulges and diffuse osteoarthritis at all lumbar levels resulting in diffuse central canal and neuroforaminal stenosis most significant at L4-5; and, disc osteophyte complexes and diffuse osteoarthritis at all cervical levels from C2-3 through C6-7, most significant at C4-5 and disc desiccation from C2-3 through C6-7. Also on the 24th, the petitioner returned to Union Health Center for low back pain. He reported back, cervical and left leg pain at Union Health on August 17th and 24th. He started physical therapy at Accelerated Rehabilitation Centers on the 24th and returned to Midway Clinics on the 26th. The petitioner denied any lumbar radiculopathy but reported some lumbar pain and continued cervical pain and guarding at his orthopedic evaluation with Dr. Hutchinson at Union Health on September 3rd.

X-rays of his cervical and lumbar spine on September 4th were negative. An MRI of his cervical spine on September 11th revealed a large, flat central posterior disc extrusion at C4-C5 and early multilevel degeneration of the cervical spine with mild neural foraminal narrowing. An MRI of his lumbar spine on October 2nd revealed a degenerated L4-L5 disc with a 1 cm central and left central caudal extrusion with compression of the dural sac, a right foraminal bulging of the L3-L4 disc with impingement on the exiting right L3 nerve root and facet degeneration at L4-5 and L5-S1. Dr. Kranzler of Advocate Medical Group performed a neurosurgical consultation on November 10th and opined that the MRIs revealed a large herniation at L4-5 and C4-5 and C6-7 abnormalities. Dermatomal conduction delay tests on December 5th revealed conduction delay on the left at L5 and C5. Dr. Kranzler's impression on December 15th was cervical and lumbar radiculopathy for which he recommended surgery. Dr. Kornblatt opined on February 3, 2010, that only the cervical surgery was warranted.

On March 19, 2010, Dr. Kranzler performed an anterior cervical decompression and arthrodesis at C4-5. The petitioner reported feeling good to Dr. Kranzler at his last follow-up on May 13, 2010. The petitioner has not undergone the lumbar surgery and wishes to proceed with it.

FINDING REGARDING WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that he sustained an accident on July 17, 2009, arising out of and in the course of his employment with the respondent. Pero Karlovic, a mechanic, saw the events leading up to Paul Morris pushing the petitioner and the petitioner's fall. Mr. Karlovic heard the petitioner question Paul Morris repeatedly about fixing his truck. Paul Morris told the

petitioner several times that requested repairs would be made and to leave the shop. The petitioner eventually left the shop but returned and again scolded Paul Morris about fixing his truck. He saw the petitioner poke Paul Morris several times while addressing him in a raised voice. Paul Morris requested the petitioner repeatedly to stop jabbing him, but the petitioner continued to talk and touch Paul Morris, who then pushed the petitioner away. Nicholas Brito, a mechanic, saw Paul Morris and the petitioner quarrelling. The petitioner poked Paul Morris' chest six or seven times and was told repeatedly by Paul Morris not to touch him anymore. Paul Morris felt the petitioner's jabs were significant and that he felt threatened. He told the petitioner to get his hands off him and then pushed him away.

Although both the petitioner and Paul Morris are subject to condemnation for their behavior, it is clear that the petitioner's confrontational and quarrelsome nature precipitated Paul Morris pushing him away and his resulting fall and injuries. The petitioner's unrelenting lambasting of Paul Morris about his truck repairs after being assured that the repairs would be done is incomprehensible and troublesome. The petitioner made physical contact with Paul Morris with his jabs and/or pokes. Jabbing Paul Morris the first time was insulting, offensive and provoking. His need to jab Paul Morris several more times even after being told to stop was highly aggressive and antagonistic. The petitioner was the aggressor and is not entitled to any compensation for his injuries due to his confrontation with Paul Morris. The petitioner's claim for benefits is denied and the claim is dismissed.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rebeca Palacios,
Petitioner,
vs.

NO: 13WC 006756

Okmar, LLC d/b/a CD One Price,
Respondent,

15IWCC0550

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 accident, causal connection, notice, temporary total disability, incurred medical, prospective medical, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 6, 2014, is hereby affirmed and adopted.

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

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

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: JUL 20 2015
o071515
CJD/jrc
049

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

NOTICE OF ARBITRATOR DECISION

PALACIOS, REBECA
Employee/Petitioner

Case# **13WC006756**

13WC008558

OKMAR LLC D/B/A CD ONE PRICE
Employer/Respondent

15IWCC0550

On 11/6/2014, 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 0.06% 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:

1315 DWORKIN AND MACIARIELLO
JULIO COSTA
134 N LASALLE ST SUITE 1515
CHICAGO, IL 60602

2837 LAW OFFICES JOSEPH A MARCINIAK
JAMES MIRRO
2 N LASALLE ST SUITE 2510
CHICAGO, IL 60602

15IWCC0550

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Rebeca Palacios
Employee/Petitioner

v.

Okmar LLC d/b/a CD One Price
Employer/Respondent

Case # **13** WC ~~6567~~ 6756

Consolidated cases: **13 WC 8558**

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 **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **September 24, 2014**. 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 **Prospective Medical Treatment**

FINDINGS

On **January 31, 2013 and February 1, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

In the year preceding the injury, Petitioner's average weekly wage was $**330.00**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **0** dependent children.

ORDER

Petitioner failed to establish that she sustained accidental injuries or was last exposed to an occupational disease arising out of and in the course of her employment with Respondent. Petitioner failed to prove a compensable accident. Accordingly, all benefits are denied.

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.

Deborah L. Simpson
Signature of Arbitrator

Nov. 6, 2014
Date

NOV 6 - 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rebeca Palacios,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 13 WC 6756**
	)	**13 WC 8558**
Omkar LLC	)	
d/b/a CD One Price	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on January 31, 2013 and February 1, 2013, the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. They agree that the Petitioner's earnings during the year preceding the injury were unknown, however they agree that her average weekly wage pursuant to Section 10 of the Act was $330.00.

At issue in this hearing is as follows: (1) Did the Petitioner sustain accidental injuries or was she last exposed to an occupational disease that arose out of and in the course of employment; (2) Did the Petitioner provide notice of the accident within the time limits stated in the Act; (3) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (4) Is the Respondent liable for the unpaid medical bills contained in the bill exhibit; (5) Is Petitioner entitled to TTD from March 14, 2013 through September 24, 2014; (6) What is the nature and extent of the injury; and (7) Is the Petitioner entitled to any prospective treatment.

Petitioner is claiming two accidents, one day apart, medical treatment overlaps and the records are all the same. One decision will be written for both cases.

STATEMENT OF FACTS

On January 31, 2013, and February 1, 2013, the Petitioner, Rebeca Palacios, was employed by the Respondent Okmar LLC, doing ironing for silk. The Petitioner testified that at the time of her injury, she had worked for Respondent for approximately 1 year.

Petitioner testified that on January 31, 2013, overall she was in a stable healthy condition. She testified that she had never experienced a back injury before. She testified she went into work that day and about five hours into her shift she was involved in a work related accident. She testified that about a meter away from her work station, she slipped on a puddle of water that was leaking down from a "bell" located above the area where she fell and that this area was

surrounded by water. She testified that she slipped on a rug that was submerged in water that was leaking from this "bell". She further testified that this area was often wet. She testified that Jasmine (later identified as Emma Cisneros) saw me fall. Petitioner testified that she had pain down her left thigh, her right lower back and her buttocks. According to the Petitioner, she informed Lucy Lozada, production supervisor, and Angelica Romec, store manager, of the incident that had occurred that day. Petitioner testified that Angelica did nothing, she just said "oh, oh really." Angelica did not write an incident report or send Petitioner to a doctor. Petitioner testified that she was in pain but finished her shift.

Petitioner testified that she returned to work the next day, February 1, 2013. She testified that she injured herself again slipping on water. This time, she was walking clothes over to the station where another employee Teresa Mercado worked. According to the Petitioner, when clothes were wrinkled she would take them to the tunnel with Theresa. Teresa was responsible for spraying chemicals on the clothes and running them through a tunnel that would vaporize the clothes. Petitioner testified that this chemical would mix with water and spill onto the floor around Teresa's work station, and that this mixture caused the floor to be slippery. She further testified that there are usually rugs but on that day, there was no rug on the floor. Petitioner testified that she slipped on the mixture of chemicals and water and fell onto the floor, injuring her low back and right arm. According to the Petitioner, Theresa saw her fall that day. She testified that a man named Tom or Dan, who was the owner of the store, saw her on the floor but turned away and kept walking. Petitioner testified that she was embarrassed because he saw her. She testified that this injury was more severe than the prior one on January 31, 2013. Petitioner testified that Teresa helped her off the floor. She testified that she continued to work her shift in pain. Petitioner testified that the pain became unbearable at home.

The next day, Petitioner testified that she informed Angelica of what had happened. She testified that Angelica once again acknowledged Petitioner's incident and that Angelica told Teresa to be careful with the chemicals. Petitioner testified that a rug was later placed on the area where she had fallen on February 1, 2013.

Petitioner testified that she continued to work in pain after her accidents. According to Petitioner she continued to work even though she was in pain because she needed to work. Her husband is on disability so she has no health insurance for medical treatment. She testified that she does not recall how long she worked for the Respondent after the falls, however about 2 days later she needed to leave for a personal problem and did not receive permission, she left anyway. According to the Petitioner she was fired the next day. She testified that when she attempted to get the pay for the hours she worked, Angelica would only give her the pay if she signed a blank document. Petitioner testified that she did not sign this document. She testified that she has not worked since that day. Petitioner stated that she was paid hourly, about $7.00 per hour.

Petitioner testified that currently her injuries affect everything. When she tries to clean her house, she experiences sharp pain in her back and arm. Petitioner testified that she would like to move forward with the treatment recommended by Dr. Murtaza, and she would like a second opinion.

Petitioner presented to Dr. Tom Dzielawski of MidCity Spine & Ortho on March 5, 2013, complaining of neck, lower back, and shoulder issues. (PX 2). A physical examination done by Dr. Dzielawski on March 5, 2013 showed findings indicative of left and right ligamentous sprains and muscular strains; cervical foraminal encroachment; increased intratechecal pressure; left sciatic radiculopathy; bilateral lumbar pericapsular inflammation; central disc lesion in lumbar spine with subsequent nerve root irritation etc. (*Id.*). Based on the physical examination, Dr. Dzielawski recommended a lumbar MRI and kept Petitioner off work pending the results. (*Id.*).

On March 7, 2013, Petitioner underwent a lumbar MRI at Advantage MRI – South Holland. (*Id.*). The MRI findings showed a posterior central disc protrusion/early herniation at L4-5 with associated posterior central canal narrowing and a left paracentral/far lateral disc herniation at L5-S1 with associated left paracentral canal narrowing and left lateral recess narrowing. (*Id.*).

Subsequently, Petitioner followed up with Dr. Sajjad Murtaza, M.D. who diagnosed her with lumbar radiculopathy at L4-5 & L5-S1, lateral recess, and lumbar lower extremity weakness. (*Id.*). Dr. Murtaza recommended physical therapy and a left L4-5 and L5-S1 transforaminal epidural steroid injection. (*Id.*). Dr. Murtaza noted that the Petitioner told him "that her neck condition is a direct result of a work related incident that she was involved in. (*Id.* Report 3/11/2013) Petitioner returned to Dr. Dzielawski and continued to treat with him until April 1, 2013. (*Id.*).

Petitioner testified that she has not received any additional treatment due to her claim being denied. On cross examination, Petitioner testified that she has not gone to the emergency room nor has she sought treatment since April, 2013. Petitioner testified that she has not sought treatment because her claim is denied and she has no money. She further testified that she is not working and has no other alternative forms of health insurance. To this day, Petitioner has not received any workers' compensation benefits. She testified that her pain is severe and wishes to proceed with the injections recommended by Dr. Murtaza.

Petitioner testified she has outstanding bills from her January 31, 2013 and February 1, 2013 accidents.

At trial, Petitioner's first witness was Lucy Lozada. Lucy was a production supervisor for Respondent and had worked for Respondent approximately three years on the dates of injury. As production manager she was responsible for making sure that product came out okay and to check on the people who were working. She testified that she was at work on January 31, 2013. Ms. Lozada testified that Petitioner informed both her and Angelica that she had been involved in a work accident that day when she slipped on water. She testified that she did not have the authority to write up incident reports. Lucy's testimony corroborated Petitioner's testimony that the area where Petitioner said she fell, under the "bell," was usually wet. She testified that wet floors were a common problem around the facility because the fans were never on. Ms. Lozada testified that she would turn the fans on but they would be turned off afterwards. She testified that in her opinion, the fans were never on because it was expensive to do so and the owners did not want to pay for it. She further testified that Angelica told her that Petitioner had been

involved in an accident. According to Ms. Lozada, when someone got hurt, the policy was that you provide them with a report and send them to a doctor. She testified further that when she was working there people got cut or burned and did not see a doctor or get any treatment. Ms. Lozada testified that she thought Petitioner was fired because she wasn't working as fast following her injuries.

On cross examination, Ms. Lozada testified that she did not actually witness either of the two falls; only that Petitioner told her about the first one and that she knew Angelica had notice of both. She further testified on cross that she had previously sustained an accident for which she filed a workers' compensation claim. However, on re-direct, she testified that her accident was three years ago, she had just started working there and she continued to do so, "it was no big deal."

Petitioner's second witness was Emma Cisneros(also known as Jasmine). Ms. Cisneros testified that she worked on January 31, 2013, Petitioner's first date of accident. She testified that she did not see the Petitioner fall, however she did see the Petitioner on the floor and her initial reaction was to laugh because Petitioner slipped on water. Ms. Cisneros testified that the wet floors in the facility were a common problem. She testified that she had personally never fallen because she was careful, but that the area under the "bell" was usually wet. According to Ms. Cisneros she did not see the Petitioner on February 1, 2013, however she heard other employees talking about the fall that day. Ms. Cisneros testified that she stopped working for the Respondent for personal reasons.

On cross examination, Ms. Cisneros testified that she was related to Petitioner. She testified that Petitioner is her mother in law and that they drove to work every day. She further testified on cross that she had previously filed a workers' compensation claim while under the employ of Respondent.

On re-direct, Ms. Cisneros testified that her claim was fully disputed as well.

Respondent presented one witness, Angelica Romec, who testified that she was the store manager during the accident dates. Ms. Romec testified that she had worked for Respondent for three years. She testified that she did not hire Petitioner but acknowledged that Petitioner was a former employee. Ms. Romec testified that on both January 31, 2013 and February 1, 2013, both she and Petitioner worked that day. She testified that she did not see or hear about any accident on either day. She testified that she asked another employee, Teresa Mercado, whether she had seen an accident, which Teresa denied.

Ms. Romec testified that she speaks Spanish and that she would have helped Petitioner fill out the forms to report an accident and to get medical attention. According to Ms. Romec if someone is injured they report to their supervisor, who reports it to her, then she makes the report and calls the owner who comes to the facility and takes the person to the hospital for medical treatment.

Regarding the conditions of the floor, she testified that there is hardly ever any condensation or wetness over the areas where Petitioner said she fell. The bell they were talking

about sucks air and steam out of the store, there would not be any water dripping from it. Also, the fans are always on in the store because of the heat.

According to Ms. Romec the first time she became aware that Petitioner may have been involved in an accident was about a month later, when representatives from the insurance company came to the work facility and asked her questions. She testified that Petitioner continued to work for about a month after the accident dates in question and that she did not appear to be in any obvious pain.

Regarding Petitioner's work status, she testified that the Petitioner continued to work there for about a month after the alleged incidents. Ms. Romec had to let Petitioner go because she did not show up for work and did not call off. Ms. Romec did let her come back but she took off a second time without calling. Ms. Romec testified that the Petitioner told her she was not telling her why she did not show up, fire me if you have to, I do not care. About a week later the Petitioner called wanting her job back but the position was filled because Ms. Romec needed someone there to do the job. Ms. Romec did not have any complaints about how the Petitioner did her job.

On cross examination, Ms. Romec testified that she was not a doctor. She testified that she had some training in OSHA safety and that she takes prescription medication for a health condition that she has. She testified that she based her opinion that Petitioner was not in any obvious pain based on her own experience dealing with her own health condition and taking her medications. She testified that there were security cameras in the facility but that the surveillance was deleted after thirty days.

When asked about Petitioner's alleged absences after the work accidents in question, Ms. Romec testified that all of that information was in Petitioner's personnel file. Ms. Romec did not present the personnel file to hearing and testified that she was unsure if the attorney for Respondent's insurance carrier had the information contained in the personnel file. She testified that she never received any notice of the injury from either Lucy Lozada or Emma Cisneros. She further testified that Lucy Lozada was the production supervisor and that Lucy had the authority to write accident reports. She testified that after speaking with the insurance company about the work injuries, she never spoke with Petitioner about whether or not they occurred. She also confirmed that neither Lucy Lozada nor Emma Cisneros currently work for Respondent.

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987).

Longstanding Illinois law mandates a claimant must show that the injury is due to a cause connected to the employment to establish it arose out of employment. *Elliot v. Industrial Commission*, 153 Ill. App. 3d 238, 242 (1987).

The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

In support of the Arbitrator's decision with regard to whether Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent, the Arbitrator makes the following conclusions of law:

The main dispute in these cases is whether petitioner sustained an accident that arose out of and in the course of her employment. The petitioner testified that on January 31, 2013 and February 1, 2013, she slipped and fell on water while working near her station or the station of a co-worker whom she was bringing clothing too. She testified that her supervisor Angelica Romec was aware of the incidents because she informed her of the incidents on January 31, 2013 and February 2, 2013. She testified that her co-worker Emma Cisneros saw her fall the first time and her co-worker Teresa Mercado saw her fall the second time. Ms. Cisneros, her daughter-in-law denied seeing Petitioner fall, but testified she did see her on the floor when Petitioner called out to her. Petitioner testified that she hurt the top of her left thigh, her right side lower back and her buttocks the first time she fell, and she just laid there until the pain went away before she got up. With respect to the second fall, Petitioner testified that she fell on her entire body. On March 5, 2013 when Petitioner sought medical treatment for the first time after the falls, she reported to Dr. Dzielawski, a Chiropractor, that she slipped on a patch of water, did the splits and landed on her left knee and felt a sharp pain in her left groin. She also told the doctor that she fell back and could not get up until a co worker helped her up. Clearly, there are varying accounts as to how and when she fell, who saw her fall, and who it was reported to.

The Petitioner stated that she fell due to water in her area which fell from a bell, and that she also fell in a tunnel. Ms. Mercado allegedly saw the accident in the tunnel. She testified that the boss Tom or Dan had walked by, saw her lying on the floor and walked the other way rather than helping her up. She stated that the next day she told Angelica about the accident. The Petitioner further testified that was not given a form to report the incidents nor was she taken for medical treatment.

Ms. Lozada testified that she didn't see any accident, and wasn't there for the alleged reported conversation with Ms. Romec. She also didn't report any incident to Ms. Romec, and admitted that she had been terminated by the Respondent. Ms. Cisneros testified that she didn't see any accident, and didn't know how the Petitioner fell, but thought it was reported to Angelica. Ms. Cisneros, admitted that she drove to work with the Petitioner, the Petitioner was her mother-in-law, and that Ms. Cisneros had also filed a workers' compensation claim against the Respondent, and had also been terminated. The Arbitrator does not find the testimony of the Petitioner and her co-workers to be credible.

The testimony of main supervisor Angelica Romec credibly contradicted most of the above contentions. Ms. Romec stated that she never had any injury reported to her by the Petitioner, Lucy Lazoda, Emma Cisneros, or Teresa Mercado, either orally or written. She also stated that all employees are aware of the accident reporting policy, and that reports are filled out for all accidents by her and workers taken directly by the company (usually the owner) for

treatment. Ms. Romec emphatically stated that there was no report ever filled out for the Petitioner nor was there any request for medical treatment. Angelica further testified that there is no condensation on the bell near Petitioner's work station, that it expels moisture out of the building and that there is no possibility of water on the floor from that apparatus. Petitioner was terminated following her second failure to report to work without calling in, and when Ms. Romec asked for a reason Petitioner refused to give one and told Ms. Romec to fire her if she had to. Ms. Romec testified that her first notice of any alleged accident was after Petitioner's termination when she the insurance company showed up to investigate the accidents that were listed in the Applications for Adjustment of Claim.

It is further noted that the Petitioner did not see a doctor for any medical treatment for over a month after the alleged injury dates. The Petitioner continued to work in a full duty capacity following the alleged accident, and did not bring in any off work slips, restricted duty slips, or medical notes of any kind. Petitioner did not seek medical treatment until after she had been terminated from employment with the Respondent.

The Arbitrator finds the testimony of Angelica Romec to be more persuasive than that of the Petitioner and her co-workers. When the testimony of all parties is taken into consideration with the gap and timing of the medical records and the circumstances of Petitioner's and her co-workers' employment termination, the Arbitrator finds that Petitioner has failed to meet her burden of proving by a preponderance of the evidence that an accident occurred that arose out of and in the course of her employment with the respondent.

In support of the Arbitrator's decision with regard to (2) Did the Petitioner provide notice of the accident within the time limits stated in the Act; (3) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (4) Is the Respondent liable for the unpaid medical bills contained in the bill exhibit; (5) Is Petitioner entitled to TTD from March 14, 2013 through September 24, 2014; (6) What is the nature and extent of the injury; and (7) Is the Petitioner entitled to any prospective treatment, the Arbitrator makes the following conclusions of law:

The Petitioner failed to establish that she sustained an accident that arose out of and in the course of her employment. No compensable accident was proved for either date. Therefore, all the remaining issues listed above are moot.

ORDER OF THE ARBITRATOR

Petitioner failed to establish that she sustained accidental injuries or was last exposed to an occupational disease arising out of and in the course of her employment with Respondent. Petitioner failed to prove a compensable accident. Accordingly, all benefits are denied.

Deborah L. Simpson
Signature of Arbitrator

Nov. 6, 2014
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dale Dougherty,

Petitioner,

vs. NO: 10 WC 38790

15IWCC0540

Transport America,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 5, 2014, is hereby affirmed and adopted.

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

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

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: JUL 16 2015
TJT:yl
o 6/22/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DOUGHERTY, DALE
Employee/Petitioner

Case# **10WC038790**

TRANSPORT AMERICA
Employer/Respondent

15IWCC0540

On 11/5/2014, 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 0.06% 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:

3269 SPIROS LAW PC
SANDRA K LOEB
2807 N VERMILION ST SUITE 3
DANVILLE, IL 61832

2904 HENNESSY & ROACH PC
EMILIE A MILLER
2501 CHATHAM RD SUITE 220
SPRINGFIELD, IL 62704

15IWCC0540

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

☐ 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

Dale Dougherty
Employee/Petitioner

v.

Transport America
Employer/Respondent

Case # 10 WC 38790

Consolidated cases: n/a

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 William R. Gallagher, Arbitrator of the Commission, in the city of Urbana, on September 23, 2014. 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 _____

15IWCC0540

FINDINGS

On April 16, 2010, 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 not sustain an accident that arose out of and in the course of employment.

Timely notice of this accident N/A ~~was not~~ 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 $48,418.58; the average weekly wage was $931.13.

On the date of accident, Petitioner was 55 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $5,200.00 for other benefits, for a total credit of $5,200.00.

Respondent is entitled to a credit of $13,604.38 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law, claim for compensation is denied.

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.

William R. Gallagher, Arbitrator

November 3, 2014
Date

NOV 5 - 2014

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on April 16, 2010. According to the Application, Petitioner slipped while climbing down from a truck and sustained injuries to his left arm/shoulder (Arbitrator's Exhibit 2). Petitioner sought an award for payment of medical bills, temporary total and permanent partial disability benefits. Respondent disputed liability on the basis of accident, notice and causal relationship.

Petitioner worked for Respondent as a truck driver for approximately five and one-half years. Petitioner's job duties required him to drive a truck throughout all of the states east of the Mississippi. Petitioner's routes varied substantially and, in addition to driving the truck, Petitioner also had to load and unload the truck. Petitioner was usually gone five to six nights every week and, when he returned to home, he parked the truck at the intersection of Main and Jackson Street in Danville, which was approximately three miles from his home. Petitioner's wife transported him to and from the location where he parked his truck.

In addition to his other duties, Petitioner had to complete a substantial amount of paperwork, logs, trip sheets, etc. Petitioner was required to turn in his completed paperwork to Respondent by midnight every Saturday. If Petitioner did not turn his paperwork by that time, he would not be paid.

Petitioner testified that on April 16, 2010, he had just returned from a trip and parked his truck in the usual location. His wife picked him up and he exited the truck, did an inspection of it and then he and his wife went to eat at a restaurant. After eating, Petitioner and his wife went to K-Mart to look around and to give Petitioner an opportunity to stretch his legs.

Petitioner stated that he and his wife returned to the truck at approximately 9:00 PM to retrieve some of his personal belongings and to complete paperwork. Petitioner testified that he still had to complete three trip sheets and he proceeded to complete his paperwork in the truck while his wife waited for him for a period of approximately 30 to 40 minutes. Petitioner stated that when he completed his paperwork, he gathered his belongings and proceeded to exit the truck.

Petitioner testified that when he exited the truck, his left foot slipped on one of the steps to the truck cab. This caused him to lose his balance and fall approximately three and one-half feet to the ground. Petitioner stated that he attempted to hold onto the truck with his right hand to prevent him from falling, but he could not do so. Petitioner landed on his left hip, left shoulder and elbow. Petitioner stated that he felt immediate pain in his ribs and his left shoulder as well as experiencing a "snap" in his left shoulder.

After Petitioner fell, he stated that his wife attempted to help him get up, but he refused her help because he did not want her to injure herself because he weighed in excess of 300 pounds. Petitioner's wife did not testify when this case was tried.

Petitioner testified that he sought medical treatment at Provena Hospital where he was seen in the ER later that evening. According to the hospital records, Petitioner fell from a semi. X-rays

of the left elbow and shoulder were taken which were negative. Petitioner was diagnosed with contusions to the left elbow and shoulder and discharged (Petitioner's Exhibit 2).

Petitioner stated that he did not report the accident to Respondent immediately because he had previously had two workers' compensation cases fearing that having a third claim would jeopardize his job. Petitioner told the personnel at Provena Hospital to bill his group health insurance carrier for the same reason.

Petitioner testified that he eventually notified Respondent that he had sustained a work-related accident; however, he was unable to recall exactly when he gave notice. Petitioner received a letter from Blue Cross Blue Shield of Minnesota dated June 7, 2010. This letter was received into evidence at trial and it informed Petitioner that his group medical policy did not cover medical services for which another insurer might be responsible (Respondent's Exhibit 5).

Petitioner stated that it was likely that he advised Respondent of the accident sometime after he received the aforementioned letter of June 7, 2010. Petitioner testified that he needed a denial from Respondent's workers' compensation insurer before Blue Cross Blue Shield would pay any of his medical expenses regarding his injury of April 16, 2010.

Catherine Axtell, the Respondent's Safety and Health Administrator testified on behalf of the Respondent when the case was tried. She stated that Respondent has a policy that all work injuries are to be reported to a supervisor immediately and that this policy was communicated to all employees during their orientation. Axtell is the individual responsible for communicating a reported work injury to Respondent's workers' compensation insurer, Zurich North American Claims.

Axtell testified that on June 23, 2010, she became aware through a series of e-mails that Petitioner had called that day asking for assistance in responding to a letter from Blue Cross Blue Shield denying his medical bills for an accident that he sustained on April 16, 2010. These e-mails were received into evidence at trial (Respondent's Exhibit 4). Axtell stated that this was the first notice provided to Respondent that Petitioner had sustained a work-related accident.

Axtell stated that sometime after her review of the e-mails on June 23, 2010, she called Petitioner and spoke to him about the accident of April 16, 2010. She testified that Petitioner told her that after he had run some errands with his wife, he returned to his truck to retrieve his laundry and coffee cup and, at that time, he fell and injured his left shoulder. She stated that Petitioner never informed her that he had returned to the truck to complete paperwork.

Based on her conversation with Petitioner, Axtell completed a First Report of Injury on July 15, 2010, which she submitted to Respondent's workers' compensation insurer, Zurich North American Claims. The First Report of Injury was received into evidence at trial and it stated that Petitioner was not on duty and that he returned to his truck to remove a bag of dirty clothes. There was no reference in the report to Petitioner's completion of any paperwork (Respondent's Exhibit 2).

Paula Smith, an adjuster with Zurich North American Claims also testified at the trial of this case. Smith was assigned to handle all of Respondent's workers' compensation claims and she saw the First Report of Injury on the day it was prepared, July 15, 2010.

Smith called Petitioner and obtained a recorded statement from him on July 19, 2010. Smith testified that Petitioner informed her that he returned to the truck to get his clothing and a thermos. He said nothing at all about completing any paperwork. A transcript of Petitioner's records statement was received into evidence at trial and it was consistent with Smith's testimony (Respondent's Exhibit 6). Smith subsequently sent a letter to Petitioner on July 20, 2010, advising him that the claim had been denied (Respondent's Exhibit 1).

Petitioner acknowledged that he gave a statement to the adjuster and agreed that he did not say anything about returning to the truck to complete paperwork. The reasons he gave for this omission were that he was not specifically asked about it and that he did not consider it to be important.

In regard to the medical treatment provided to Petitioner, as previously stated, he was seen in the ER on April 16, 2010; he was next seen by Dr. James Henshold, his family physician, on July 22, 2010. Dr. Henshold diagnosed arthralgia of the left shoulder and ordered an MRI scan (Petitioner's Exhibit 3).

The MRI scan revealed a rotator cuff tear and Petitioner was subsequently treated by Dr. Edward Kolb, an orthopedic surgeon, who initially saw Petitioner on September 20, 2010. Dr. Kolb performed arthroscopic surgery on September 30, 2010, and the procedure consisted of rotator cuff repair, SLAP repair, subacromial decompression and debridement of torn anterior and posterior labral tissues (Petitioner's Exhibits 4, 5 and 6).

Subsequent to the surgery, Petitioner continued to be treated by Dr. Kolb who ordered physical therapy. Dr. Kolb released Petitioner to return to work as a truck driver on February 14, 2011. Dr. Kolb later ordered a Functional Capacity Evaluation (FCE) which was performed on June 10, 2011. Dr. Kolb saw Petitioner on July 22, 2011, reviewed the FCE and imposed some permanent lifting restrictions based on the FCE findings (Petitioner's Exhibits 5 and 8).

Dr. Kolb was deposed on January 11, 2013, and his deposition testimony was received into evidence at trial. Dr. Kolb's testimony was consistent with his medical records and he opined that the work injury was an aggravating factor contributing to the need for surgery (Petitioner's Exhibit 1; p 15).

Petitioner testified that Respondent subsequently terminated his employment, but that he did return to work as a truck driver for another employer. Petitioner still has complaints of weakness, pain and a reduced range of motion of the left shoulder.

Conclusions of Law

In regard to disputed issue (C) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner did not sustain an accidental injury arising out of and in the course of his employment for Respondent on April 16, 2010.

In support of this conclusion the Arbitrator notes the following:

Petitioner's act of returning to his truck to retrieve his personal belongings did not arise out of his employment for Respondent.

While Petitioner was a traveling employee, he had already completed his route and was no longer on duty when he returned to the truck. Petitioner's testimony that he also returned to the truck to complete paperwork was not credible. Petitioner did not report this alleged activity to either Catherine Axtell or Paula Smith.

Further, while Petitioner testified that his wife waited for him for approximately 30 to 40 minutes while he completed his paperwork, she did not testify at trial.

In regard to disputed issues (E), (F), (J), (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (C).

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Irnalda Carrera,
Petitioner,

vs.

NO: 10 WC 07642
11 WC 07589
12 WC 35539

Terrace Holding Paper, Co.,
Respondent.

15IWCC0546

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, temporary total disability, the nature and extent of Petitioner's disability, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 10, 2014, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $600.00. 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: JUL 16 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-07/15/15
jdl/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CARRERA, IRMALDA
Employee/Petitioner

Case# 10WC007642

11WC007589

12WC035539

TERRACE HOLDING PAPER CO
Employer/Respondent

15IWCC0546

On 11/10/2014, 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 0.06% 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:

0226 GOLDSTEIN BENDER & ROMANOFF
RICHARD H VICTOR
ONE N LASALLE ST SUITE 2600
CHICAGO, IL 60602

0766 HENNESSY & ROACH PC
MICHAEL P GEARY
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

IRMALDA CARRERA
Employee/Petitioner

v.

TERRACE HOLDING PAPER CO.,
Employer/Respondent

Case #10 WC 7642
#11 WC 7589
#12 WC 35539

15IWCC0546

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 Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on October 29, 2014. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

A. ☐ Was the 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 the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☐ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?

L. ☒ What is the nature and extent of injury?

M. ☐ Should penalties or fees be imposed upon the respondent?

N. ☐ Is the respondent due any credit?

O. ☐ Prospective medical care?

FINDINGS

- On August 17, 2007, December 4, 2010, and August 29, 2012, the respondent was operating under and subject to the provisions of the Act.

- On those dates, an employee-employer relationship existed between the petitioner and respondent.

- On those dates, the petitioner sustained injuries that arose out of and in the course of employment.

- Timely notice of the accidents was given to the respondent.

- In the year preceding the injuries, the petitioner earned $18,734.56; the average weekly wage was $360.28.

- At the time of injuries, the petitioner was 57, 60 and 62 years of age, married with no children under 18.

- The parties agreed that the respondent has not paid any medical bills through its group medical plan.

ORDER:

- The petitioner's request for temporary total disability benefits is denied.

- The respondent shall pay the petitioner the sum of $230.00/week for a further period of 10 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 2% loss of use of the person as a whole for her headaches, cervical sprain and right leg injury.

- The petitioner's claim for benefits for her lumbar spine is denied.

- The respondent shall pay the petitioner compensation that has accrued from August 17, 2007, through October 29, 2014, and shall pay the remainder of the award, if any, in weekly payments.

- The medical care rendered the petitioner for her headaches through November 7, 2007, for the right side of her face and neck from December 4, 2010, through March 2, 2011, and for her right leg on September 14, 2012, was reasonable and necessary and is awarded. The medical care rendered the petitioner by Garcia Medical Center, Midwest Medicorp, Salud Family Health and Dr. Einhorn for her lumbar spine was not reasonable or necessary and is denied. The respondent shall pay the medical bills in accordance with the Act, the medical fee schedule or any prior adjustments or negotiated rate. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

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.

Robert E. Williams

Signature of Arbitrator

November 7, 2014
Date

NOV 10 2014

FINDINGS OF FACTS:

On August 17, 2007, the petitioner suffered a head injury when a steel object fell on her head. The incident is the subject matter of claim #10 WC 7642. She sought emergency care for headaches at Norwegian American Hospital on August 20, 2007. A CT scan of her head the same day was negative. The petitioner also received medical care for headaches at the Salud Family Health Center Clinic on the 20th and followed up on the 21st. On September 4th, she reported less frequent headaches but dizziness, nausea and heaviness radiating down her right face accompanying the headaches. A CT scan of her brain on September 10, 2007, did not reveal any acute intracranial process. On November 7th, the petitioner reported a headache the day before and one two weeks prior. She also complained of right eye inflammation and droopiness triggered by working on the assembly line.

The petitioner sought treatment at both the Salud Family Health and the Garcia Medical Center on January 24, 2008, for fainting the prior Tuesday. Dr. Glantz opined after an independent medical evaluation on March 18, 2008, that there were no objective neurological findings or abnormalities to support the petitioner's symptoms. An EEG on April 9, 2008, was normal. She reported a chronic headache and right eye and facial swelling at Salud on September 8, 2009. An MRI of her brain on September 21, 2009, was negative for acute or subacute traumatic brain injuries. The petitioner sought care at the Clearing Clinic on January 10, 2010, for throbbing face and forehead pain. She reported that a newly-constructed fence around her machine struck her on the face and forehead on August 18, 2007. She started chiropractic care at Midwest Medicorp on January 16, 2010, for progressively worsening right-sided head and neck pain attributed

to a work injury on September 20, 2007. She received various chiropractic modalities through January 28, 2010.

On December 4, 2010, the petitioner injured her neck and the right side of her face when she was struck by a carton. The incident is the subject matter of claim #11 WC 7589. A CT scan of the petitioner's head did not reveal an intracranial hemorrhage, mass effect or a calvarial fracture. A second CT scan on December 9th was negative for any acute changes. The petitioner started care with Dr. McGonagle on December 14, 2010, and reported predominantly right cheek and lower jaw pain, significant pain and occasional right-ear popping with chewing, episodes of sudden spinning dizziness, occasional nausea coupled with right-sided facial pain, blurred vision and sleeping difficulty. Dr. McGonagle recommended an aggressive approach for the petitioner's mild head and facial trauma and her embellished symptoms. He prescribed a short course of physical therapy for her cervical and trapezius sprains, medication and no work. She followed up periodically with Dr. McGonagle through May 12, 2011, and reported continued symptoms. Dr. Frank opined after his evaluation of the petitioner's face and neck on March 2, 2011, that there was no evidence of any objective pathology or neurological deficits.

On August 29, 2012, a box of garbage fell on the petitioner's right leg. The incident is the subject matter of claim #12 WC 35539. She sought care at the Clearing Clinic on September 14, 2012, for right leg pain below the knee. She received care with Dr. Einhorn from November 19, 2012, through December 17, 2012, for low back pain.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The medical care rendered the petitioner for her headaches through November 7, 2007, for the right side of her face and neck from December 4, 2010, through March 2, 2011, and for her right leg on September 14, 2012, was reasonable and necessary and is awarded. The medical care rendered the petitioner by Garcia Medical Center, Midwest Medicorp, Salud Family Health and Dr. Einhorn for her lumbar spine was not reasonable or necessary and is denied.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner proved that her condition of ill-being with her headaches through November 7, 2007, the right side of her face and neck from December 4, 2010, through March 2, 2011, and her right leg through September 14, 2012, is causally related to the work injuries. The petitioner failed to prove that her condition of ill-being with her lumbar spine is causally related to the work injuries. The petitioner's claim for benefits for her lumbar spine is denied.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

The petitioner failed to prove that she was entitled to temporary total disability benefits as a result of the injury to her right leg on August 29, 2012. The petitioner's request for temporary total disability benefits is denied.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

The respondent shall pay the petitioner the sum of $230.00/week for a further period of 10 weeks, as provided in Section 8(d)2 of the Act, because the injuries

sustained caused the permanent partial disability to petitioner to the extent of 2% loss of use of the person as a whole for her headaches, cervical sprain and right leg injury.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

OCTAVIA MORGAN,

Petitioner,

vs.

NO: 11 WC 25614
consol. with 12 WC 25141

CHICAGO STATE UNIVERSITY,

15IWCC0548

Respondent.

DECISION AND OPINION ON REVIEW

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

The Arbitrator found that Petitioner's condition of ill being and the care she received in the summer of 2011 was causally connected to the January 11, 2011 accident. He further awarded Petitioner $75.00 in out-of-pocket medical expenses.

The Commission modifies the Decision of the Arbitrator and finds Petitioner's treatment and condition of ill being that was causally connected to the January 2011 work accident ended by June 1, 2011. Petitioner suffered a minor injury to her low back and right knee when she slipped and fell on ice in the employee parking lot on January 11, 2011. Petitioner underwent physical therapy for her condition. Petitioner's testimony and the medical records show that by mid-March, Petitioner ended her physical therapy on her own without being discharged, felt better and believed she had recovered from her January injury. Petitioner admitted she stopped going to therapy because she felt better and she had conflicts between her appointments and her job duties. So even though she had not finished her program, Petitioner unilaterally decided she felt well enough that she could stop her treatment and return to work without restrictions.

15IWCC0548

Petitioner claimed that after stopping physical therapy, the physical demands on her body changed. But she also testified the number of campus tours and amount of walking she did for her job did not change between January and May 2011, when she alleged her symptoms reoccurred. Petitioner claimed she had added stress on her body from her job but when asked for details, Petitioner was unable to specifically describe any added stress. Additionally, there was a two to three month gap between when Petitioner decided to stop attending physical therapy and when she claimed her symptoms reoccurred. Moreover Petitioner did not offer a physician's opinion that her alleged continued pain and condition of ill being was causally connected to her work accident.

The Arbitrator awarded Petitioner $75.00 in out-of-pocket expenses. The record lacked evidence that Petitioner paid those out-of-pocket expenses. Additionally, any expenses Petitioner paid beginning in June 2011 should not be awarded as there is no causal connection with Petitioner's January 11, 2011 work injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $382.15 per week for a period of 7.15 weeks, as provided in §8(d)(2) and §8(e) of the Act, for the reason that the injuries sustained caused the 1% loss to the person as a whole and 1% loss of the right leg.

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.

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: JUL 17 2015
TJT: kgg
R: 6/16/15
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MORGAN, OCTAVIA
Employee/Petitioner

Case# **11WC025614**
12WC025141

CHICAGO STATE UNIVERSITY
Employer/Respondent

15IWCC0548

On 4/30/2014, 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 0.45% 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:

2706 LAW OFFICE OF EVAN A HUGHES
30 N LASALLE ST
SUITE 2950
CHICAGO, IL 60603

5048 ASSISTANT ATTORNEY GENERAL
MEGAN MURPHY
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0904 STATE UNIVERSITY RETIREMENT SYS
PO BOX 2710 STATION A*
CHAMPAIGN, IL 61825

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

APR 30 2014

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0548

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Octavia Morgan
Employee/Petitioner

v.

Chicago State University
Employer/Respondent

Case # **11** WC **25614**

Consolidated cases: **12 WC 25141**

An *Application for Adjustment of Claim* was filed in each of these matters, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Chicago**, on **4/10/14**. 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? (disputed as to June 9, 2011 accident/12 WC 25141 only)
D. ☒ What was the date of the accident? (disputed as to June 9, 2011 accident/12 WC 25141 only)
E. ☒ Was timely notice of the accident given to Respondent? (disputed as to June 9, 2011 accident/12 WC 25141 only)
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 **January 11, 2011 and on June 9, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

On January 11, 2011, Petitioner ***did*** sustain an accident that arose out of and in the course of employment. On June 9, 2011, the petitioner did not sustain an accident that arose out of and in the course of employment.

Timely notice of the January 11, 2011 accident ***was*** given to Respondent.

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

In the year preceding the injury, Petitioner earned **$33,119.84**; the average weekly wage was **$636.92**.

On each date of accident, Petitioner was **49** years of age, ***married*** with **0** dependent children.

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

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

ORDER

No accident was demonstrated regarding June 9, 2011; the medical care at issue was related to the January 2011 date of loss.

The respondent shall pay the petitioner $75.00 in out of pocket medical expenses as provided in Section 8(a) of the Act. The respondent shall be given a credit of for medical benefits that have been paid but shall hold the petitioner harmless from any claims by any providers of the services for which the respondent is receiving this credit, as provided in Section 8(j) of the Act.

The respondent shall pay the petitioner permanent partial disability benefits of $382.15/week for 7.15 weeks, because the injuries sustained caused 1% loss to the person as a whole, as provided in Section 8(d)2 of the Act, and 1% loss to the right leg, as provided in Section 8(e) of the Act.

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.

Arbitrator Joshua D. Luskin

April 30, 2014
Date

APR 30 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

OCTAVIA MORGAN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Nos. 11 WC 25614
	)	12 WC 25141
CHICAGO STATE UNIVERSITY,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

These matters were consolidated and tried jointly. The parties requested a singular decision encompassing both claims; after review of the evidence the Arbitrator concurs that this is the appropriate approach.

STATEMENT OF FACTS

The petitioner is an admissions counselor for the respondent, beginning that position in 2008. Her job duties include guidance and assisting students with enrollment issues as well as scheduling and conducting campus tours for prospective students.

On January 11, 2011, the petitioner slipped and fell on ice in an employee parking lot. She described pain in her right knee and low back following the fall. The petitioner testified she attempted self-treatment such as an Epsom bath and over-the counter medication. She reported the incident to her employer within the 45-day statutory requirement. Accident and notice were not disputed relative to that injury.

On February 7, 2011, the petitioner saw her primary care provider, Advocate Medical Center. At that time, she reported pain in her lower back and right knee. X-rays showed no acute bony problems in the knee and she was assessed with a strain. She was given ibuprofen, physical therapy and recommended weight loss and home exercise. PX1. She began physical therapy two days later. The petitioner attended six physical therapy appointments over the next five weeks. PX3. She reported improvement in both her low back and knee symptoms over the course of therapy.

On June 9, 2011, the petitioner saw her primary care provider, reporting recurrent pain in the low back and knee due to campus tours, but related the condition to the January 2011 fall. Back x-rays showed no fracture. She was given a physical therapy prescription and referred to an orthopedist. PX1. On June 28, 2011, she reported persistent symptoms to her family doctor and she was instructed to follow up with

15IWCC0548

orthopedics and physical therapy. PX1.

On July 5, 2011, the petitioner saw Dr. Strugula, an orthopedist. She reported low back pain that had good improvement in prior physical therapy but recurrent symptoms since. He recommended physical therapy and referred her for an MRI. PX2. She began physical therapy on July 7, 2011. See PX3.

The lumbar MRI was done July 16, 2011, noting a minimal diffuse disk bulge at L4-5 with no stenosis or foraminal narrowing, consistent with mild degeneration. PX2.

On July 26, 2011, Dr. Strugula reviewed the MRI and noted "very minimal degeneration" with no acute disk pathology. He recommended continuation of physical therapy and told her to follow up in a month. PX2.

On August 29, 2011, the petitioner was discharged from physical therapy, having attended eight sessions over the course of July and August. PX3. On August 30, 2011, the petitioner saw Dr. Strugula. She reported that her pain worsened with stressful situations at work. She ambulated without difficulty. He instructed her to continue home exercise and discharged her from care. PX2.

On September 1, 2011, she saw her family doctor. She reported improvement but was concerned about walking. No neurological symptoms were noted. She was released to work, told to lose weight and told to follow up as needed. PX1. The petitioner has not sought medical care for this issue since that time.

The petitioner worked regular duty in her job through June. She was off work during the summer and returned to work in August 2011. She was paid her regular salary during the summer months. She has continued to work for the respondent since her medical discharge. She reports she continues to do home exercise.

OPINION AND ORDER REGARDING DISPUTED ISSUES

Accident (June 2011 incident / 12-WC-25141 only) and Causal Connection

As these issues overlap, the Arbitrator will address them jointly. The petitioner suffered a slip and fall on ice in January 2011, which was not disputed. The petitioner reported to her physicians that her ongoing complaints were related to the January 2011 incident and that no new trauma had occurred. While the Arbitrator finds it unusual that symptoms would persist for that duration given the minimal objective findings, it appears clear that the claimant did not suffer an injury on or about June 9, 2011.

The physicians have causally related the June, July and August 2011 care to the January 2011 incident. While some of the symptoms appear related to stress rather than physical pathology, the Arbitrator views that as properly addressed under Nature and Extent of the Injury, below, and does not view that as severing the causal relationship; the

Arbitrator therefore finds that the care received in the summer of 2011 is related to the January 2011 date of loss and is not the result of a new injury.

Notice (June 2011 incident / 12-WC-25141 only)

Given the above findings as to accident and causal connection relative to the June 2011 accident allegation, this issue is moot.

Marital Status

The claimant testified she married Mark Morgan in 2006 and has been married since that time. No contrary evidence was introduced. The Arbitrator finds that the claimant was married at the time of the accident.

Medical Services Provided

The medical services provided were largely paid through group insurance. The respondent is directed to pay the petitioner $75.00 in her out-of-pocket expenses. Regarding the other medical bills identified, those appear to have zero balances; the respondent shall receive credit for those amounts previously paid but shall hold the petitioner harmless, pursuant to 8(j) of the Act, for group health carrier reimbursement requests for such payments.

Nature and Extent of the Injury

The claimant suffered a low back strain superimposed on prior mild degeneration, as well as a right knee strain. Following minimal physical therapy, the claimant returned to her regular job duties at the direction of her treating physician. The petitioner having reached maximum medical improvement, respondent shall pay the petitioner the sum of $382.15/week for a further period of 7.15 weeks, because the injuries sustained caused 1% loss to the person as a whole, as provided in Section 8(d)2 of the Act, and 1% loss to the right leg, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ 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 down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Brian Skokowski,
Petitioner,

vs. No: 13 WC 37529

Euclid Beverage, Ltd.,
Respondent.

15IWCC0516

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and extent of permanent disability, and being advised of the facts and law, modifies the October 3, 2014 Decision of the Arbitrator, which is attached hereto and made a part hereof.

Claim numbers 13 WC 01583 and 13 WC 37529 were heard in consolidation before Arbitrator O'Malley on July 24, 2014. A separate decision was issued for each claim. The Arbitrator found for claim 13 WC 37529 that Petitioner proved he sustained an accident that arose out of and in the course of employment on November 18, 2010 and also proved that a causal connection exists between the condition of ill-being of his thoracic spine and the accident.

The Arbitrator found Petitioner sustained a 1% loss of the person as a whole for his thoracic spine injury. After considering the entire record, and for the reasons set forth below, the Commission modifies the Decision of the Arbitrator. The Commission affirms and adopts the Arbitrator's finding of accident and causal connection but vacates the Arbitrator's award of permanent disability.

On November 18, 2010, Petitioner was pushing a door open while working for Respondent when his mid-back cramped and he had difficulty moving. Petitioner testified he had experienced a similar prior incident of back spasm that resolved. Petitioner presented to Tyler Medical Clinic on the date of injury and was diagnosed with right thoracic muscle strain. Petitioner was prescribed topical lotion and advised to use therapy exercises and over the counter pain relievers. Petitioner followed up at Tyler Medical Center approximately four weeks later with complaints of occasional intermittent muscle soreness that he was able to self-manage. Petitioner was found to be at maximum medical improvement from the November 18, 2010 injury on December 14, 2010. Petitioner did not miss any work due to the injury.

15IWCC0516

Petitioner testified at hearing that he has occasional cramping in his mid-back a few times a year that he manages with Advil, heat and ice. If the symptoms fail to subside, Petitioner testified he seeks treatment with a chiropractor. Section 12 examiner, Dr. Kornblatt, examined Petitioner and authored a report on January 24, 2014. Dr. Kornblatt opined Petitioner suffered a thoracic strain on November 18, 2010 and his complaints on examination were consistent with thoracic myofascitis. Dr. Kornblatt further opined that he found no abnormal findings referable to Petitioner's subjective complaints and that Petitioner had reached maximum medical improvement.

The Commission finds Petitioner sustained a thoracic strain on November 18, 2010 that resolved with two medical visits and conservative treatment. Petitioner lost no time from work and no diagnostic testing was ordered. The Commission finds no evidentiary support for a finding of permanent partial disability. The injuries sustained caused a 0% loss of the person as a whole under Section 8(d)2 of the Act.

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 3, 2014 is hereby modified. The Commission finds Petitioner suffered no permanent disability as a result of the November 18, 2010 accident.

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 injuries.

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

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.

DATED: JUL 7 - 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-05/20/15
jdl/adc
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SKOKOWSKI, BRIAN
Employee/Petitioner

Case# **13WC037529**

13WC001583

EUCLID BEVERAGE LTD
Employer/Respondent

15IWCC0516

On 10/3/2014, 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 0.04% 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:

1380 MURPHY & MURPHY
JUSTIN S STONER
53 W JACKSON BLVD SUITE 1760
CHICAGO, IL 60603

5001 GAIDO & FINTZEN
ROBERT L SMITH
30 N LASALLE ST SUITE 3010
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Brian Skokowski,
Employee/Petitioner

v.

Euclid Beverage, Ltd.,
Employer/Respondent

Case # **13** WC **37529**

Consolidated cases: **13 WC 1583**

15IWCC0516

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Geneva**, on **7/24/14**. 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. [x] 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. [x] 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 **11/18/10**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**67,600.00**; the average weekly wage was $**1,300.00**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **no** 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 $669.64 per week for 5 weeks, because the injuries sustained caused the 1% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

9/30/14
Date

OCT 3 – 2014

STATEMENT OF FACTS:

On November 18, 2010, Petitioner was employed as a driver for Respondent, Euclid Beverage. Petitioner testified at hearing that his job responsibilities included hauling kegs weighing approximately 160 pounds each and racks of 20-25 pound beer cases.

Petitioner presented to Tyler Medical Clinic on November 18, 2010. He reported that he had felt a cramp in his back while trying to open a door while pushing a rack at work. He further reported that he had to lie down on the ground in order to release the cramp from his back. Upon exam, the treating physician noted discomfort at T4-T5. He was diagnosed with a right thoracic muscle strain and released back to work without restrictions. He was prescribed a topical lotion, Dendracin, and instructed to apply the lotion and ice up to four times daily. (PX2).

Petitioner had a follow-up appointment with Dr. George Pappas at Tyler Medical Services approximately four weeks later, on December 16, 2010. At that time he reported that he still had occasional, intermittent muscle soreness that he self-managed. He reported taking over-the-counter ibuprofen for the pain. Finding no residual thoracic tenderness, Dr. Pappas found that Petitioner had reached maximum medical improvement and discharged him from further care. (PX2).

The medical records admitted into evidence demonstrate that Petitioner had suffered prior thoracic strains in 2001 and 2003, but there is no evidence of any treatment to the thoracic spine at any time from December 2003 until the November 2010 work injury. Petitioner's December 19, 2003 physical therapy note reflects that he felt "100% better" after treatment for the second of the two prior strains. (PX2).

Dr. Michael D. Kornblatt of Illinois Bone & Joint Institute performed a §12 evaluation at Respondent's request on February 24, 2014. Dr. Kornblatt opined that Petitioner sustained a "self-limiting thoracic strain" in November 2010 and that Petitioner's current complaints were "consistent with thoracic myofascitis." (RX1).

Petitioner testified at hearing that although he does not have daily pain in his back, he continues to experience occasional back spasms that he treats with Advil, heat, and cold compresses. He testified that he had not suffered any subsequent injury to his back since the work-related injury on November 18, 2010.

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

Based upon the above, and the record taken as a whole, the Arbitrator funds that Petitioner's current condition of ill-being relative to his back is casually related to the accident on November 18, 2010. Along these lines, the Arbitrator relies on the chain of events and Petitioner's credible testimony to the effect that while he had previously experienced back spasms, on and off, the incident on November 18, 2010 resulted in increased back pain necessitating his visit to Tyler Medical Clinic. Along these lines, the Arbitrator finds the opinion of Respondent's §12 examiner, Dr. Kornblatt to be unpersuasive and therefore declines to rely on same.

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

Petitioner sustained a thoracic strain as a result of the work-related occurrence on November 18, 2010. He visited Tyler Medical Clinic on the date of the incident and missed no time as a result of the accident. Petitioner has not sought treatment for his back since. Currently, he noted that his back does not affect him on a daily

basis, but that when he does have a spasm his "day is shot" and he's "pretty much wiped out." He indicated that in those instances he takes Advil, applies cold compresses and uses a heating pad.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 1% person-as-a-whole pursuant to §8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, IWCC,

Petitioner,

vs. NO: 09 INC 00353

AMER M. GAMAL, President & Secretary of RED CAB CO., d/b/a OAK PARK CAB,

15IWCC0552

Respondent.

DECISION AND OPINION RE: INSURANCE COMPLIANCE

Petitioner, the Illinois Workers' Compensation Commission, Insurance Compliance Division, brings this action, by and through the Office of the Illinois Attorney General, against the above-captioned Respondent, alleging violations of Section 4(a) of the Illinois Workers' Compensation Act ("the Act") and Section 7100.100 of the Rules Governing Practice Before the Industrial Workers' Compensation Commission ("the Rules"), codified as 50 Illinois Administrative Code, Chapter 11. Proper and timely notice was given to all parties.

An Insurance Non-Compliance Hearing was held before Commissioner Thomas Tyrrell on October 23, 2014 in Chicago, Illinois. The Commission, after considering the record in its entirety and the applicable law, finds Respondent, RED CAB CO. d/b/a OAK PARK CAB and AMER M. GAMAL, individually and as President and Secretary of RED CAB CO. willfully and knowingly violated Section 4(a) of the Act and Section 7100.100 of the Rules during the period of July 18, 2003 to October 23, 2014. As a result, the Respondent shall be held liable for its non-compliance with the Act and shall pay a penalty pursuant to the agreed stipulation and in accordance with Sections 4(d) of the Act and 7100.100(b)(1) of the Rules. The Commission

15IWCC0552

having considered the record in its entirety assesses the penalty of $2,058,000.00 against the Respondent for the reasons set forth below.

FINDINGS OF FACT

The Commission finds:

Mr. Gamal is the owner of Red Cab and has owned it since 2003. He runs the Red Cab office and day to day management. Mr. Gamal denied owning the cabs and testified that Red Cab has no employees. He testified three dispatchers answer the phones for Red Cab throughout the day. However, the dispatchers were employed by a separate company called Apptech. Mr. Gamal testified he is also the owner of Apptech. Apptech was incorporated in January 2013.

Mr. Gamal testified Red Cab has never had workers' compensation insurance. He added he believes Red Cab does not need workers compensation insurance.

On May 7, 2009, the Insurance Compliance Department issued a letter stating it cannot find proof of insurance for Mr. Gamal and Red Cab from July 18, 2003 through the present.

On March 26, 2010, Red Cab and Mr. Gamal were personally served with a Notice of Insurance Compliance Hearing. Frank Capuzi, chief of investigators for the Insurance Compliance Division, and Investigator Don Johnson personally served Mr. Gamal. Chief Investigator Capuzi further testified he observed three individuals working behind desks with telephones and radio equipment. The hearing date was set for June 3, 2010.

On March 18, 2011, the Self-Insurance Department issued a Certification stating it performed a thorough search of its records and such records showed no certificate of approval to self insurance was issued by the Illinois Workers' Compensation Commission to Red Cab. On March 21, 2011, the National Council on Compensation Insurance ("NCCI") notarized a copy Certification that stated that from July 18, 2003 to present, Mr. Gamal and Red Cab did not have workers' compensation insurance per its database. Chief Investigator Capuzi testified Red Cab had no workers' compensation insurance at any time.

Mr. Gamal also testified he incorporated Falafel, Inc. but it was never in business. Mr. Gamal changed the name to Grand Auto, which was a corporation but no longer exists. Grand Auto existed for three years and was intended to be a car repair service and located in the same space as Red Cab. Mr. Gamal agreed that effective June 19, 2009, he obtained workers' compensation insurance for Falafel. He then transferred the insurance policy to Grand Auto in 2010. On May 4, 2010, Mr. Gamal purchased insurance for Grand Auto and then cancelled the insurance on September 1, 2010. Mr. Gamal obtained insurance for Grand Auto again on June 29, 2012 but it was cancelled on April 8, 2013 for nonpayment of the premium.

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CONCLUSIONS OF LAW

Pursuant to Section 3 of the Act, the provisions of this Act shall apply automatically to all employers engaged in any department of the following enterprises...: 3) Carriage by land...and loading or unloading in connection therewith; and, 15) Any business in which...gasoline power driven equipment is used in the operation thereof. Pursuant to Section 3 of the Act, the provisions of this Act shall apply automatically to all employers engaged in any department of the following enterprises...: 17(a) any business...in which services are rendered to the public at large, provided that this paragraph shall not apply to such business or enterprise unless the annual payroll during the year next preceding the date of the injury shall be in excess of $1,000.00.

The Commission finds that Mr. Gamal was President and Secretary of Red Cab. Red Cab was in the business of dispatching and cab services. The Commission finds that Red Cab was operating under and subject to the provisions of Section 3 of the Act.

The Workers' Compensation Commission's authority and jurisdiction over insurance non-compliance cases is authorized by the Act, as well as the Rules. Under Section 4 of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance, whether this is done through being self-insured, through security, indemnity or bond, or through a purchased policy. Under Section 4(d):

> Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure of an employer to comply with any of the provisions of paragraph (a) of this Section . . . , the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. Each day of such failure or refusal shall constitute a separate offense. The minimum penalty under this Section shall be the sum of $10,000. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty.

Section 7100.100 of the Rules codifies the language of the Act, and additionally describes the notice on noncompliance required, as well as the procedures of the Insurance Compliance Division, and how hearings are to be conducted. Reasonable and proper notice, as

15IWCC0552

noted above, has been provided to the Mr. Gamal. Section 7100.100(d)(3)(D) of the Rules indicates that "A certification from an employee of National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 7100.30 shall be deemed prima facie evidence of that fact." Petitioner's exhibit 3 contains the certification from NCCI Holdings, Inc. and establishes that Mr. Gamal had no workers' compensation insurance from July 18, 2003 to March 21, 2011. Mr. Gamal offered no evidence establishing he had insurance as required under the Act. Further, Mr. Gamal testified that he did not have workers' compensation insurance during the above period.

In *State of Illinois v. Murphy Container Service, et al.*, 2007 Ill.Wrk.Comp.LEXIS 1216, the Commission considered the following factors in assessing penalties against an uninsured employer: 1) the length of time the employer had been violating the Act; 2) the number of workers' compensation claims brought against the employer; 3) whether the employer had been made aware of his conduct in the past; 4) the number of employees working for the employer; 5) the employer's ability to secure and pay for workers' compensation coverage; 6) whether the employer had alleged mitigating circumstances; and, 7) the employer's ability to pay the assessed amount.

In the instant case, the evidence establishes that Mr. Gamal was aware of, and willfully ignored his statutory obligation to maintain worker's compensation insurance for a significant period of time. The evidence established that Mr. Gamal owned and operated other corporations, namely Grand Auto, at the same time as Red Cab and he purchased workers' compensation insurance for those entities at various points of time. No evidence was offered demonstrating that Mr. Gamal did not have the ability to secure and pay for workers' compensation insurance. Mr. Gamal offered no mitigating circumstances in this case.

The Commission finds that Mr. Gamal knowingly and willfully failed to comply with the Act. Based on the significant period of time Mr. Gamal failed to comply with the Act and the serious nature of the injury, the Commission assesses a penalty of $2,058,000.00 against Amer Gamal, individually and as President and Secretary of Red Cab Co., d/b/a Oak Park Cab.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent, RED CAB CO., d/b/a OAK PARK CAB and AMER M. GAMAL, individually and as President and Secretary of RED CAB CO., d/b/a OAK PARK CAB is found to be an employer who was in non-compliance with the insurance provisions of Section 4(a) of the Act and Section 7100.100 of the Commission Rules, and is hereby ordered to pay the Commission a fine of $2,058,000.00 pursuant to Section 4(d) of the Act and Section 7100.100 of the Commission Rules.

Pursuant to Commission Rule 7100.100(f), once the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Act, payment shall be made according to the following procedure: 1) payment of the penalty shall be made by certified check or money order made payable to the State of Illinois; 2) payment shall be mailed or presented

15IWCC0552

within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Workers' Compensation Commission
Fiscal Office
100 West Randolph Street Suite 8-328
Chicago, Illinois 60601
1-312/814-6625

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.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Penalty Petition be and it is hereby Denied.

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: JUL 21 2015
TJT: kgg
R: 10/23/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt	☐ 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

Steven Webb,

Petitioner,

15IWCC0553

vs.

NO: 14 WC 17404

Southern Mail Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability, penalties and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 4, 2014, is hereby affirmed and adopted.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $12,400.00. 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: JUL 2 1 2015
KWL/vf
O-7/14/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

15IWCC0553

WEBB, STEVEN
Employee/Petitioner

Case# **14WC017404**

SOUTHERN MALL TRANSPORTATION
Employer/Respondent

On 9/4/2014, 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 0.05% 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:

1427 BERG & BERG
FRANK A BARBER JR
2100 W 35TH ST
CHICAGO, IL 60609

1401 SCOPELITIS GARVIN LIGHT HANSON ET AL
JOHN S MAGIERA
30 W MONROE ST SUITE 600
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION
19(b)

15IWCC0553

STEVEN WEBB
Employee/Petitioner

Case # 14 WC 017404

v.

SOUTHERN MAIL TRANSPORTATION
Employer/Respondent

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 **David A. Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **August 20, 2014**. 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, **January 9, 2014**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$69,375.80**; the average weekly wage was **$1,334.15**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of **$16,009.74** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$16,009.74**.

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

ORDER

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of **$889.43**/week for **31-6/7** weeks, commencing **1/10/2014** through **8/20/2014**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$16,009.74** for temporary total disability benefits that have been paid.

Prospective Medical Care
Respondent shall authorize and pay for the epidural blockade, disc decompressive surgery at L4, L5, and S1, and the associated aftercare, as recommended by Dr. Lawrence.

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.

David A. Kane
Signature of Arbitrator

September 4, 2014
Date

ICArbDec19(b)

SEP 4- 2014

State of Illinois)
) SS
County of Cook)

ILLINOIS WORKER'S COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

STEVEN WEBB
Employee/Petitioner

15IWCC0553

v.

Case No. 14 WC 017404

SOUTHERN MAIL TRANSPORTATION
Employer/Respondent

Memorandum of Decision of Arbitrator

FINDINGS OF FACT

In support of the Arbitrator's decision, the arbitrator hereby makes the following findings of facts:

It is stipulated by the parties that on January 9, 2014, Petitioner Steven Webb was 54 years old and an employee of Southern Mail Transportation. He was employed as a truck driver relaying trailers of United States Mail between Wauseon, Ohio and Chicago, Illinois. The Parties stipulated that Petitioner sustained an injury arising out of and in the course of his employment as a truck driver for the Respondent. It is uncontested that prior to the accident Petitioner was working full duty with no restrictions or limitations whatsoever.

On January 9, 2014, Petitioner was making a relay run with a full trailer of United States mail from Wauseon, Ohio to Chicago, Illinois. When he arrived at the warehouse in Chicago at approximately 11:30 p.m., he backed his truck up to the loading dock and proceeded to attempt to open the trailer door, but the mail in the trailer had shifted and wedged against the overhead roll top door. Petitioner spent approximately 30 to 40 minutes trying to open the door and at some point during that time, he yanked the door upward and felt a snap or pop in his back. Petitioner described the sensation he felt in his back as being struck with a stun gun in the back. Petitioner did eventually get the door open, waited while his trailer was unloaded and reloaded, and then began his return drive to Wauseon, Ohio.

On the drive back to Wauseon Petitioner began to experience pain in his back and "knew that something was wrong." He arrived in Wauseon, Ohio between 10:00 a.m. and 11:00 a.m. on January 10, 2014, dropped off the relay truck and then returned home. Once home, he called and reported the accident to his supervisor, Mary Ann, who instructed him to go to the emergency room. Petitioner also reported the accident in writing later by filling out an accident report form and returning it to Respondent. (The accident report form was entered into evidence as Respondent's exhibit #2 (RX2)). Petitioner went to the emergency room at Mercy St. Anne Hospital in Toledo, Ohio. (The medical records from Mercy St. Anne Hospital were introduced into evidence as Petitioner's exhibit #1 (PX1)). Petitioner was treated for low back pain and x-rays were taken of the lumbar spine which revealed no acute abnormalities (PX1, pp.9-10). He was given pain medication and muscle relaxers and told to follow up with his primary care

physician in 3 to 5 days if the pain did not subside (PX1, p.10). He was also given lifting restrictions of nothing over twenty pounds (PX1, p.13).

Petitioner's pain did not abate, and on January 15, 2014, he went to Northwest Ohio Urgent Care and sought treatment for his low back pain. (The medical records from Northwest Ohio Urgent Care were entered into evidence as Petitioner's exhibit #2 (PX2)). Petitioner went to Northwest Ohio Urgent Care because he did not have a primary care physician. Dr. Arshad Husain examined Petitioner and noted low back pain and pain radiating into the left leg (PX2, p.18). Dr. Husain speculated that the injury was a herniated disc based on the complaints and referred Petitioner for an MRI and prescribed physical therapy and pain medication (PX2, p.19). Petitioner began a course of physical therapy at Northwest Ohio Urgent Care on January 15, 2014.

On February 11, 2014, Petitioner went to Imaging Central for an MRI of the lumbar spine (PX2, p.24). At L4-L5, the MRI showed a small bilateral paracentral/intraforaminal disc protrusion with severe facet hypertrophy and marked ligamentum flavum thickening with mild central stenosis and bilateral neural foraminal narrowing (PX2, p.24). At L5-S1, the MRI showed severe disc space narrowing with severe degenerative changes of the endplates, as well as a broad based circumferential disc protrusion, mild/moderate facet hypertrophy, mild to moderate right and mild left neural foraminal narrowing (PX2, p.25). Petitioner continued to follow up at Northwest Ohio Urgent Care both for regular examinations by Dr. Husain as well as physical therapy. When the physical therapy did not offer any lasting relief from Petitioner's low back pain, Dr. Husain referred Petitioner

for a neurosurgical consultation with Dr. Edmund Lawrence of Neurosurgical Network, Inc. (PX2, p.32; PX3, p.42).

On March 27, 2014, Petitioner saw Dr. Edmund Lawrence of Neurosurgical Network, Inc. for a Neurosurgical Consultation. (The medical records from Neurosurgical Network, Inc. were entered into evidence as Petitioner's exhibit #3 (PX3)). Petitioner testified at trial that he had previously treated with Dr. Lawrence for a low back injury in 1994. Dr. Lawrence examined Petitioner and reviewed the MRI films from the February 11, 2014, MRI. Dr. Lawrence diagnosed Petitioner with a "stenosis secondary to a lumbar disc herniation at L4-L5 with foraminal stenosis with probable facet ganglion as well at that level, and ... foraminal stenosis at L5-S1 as well" (PX3, p.41). Dr. Lawrence recommended trying an epidural blockade but indicated in his records that he expected this to fail and recommended that Petitioner consider a "disc decompressive surgery" at "L4, L5 and S1" (PX3, p.42).

On April 16, 2014, Petitioner returned to see Dr. Husain at Northwest Ohio Urgent Care for an exam following completion of physical therapy on April 14, 2014 (PX2, p.35). Dr. Husain indicated that Petitioner's claim had been denied by the insurance company and that he would be unable to get the surgery as recommended by Dr. Lawrence (PX2, p.37). Dr. Husain gave Petitioner a prescription for pain medication and told him to follow up in six months for a routine checkup (PX2, p.37).

On May 7, 2014, Petitioner was sent to see Dr. Douglas C. Gula of Kuhnlein and Martin, Inc. for an independent medical evaluation. (The

independent medical evaluation report of Dr. Gula was entered into evidence as Respondent's exhibit 1 (RX1)). At trial, Petitioner testified that Dr. Gula spent "no more than ten minutes" examining him. In his report Dr. Gula noted that Petitioner did "appear to be in distress at this time" and that "claimant did have difficulty standing from a seated position" (RX1, p.3) Dr. Gula opined that Petitioner had suffered no more than a sprain on January 9, 2014, and that Petitioner's current condition of ill-being was a result of underlying "chronic conditions that are naturally occurring" (RX1, p.5) He pointed out that Petitioner did have a pre-existing condition – "notably, he has a significant history of back complaints having had a previous back surgery at L4-L5" (RX1, p.4) Elsewhere in his report, Dr. Gula indicated that this previous back surgery at L4-L5 had taken place almost twenty years prior in 1995 (RX1, p.2). Based upon Dr. Gula's report, Respondent terminated medical benefits as well as temporary total disability benefits on May 7, 2014.

Petitioner testified at trial that once he was cut off by Respondent he did not have personal health insurance or enough money to continue seeking treatment on his own. As such he only followed up with Dr. Husain at Northwest Ohio Urgent Care once more on August 13, 2014. At that visit, Dr. Husain agreed with Dr. Lawrence's assessment that further care was needed, specifically the surgery as recommended by Dr. Lawrence (PX2, p.39).

CONCLUSIONS OF LAW

In regards to the Arbitrator's decision on issue (F), whether the Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds the following:

The Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the injury.

Before the January 9, 2014, accident, Petitioner was working with no restrictions. There was a clear accident followed by a condition of ill-being, and objective testing has confirmed a severe disc injury consistent with Petitioner's subjective complaints. When Petitioner was hired by Southern Mail Transportation he had to pass a physical exam in order to be hired. Petitioner further testified on cross that he had been working as a truck driver since 2002 and prior to 2002 he worked in a hydraulic manufacturing plant. Petitioner did admit a work accident in 1994 and lumbar disc surgery in 1995, but testified that since that surgery he had suffered no problems with his back, had not sought treatment for any back pain, did not take any pain medication for back pain and had not seen a doctor for anything relating to back pain since 1995.

On the date of the accident, Petitioner felt a "pop" or "snap" in his back. Although Petitioner did not immediately feel pain in his lower back, he was in severe pain within hours of the accident (RX2). He promptly

reported the accident to his supervisors and sought medical attention the same day he returned from Chicago.

Petitioner first treated at the emergency room in Mercy St. Anne Hospital. Following his emergency treatment he sought further treatment with Dr. Husain at Northwest Ohio Urgent Care. Petitioner completed physical therapy at Northwest Ohio Urgent Care. Dr. Husain referred him to Dr. Edmund Lawrence for neurosurgical treatment. Petitioner has continued to seek and has remained under continuous medical treatment since the date of the accident.

Besides the immediate outcry and the continuous medical treatment since the date of accident, the objective evidence supports Petitioner's contention that his current condition of ill-being is causally related to the January 9, 2014, accident. The MRI taken on February 11, 2014, shows severe disc injuries at the L4-L5 and L5-S1 levels. At L4-L5, the MRI showed a small bilateral paracentral/intraforaminal disc protrusion with severe facet hypertrophy and marked ligamentum flavum thickening with mild central stenosis and bilateral neural foraminal narrowing (PX2, p.24). At L5-S1, the MRI showed severe disc space narrowing with severe degenerative changes of the endplates, as well as a broad based circumferential disc protrusion, mild/moderate facet hypertrophy, mild to moderate right and mild left neural foraminal narrowing (PX2, p.25). Dr. Lawrence reviewed the MRI films of Petitioner's back at his March 27, 2014, appointment and noted his impressions. Dr. Lawrence diagnosed Petitioner with a lumbar disc herniation at L4-L5 with secondary stenosis and foraminal stenosis at L5-S1 (PX3, p.41). Dr. Lawrence indicated that

these objective findings were consistent with Petitioner's subjective complaints, noting "he has sensory loss only into his upper thigh that seems to follow the L4 dermatome pattern" (PX3, p.41). Dr. Lawrence distinguished these "very specific findings" from any underlying degenerative disc disease (PX3, p.40).

"A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Indus. Comm'n.*, 93 Ill.2d 59, 63-64 (1982). The Arbitrator notes that before the January 9, 2014, accident, Petitioner was working with no restrictions. There was a clear accident followed by a condition of ill-being. Objective testing has confirmed a severe disc injury at L4, L5, and S1 consistent with Petitioner's complaints of severe back pain and radiating pain into the left extremity.

Furthermore, the Arbitrator notes that Respondent's reliance on the opinion of its Section 12 examiner, Dr. Douglas Gula, is misplaced. Dr. Gula noted that Petitioner was "in distress at this time" and that "claimant did have difficulty standing from a seated position and sitting from the same position" (RX1, p.3). Furthermore Dr. Gula conducted physical tests which were consistent with Petitioner's complaints of left sided radiating extremity pain and specifically showed weakness in the left extremity. Dr. Gula admitted that Petitioner had discogenic issues at L3-L4, L4-L5 and L5-S1. However, Dr. Gula opined that Petitioner's current condition of ill-being was not related to the accident and that he had suffered a sprain which should

have resolved 4-8 weeks after January 9, 2010. He found it very significant that the Petitioner had undergone a back surgery at L4-L5 in 1995, almost 20 years prior and claimed that this was now causing his current symptomology, completely ignoring the fact that Petitioner had been asymptomatic for almost 20 years. Furthermore, Petitioner did undergo a surgery in 1995 at L4-L5 however, the present injury is affecting L4-L5 and L5-S1. Dr. Gula's contention of a previous back surgery at L4-L5 being the cause of the injury at L4-L5 and L5-S1 is illogical. Clearly this is a new injury which has involved a whole new disc level.

Based on the totality of the evidence, and the oinions of the treating physician, he Arbitrator concludes that the Petitioner's current condition of ill-being is casually related to Petitioner's work accident on January 9, 2014.

In regards to the Arbitrator's decision on issue (K), whether the Petitioner entitled to any prospective medical care, the Arbitrator finds the following:

The Arbitrator finds that the Petitioner is entitled to prospective medical treatment recommended by his treating physician, Dr. Edmund Lawrence.

Petitioner has undergone extensive physical therapy for his low back pain and left extremity pain. The physical therapy has offered no relief from the pain. Petitioner has not undergone any epidural injections or blockade since Respondent has not authorized any treatment beyond the physical

therapy. Dr. Lawrence, Petitioner's treating physician, believes that while an epidural blockade is an option, only a disc decompressive surgery at L4, L5, and S1 will fully address Petitioner's pain. Petitioner's condition and specific pain complaints have been confirmed by the MRI which showed discogenic injury at the L4-L5 and L5-S1 levels. Dr. Husain has also indicated that he believes this surgery offers Petitioner the best chance to return to work and good health (PX2, p.39).

Dr. Gula indicated in his IME report that he felt Petitioner needed this surgery. When responding to whether the decompressive surgery at L4, L5, and S1 was medically necessary and appropriate, he said that he felt the surgery would be appropriate for Petitioner to address "chronic conditions that are naturally occurring" (RX1, p.5). However, he felt Petitioner's current condition of ill-being which he documented quite well in the IME report, was unrelated to the current claim and must be a result of the 1995 back injury and surgery (RX1, p.5).

Petitioner is unable to sleep lying down anymore and must sleep sitting up in a lazy boy recliner. Petitioner has been unable to return to work and he testified on cross examination that the only thing he is "hell-bent on" is returning to work.

The Arbitrator therefore concludes that the epidural blockade as well as the disc decompressive surgery at L4, L5, and S1, as recommended by Dr. Edmund Lawrence, offers Petitioner the best opportunity of returning to his regular work in a timely fashion as well as returning to his normal pre-accident lifestyle. As such Respondent shall send written approval for the

epidural blockade and disc decompressive surgery at L4, L5, and S1 and associated care to Dr. Lawrence and to Petitioner's attorney posthaste.

In regards to the Arbitrator's decision on issue (L), whether the Petitioner is entitled to any Temporary Total Disability benefits, the Arbitrator finds the following:

The Arbitrator finds that Petitioner is entitled to outstanding temporary total disability (TTD) benefits.

It is stipulated by the parties that TTD was owed and paid to the Petitioner from January 10, 2014, through May 7, 2014, (Arbitrator's exhibit #1). The primary dispute between the parties pertains to the TTD period from the date of the IME report of Dr. Gula, when Respondent cut off TTD benefits, through the date of the hearing on August 20, 2014, and continuing beyond that.

On January 10, 2014, Petitioner went to the ER at Mercy St. Anne Hospital in Toledo, Ohio. Petitioner began treating with Northwest Ohio Urgent Care on January 15, 2014. Respondent began paying TTD benefits soon after the accident was reported and began with January 10, 2014, the day after the accident (Arbitrator's exhibit #1). Respondent continued to pay TTD to the Petitioner until May 7, 2014, the date of Dr. Gula's independent medical evaluation (Arbitrator's exhibit #1). The only reason Respondent has ceased paying TTD benefits was due to its reliance on Dr. Gula's IME report. Respondent's reliance on the IME is unreasonable,

therefore Respondent's decision to cease TTD payments was also unreasonable.

Every doctor who has examined Petitioner has noted that Petitioner is in obvious physical distress and that he has difficulty doing the most basic of movements. Dr Lawrence, Petitioner's treating neurosurgeon, noted in his examination that Petitioner "could barely stand up while he was talking with me in the office today" and he had suffered from weakness on the left side (PX3, p.41). Petitioner last saw his treating doctor, Dr. Husain on August 13, 2014. At that visit, Dr. Husain noted that Petitioner was experiencing pain at a level of 8/10 which was triggered by "bending, lifting ... twisting, activity, and position change" (PX2, p.38). Dr. Husain again prescribed pain medication and recommended that he again undergo an intensive course of physical therapy with several visits a week and noted that he hoped the Petitioner was able to get the surgery as recommended by Dr. Lawrence (PX2, p.38). Petitioner testified that all he wants is to return to work, but that his condition has not improved with physical therapy and that the pain is so bad he cannot even sleep lying down anymore.

Most importantly Respondent's own doctor, Dr. Gula, noted Petitioner's poor condition and inability to do the most basic of physical functions required for Petitioner to effectively do his job. Dr. Gula specifically noted in his report that Petitioner was "in distress at this time" and that Petitioner "did have difficulty with regard to toe and heel walking" (RX1, p.3). Dr. Gula indicated that Petitioner had "weakness ... to the left lower extremity" (RX1, p.3). Dr. Gula also noted that Petitioner "did have difficulty standing from a seated position and sitting from same position"

(RX1, p.3). Dr. Gula did not contest Petitioner's pain complaints and no symptom magnification was noted.

Although there are no off-work slips from any of Petitioner's treating physicians, the Arbitrator does have the discretion to determine as a matter of fact whether the Petitioner was temporarily totally disabled for a period of time. Provided such a finding is not based on "imagination, speculation or conjecture" but "arise[s] out of facts established by a preponderance of the evidence." *Mirific Products Co. v. Industrial Com.* 356 Ill. 645, 650. In the case at hand, Petitioner's treating doctors have all stated that Petitioner was clearly physically incapacitated by this injury and that Petitioner's condition has not stabilized nor has he reached maximum medical improvement. Respondent's Section 12 examiner also acknowledged that Petitioner appeared to be physically incapacitated and that his overall condition had not stabilized.

Therefore, as a result of the accident on January 9, 2014, Petitioner was temporarily totally disabled from January 10, 2014 through the date of the hearing, representing a period of 31-6/7.

In regards to the Arbitrator's decision on issue (M), should penalties and fees be imposed upon respondent, the Arbitrator finds the following:

The Arbitrator finds that Petitioner is not entitled to penalties and attorney's fees under sections 19(k), 19(l) and section 16, as there was a reasonable dispute as to causal relationship in this case.

Therefore, penalties and attorney's fees are hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ Affirm and adopt	☐ 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

Louis Bodie III,
Petitioner,
vs.

15IWCC0554

NO: 10 WC 28038

City of West Chicago,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 5, 2014, is hereby affirmed and adopted.

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

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

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: JUL 21 2015
KWL/vf
O-7/14/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0554

BODIE III, LOUIS
Employee/Petitioner

Case# **10WC028038**

10WC028037
10WC028036

CITY OF WEST CHICAGO
Employer/Respondent

On 8/5/2014, 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 0.05% 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:

2333 WOODRUFF JOHNSON & PALERMO
RUSSELL HAUGEN
4234 MERIDIAN PKWY SUITE 134
AURORA, IL 60504

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
JEFFREY N POWELL
10 S RIVERSISDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

15IWCC0554

Louis Bodie III,
Employee/Petitioner

v.

Case # 10 WC 28038

Consolidated cases: 10 WC 28036
10 WC 28037

City of West Chicago,
Employer/Respondent

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Geneva**, on **4/24/14**. 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. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 **10/14/09**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**45,975.08**; the average weekly wage was $**884.15**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **no** dependent children.

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

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

Respondent shall be given a credit of $**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 temporary total disability benefits of $589.43 per week for 7-5/7 weeks, commencing 5/14/10 through 7/6/10, as provided in § 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 10/15/09 through 4/24/14, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of $21,763.75, as provided in §§ 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $530.49 per week for 43 weeks, because the injuries sustained caused the 20% loss of the left leg, as provided in §8(e)12 of the Act.

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

7/29/14
Date

AUG - 5 2014

STATEMENT OF FACTS:

Petitioner, a 62 year old maintenance worker, testified that on October 14, 2009 he was instructed to clean up the maintenance shed for an upcoming inspection. He was instructed to perform these tasks by his supervisor, Pat Colford. While performing this task, Petitioner was unloading tires from the back of a pickup truck. After unloading the tires, he returned to the truck to close the tailgate. As he was walking away from the truck, his left knee struck the pintle hitch on the back of the truck. Petitioner testified that he was moving at a relatively high rate of speed when his left knee struck this hitch. Immediately after he struck his left knee on the hitch, he twisted his knee and felt an immediate onset of pain. There were three co-workers near him when this occurred. Ron Milan, Mark Harvel, Kurt Sortens were right there when it happened. One of the gentlemen said "that was a real knee knocker".

Prior to the alleged date of injury, Petitioner was evaluated by Dr. Schinksy at Castle Orthopaedics on November 4, 2008. At that time, Petitioner complained of some left knee grinding and pain. On examination, his left knee was at a near full extension with some crepitus with knee range of motion. X-ray of the left knee revealed severe patellofemoral degenerative joint disease. An MRI of the left femur, which was performed on December 1, 2008, revealed fibro osseous lesion. Petitioner returned to Dr. Schinksy on December 10, 2008. Dr. Schinksy diagnosed left knee degenerative joint disease and instructed Petitioner to follow up as needed. (PX2).

Immediately following the incident on October 14, 2009, Petitioner reported it to his supervisor, Pat Colford. Petitioner also filled out an accident report on that same day. On the accident report, which was completed by the Petitioner on October 14, 2009, Petitioner indicated that he struck his left knee on the pintle hitch after closing the tailgate. (RX4).

At the time of the October 14, 2009 incident, Petitioner testified that he wasn't having any knee pain. He further testified that he was working full duty and wasn't under the care and treatment of a doctor regarding his left knee. He further testified that he had occasional popping in his knee prior to the accident. However, it got significantly worse following the accident.

At the time of arbitration hearing, Petitioner complained of ongoing left knee pain. Petitioner testified that his left knee always hurts, it is stiff and pops on a regular basis. He can no longer exercise on the elliptical machine because it causes too much grinding. He was able to exercise on the elliptical machine prior to the accident.

On October 27, 2009, Petitioner was seen by Dr. Schinksy at Castle Orthopaedics. By history, Petitioner reported striking the anterior portion of his left knee on a trailer hitch at work. Petitioner further reported that since that accident, he has had progressively worsening left knee pain, aggravated with ambulating stairs. On examination, Petitioner had patellofemoral tenderness to palpation, and medial and lateral joint line tenderness. X-rays of the left knee revealed advanced patellofemoral degenerative joint disease. Dr. Schinksy diagnosed advanced left knee patellofemorl degenerative joint disease and provided the Petitioner with an injection into the left knee. Petitioner was instructed to follow up in three months or sooner if his symptoms progressed. (PX2).

On January 11, 2010, Petitioner returned to Dr. Schinksy. Petitioner reported minimal relief from the prior injection with a resumption of his symptoms. Petitioner continued to complain of ongoing anterior left knee pain. Dr. Schinksy recommended an MRI be performed on Petitioner's left knee. (PX2).

Petitioner underwent an MRI to his left knee on February 19, 2010. The MRI revealed a flap type posterior horn medial meniscus tear, calcified loose body of the medial meniscus, horizontal tears of the lateral meniscus,

patellofemoral joint effusion, and scarring of the proximal medial and lateral collateral ligaments. On February 23, 2010, Dr. Schinksy reviewed the MRI results. Dr. Schinksy confirmed a meniscal tear, a loose body, and significant degenerative joint disease. (PX2).

On March 10, 2010, Petitioner returned to Dr. Schinksy. Petitioner reported that his left knee continued to bother him since striking it on the hitch at work. Dr. Schinksy diagnosed left knee patellofemoral degenerative joint disease, a medial meniscus tear, and a lateral meniscus tear. Petitioner was recommended to undergo surgical intervention to his left knee. (PX2).

On April 27, 2010 and April 30, 2010, Petitioner underwent pre-operative screening at Rush Copley Medical Center. (PX2, PX5, and RX9). On May 14, 2010, Petitioner underwent surgical intervention to his left knee by Dr. Mark Schinksy. The pre-operative diagnosis was left knee medial meniscal tear, left knee lateral meniscal tear, and left knee degenerative joint disease. A left knee diagnostic arthroscopy was performed with partial medial meniscectomy and partial lateral meniscectory. Post-operative diagnosis was left knee medial meniscal tear, lateral meniscal tear, and degenerative joint disease. (PX2).

On May 25, 2010, Petitioner was seen by Dr. Schinksy for a post-operative follow up. Dr. Schinksy recommended Petitioner to start physical therapy and return for a follow up evaluation in six weeks. (PX2).

Petitioner underwent a physical therapy evaluation at Castle Orthopaedics on May 27, 2010. It was indicated that Petitioner had been off of work since the surgery. Petitioner underwent physical therapy on May 27, 2010, June 1, 2010, June 3, 2010, June 8, 2010, and June 10, 2010. Petitioner was discharged from therapy on June 17, 2010. At that time, it was noted that Petitioner lacks the final 20% of his flexion of his left knee. Petitioner indicated that he was attending health club regularly and performing comprehensive exercises including swimming. He was instructed to follow up with Dr. Schinksy. (PX2).

On July 6, 2010, Petitioner was seen by Dr. Schinksy. At that time, Petitioner indicated that he was doing quite well. He further indicated that he was experiencing a grinding sensation in the knee when he first gets moving but the knee can work after continued activity. Dr. Schinksy indicated that Petitioner continue his activities as tolerated and follow up as needed. (PX2).

Petitioner was seen by Dr. Howard Freedberg at the request of Respondent on November 2, 2010. Petitioner provided a history of the work accident. Dr. Freedberg took an examination of Petitioner's left knee and reviewed the pertinent medical records. Dr. Freedberg opined that Petitioner sustained a blunt contusion to the anterior aspect of the left knee as a result of the work accident. He further opined that the mechanism of injury, striking a knee on the hitch, could cause a medial or lateral meniscal tear. The evidence deposition of Dr. Freedberg was completed on March 8, 2011.

At the request of his attorney, Petitioner was seen by Dr. Jeffrey Coe on May 31, 2011. At that time, Petitioner provided Dr. Coe with a description of the October 14, 2009, work accident. Petitioner indicated that he struck his left knee of the trailer hitch, noted immediate onset of pain, and "recoiled" for the pain causing a twisting motion. Dr. Coe performed an examination of Petitioner's left knee and reviewed the pertinent medical records. Dr. Coe opined that Petitioner's left knee condition was causally related to the October 14, 2009 work accident. The evidence deposition of Dr. Coe was performed on September 6, 2013.

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

On October 14, 2009, Petitioner was instructed to clean up the maintenance shed for an upcoming inspection. He was directed to perform these tasks, which were incidental to his duties as a Maintenance II, by his supervisor Pat Colford. While walking past the rear of his work truck, he struck his left knee on the hitch. The rear of the truck was in disrepair and it caused the hitch to stick out further than it should. The incident report Petitioner filed out was consistent with his trial testimony.

Based on the above, and the record as a whole, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of his employment on October 14, 2009.

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

Petitioner testified that he reported the October14, 2009, work accident to his supervisor, Pat Colford, on that same day. Petitioner also filed out a written incident report explaining the work accident. The incident report was signed by his supervisor on October 15, 2009. (RX4).

Based on the above, and the record taken as a whole, the Arbitrator finds that timely notice of the accident was given to Respondent.

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

Petitioner had an onset of left knee pain immediately following the accident. He testified that his knee twisted when it recoiled in pain. He further testified that his knee twisted as he turned to look at three coworkers who were near the accident. Petitioner sought treatment with Dr. Schinsky on October 27, 2009. At that time, he reported a consistent history of the work accident.

Petitioner was previously seen by Dr. Schinsky for left knee complaints. As of December 10, 2008, Petitioner was diagnosed with degenerative joint disease in his left knee. Dr. Schinsky instructed Petitioner to return if needed. There wasn't any type of outstanding treatment recommendation for Petitioner's left knee. Additionally, Petitioner was working full duty without any type of restrictions to his left knee. Petitioner had gone over ten months without requiring a follow up visit with Dr. Schinsky. It wasn't until the October 27, 2009 accident, which required him to return to Dr. Schinsky.

Furthermore, Dr. Coe testified that the accident of October 14, 2009 aggravated the preexistent left knee degenerative arthritis and caused a medial and lateral meniscus tear. Dr. Coe explained that Petitioner's history of twisting his knee after the blunt trauma was not inconsistent with the medical records. (PX1).

Based on the above, and the record taken as a whole, and in light of the Arbitrator's finding as to accident (issue "C" and "D", supra), the Arbitrator finds that Petitioner's current condition of ill-being with respect to his left knee/leg is causally related to the accident on October 14, 2009.

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

Petitioner treated with Castle Orthopaedics for his left knee condition. Dr. Coe testified that the treatment was reasonable and necessary to treat this condition.

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident and causation (issues "C", "D" and "F", supra), the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses associated with the care and treatment of his left knee/leg totaling $21,763.75, pursuant to §8(a) and the fee schedule provisions set forth in §8.2 of the Act. These expenses include services provided by Castle Orthopaedics in the amount of $7,925.00, services provided by Castle Surgicenter in the amount of $10,774.00, services provided by Guardian Anesthesia Associates in the amount of $920.00, services provided by Rush-Copley in the amount of $1,704.00, services provided by Aurora Internal Medicine in the amount of $250.00, services provided by Valley Imaging in the amount of $96.00, and services provided by APLM in the amount of $94.75. (PX5).

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

Petitioner was taken off of work by Dr. Schinsky as of May 14, 2010, the day of his left knee surgery. Petitioner was terminated from his employment with Respondent on May 18, 2010. On July 6, 2010, Dr. Schinsky released Petitioner to his activities as tolerated. This is the date he reached maximum medical improvement. Petitioner testified that he didn't work from May 14, 2010 through July 6, 2010.

Based on the above, and record taken as a whole, as well as the Arbitrator's determination as to accident and causation (issues "C", "D" and "F", supra), the Arbitrator finds that Petitioner was temporarily totally disabled from May 14, 2010 through July 6, 2010, for a period of 7-5/7 weeks.

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

The record shows that as a result of the accident in question, Petitioner suffered a left knee lateral and medial meniscus tear. The records further show that Petitioner underwent surgical intervention to his left knee to repair the tears. Petitioner testified that he has ongoing knee pain but that the pain has been better since surgical intervention. He takes Aleve to relieve his left knee pain. He further testified that he can no longer use the Elliptical machine because it causes him too much pain in his left knee.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 20% loss of use of left leg, pursuant to §8(e)12 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☒ 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

Juan Barrera,

Petitioner,

vs. NO: 12 WC 34248

15IWCC0559

Julian Electric,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2014 is hereby affirmed and adopted.

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

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

15IWCC0559

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

DATED: JUL 2 2 2015

David L. Gore

DLG/gaf
O: 7/9/15
45

Stephen Mathis

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BARRERA, JUAN
Employee/Petitioner

Case# **12WC034248**

15IWCC0559

JULIAN ELECTRIC
Employer/Respondent

On 2/20/2014, 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 0.07% 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:

5056 KURTZ & AUGENLICHT LLP
DAVID FROYLAN
123 W MADISON ST SUITE 700
CHICAGO, IL 60602

0766 HENNESSY & ROACH PC
QUINN M BREMMAN
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

15IWCC0559

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Juan Barrera
Employee/Petitioner

v.

Julian Electric
Employer/Respondent

Case # 12 WC 34248

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Wheaton**, on **12-12-2013**. 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. [x] 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 **05-23-12**, 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* causally related to the accident.

In the year preceding the injury, Petitioner earned $ **20,800.00**; the average weekly wage was $ **400.00**.

On the date of accident, Petitioner was **28** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**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 $266.67/week for 22.57 weeks, commencing 05-10-13 through 10-15-13, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $ 131,711.10, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $240/week for 55 weeks, because the injuries sustained caused the 11% loss of the man as a whole, as provided in Section 8(e) of the Act.

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

02-19-13
Date

FEB 20 2014

Findings of Fact

Petitioner worked for Respondent from June 9, 2011 through May of 2012 as a cutter, crimper and solderer. As of May 2012, Petitioner's pay rate was $10.00 per hour.

On May 23, 2012, Respondent started his shift at 8:00 a.m. On that day, the solder operator was out due to emergency surgery and Petitioner was asked to cover that position.

The solder operator is part of an assembly line. The solder operator stands in front of a manually operated conveyor belt that carries multiple cables measuring from twelve inches to six feet in length and weighing half-a-pound to five pounds individually. The cables are constructed of copper and insulation. The solder operator must manually pull the cables off the assembly line, carry them to the solder pot and solder each end by dipping them in the solder pot. The solder pot holds heated liquid lead. The solder operator then cleans each end of the cable and returns the cable to the conveyor belt. On May 23, 2012, the solder operator had a daily quota of 2400 pieces per day or one cable every 12 seconds.

Petitioner testified that he injured his shoulder on May 23, 2012 while covering the solder operator position. Specifically, Petitioner testified that he pulled six or seven cables off the conveyor belt. The cables measured six feet in length. As he brought the cables over his shoulder, he felt a sharp pain in his right shoulder. Petitioner did not immediately report the injury. Petitioner testified he did not think anything of it and continued to work. At the end of his shift, he went home and took Aleve for the pain.

Sometime between May 23, 2012 and May 29, 2012, Petitioner testified he reported his injury to Ruben Soto ("Ruben"), the floor supervisor. Ruben testified he first learned of

the accident through Jordan Ferrario ("Jordan"), but did not recall the date. Petitioner testified he did not report his injury to Jordan, the Human Resources representative, because she was not available that day. Jordan is only available on Tuesdays. Petitioner related that the following Tuesday after the accident, May 29, 2012, he reported his injury to Jordan. Jordan testified she did not learn of the accident until June 12, 2012.

Petitioner was not offered any medical assistance by his employer. On May 29, 2012 Petitioner contacted his primary care physician at Des Plaines Valley Community Health ("Des Plaines Valley") and requested an appointment for an examination of his shoulder pain. The first available appointment was June 13, 2012.

On June 13, 2012, Petitioner was examined by Dr. Solomon Okai ("Dr. Okai") of Des Plaines Valley. (PX. 1 p. 11-12). Dr. Okai prescribed 500 milligrams of ibuprofen and referred Petitioner to La Grange Hospital for an X-ray of his right shoulder.

On June 13, 2012, LaGrange Hospital took X-rays of Petitioner's right shoulder. (PX. 2 p. 9). Petitioner followed up with Dr. Nasreen Ansari ("Dr. Ansari") of Des Plaines Valley.

Dr. Ansari examined Petitioner and took a history of the injury. Petitioner stated he injured his right shoulder carrying cable at work. Dr. Ansari referred Petitioner to Dr. Bruce Hallman ("Dr. Hallman") of LaGrange Hospital. (PX. 3 p. 6).

On July 26, 2012, Petitioner attended his first appointment with Dr. Hallman. (PX. 3 p. 4). Dr. Hallman examined Petitioner and took a history of the injury. Petitioner stated he injured his right shoulder carrying cable at work. *Id.* Dr. Hallman reviewed Petitioner's X-rays and gave him a corticosteroid injection in his right shoulder. (PX. 3 p. 4-5).

Sometime after August 10, 2012, an insurance representative contacted Petitioner. Petitioner was advised that Dr. Hallman was not a part of the their group insurance. The

insurance representative advised Petitioner to choose a physician within their group. Petitioner chose Hinsdale Orthopaedics, due to the proximity to Respondent's place of business.

On August 22, 2012, Petitioner saw Dr. Schiffman of Hinsdale Orthopaedics. (PX. 4 p. 24). Dr. Schiffman examined Petitioner and took a history of the injury. Petitioner stated he injured his right shoulder carrying cable at work. Dr. Schiffman diagnosed Petitioner with right shoulder impingement, gave him work restrictions and referred him to physical therapy at Hinsdale Orthopaedics. (PX. 4 p. 29). Respondent was able to accommodate his restrictions.

In October of 2012 Dr. Schiffman took Petitioner off work restrictions. (PX. 4 p. 47). Petitioner attempted to work but continued to have pain in his shoulder. Petitioner returned to Dr. Schiffman who recommended an MRI. (PX. 4 p. 48-49).

On December 13, 2012, Hinsdale Orthopaedic performed an MRI of Petitioner's right shoulder. (PX. 4 p. 50). Susequently, Dr. Schiffman referred Petitioner to Dr. Steven Chudik ("Dr. Chudik") of Hinsdale Orthopaedics. (PX. 4 p. 59). Dr. Chudik is an orthopaedic specializing in shoulder injuries.

On January 9, 2013, Petitioner saw Dr. Chudik. (PX. 4 p. 56-59). Dr. Chudik examined Petitioner and took a history of the injury wherein Petitioner reiterated that he injured his right shoulder carrying cable at work. *Id.* Dr. Chudik reviewed the MRI and stated it was consistent with a superior labral tear. (PX. 4 p. 70). Dr. Chudik placed Petitioner on light duty and referred him to physical therapy at Hinsdale Orthopaedics. (PX. 4 p. 56-59). Respondent accommodated Petitioner's restrictions.

In late February 2013, Dr. Chudik recommended surgery to treat Petitioner's injury. (PX. 4 p. 67-68). In spite of Dr. Chudik's recommenation, the work comp insurer refused to provide coverage for the surgery.

On May 10, 2013, Dr. Chudik agreed to perform the surgery even though it was not approved and removed Petitioner from work. (PX. 4 p. 77). On May 14, 2013, Dr. Chudik performed surgery at Hinsdale Hospital. (PX. 5 p. 20-23). The surgical procedures performed by Dr. Chudik included right shoulder arthroscopic surgery, right labral debridement, right distal clavicle resection, right capsular release, right subacromial decompression and right biceps tenodesis. *Id.* A couple days after surgery, Petitioner thereafter resumed physical therapy. (PX. 4 p. 86).

In late August 2013, Petitioner finished physical therapy. Dr. Chudik referred Petitioner to ATI for work conditioning, and subsequently an FCE. (PX. 4 p. 93-95). Petitioner completed work condition, and on October 3, 2013, completed the FCE. (PX. 6 p. 65). The FCE placed Petitioner at a heavy-duty capacity. *Id.* Dr. Chudik released Petitioner to work on October 14, 2013. (PX. 4 p. 106).

Petitioner reported to work, but Respondent did not have a position available for him. Neil Sprindis ("Neil"), plant manager, testified an employee on their Ford production line left Respondent for a better employment opportunity. Neil testified this position would be available January 6, 2014, and that he relayed this to Petitioner. Neil testified the job offer was not memorialized in writing and that the position's availability is contingent on Respondent having the business.

Although Dr. Chudik ordered Petitioner off work from May 10, 2013 thru October 14, 2013, Petitioner was not paid temporary total disability for that period or any other

benefits from the workers compensation insurance carrier. Petitioner attempted, unsuccessfully, to find employment elsewhere and eventually applied for unemployment.

Conclusions of Law

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The Arbitrator finds that based upon the medical records and Petitioner's uncontradicted testimony at trial, an accident did occur that arose out of and in the course of Petitioner's employment with the Respondent.

The Arbitrator notes that Petitioner testified credibly and consistently that on May 23. 2012, he sustained an injury at work. Specifically, Petitioner testified that on May 23, 2012, while covering the solder operator, he injured his right shoulder. (T. 13). Petitioner testified that he pulled six or seven cables off the conveyor belt. (T. 10). The cables measured six feet in length. *Id.* The cables weighed between 30 – 40 pounds. (T. 38). As he brought the cables over his shoulder, he felt a sharp pain in his right shoulder. (T. 13).

Petitioner testified he related the same set of facts to his treating physicians. The medical records from Des Plaines Valley document Petitioner complained of right shoulder pain. (PX. 1 p. 12). The medical records from LaGrange Hospital document a work injury. (PX. 2 p. 9). The medical records from Dr. Hallman document an injury occurring on May 23, 2012 while carrying heavy cable. (PX. 3 p. 4). The medical records from Dr. Schiffman document a work injury occurring on May 23, 2012. (PX. 4 p. 30). The medical records from Dr. Chudik document a work injury occurring on May 23, 2012. (PX. 4 p. 56). The medical records from Hinsdale Orthopaedic Physical Therapy document a work injury

occurring on May 23, 2012 while lifting something heavy onto his right shoulder. (PX. 4 p. 60). The consistency of the medical records reflects that an accident did occur on May 23, 2012.

In addition, Petitioner testified he reported his injury to Ruben and Jordan. (T. 15-16). Although Ruben denied Petitioner reporting the injury to him, he did acknowledge Jordan had spoken to him about Petitioner's injury. (T. 65).

Jordan acknowledges that Petitioner reported pain in the workplace. Jordan testified Petitioner reported pain when performing a work activity. Specifically, "...feeling pain when doing part of the job..." and Petitioner's report was of "pain in the workplace while doing a duty..." (T. 86). Although Jordan disagrees Petitioner's pain was work-related, she offers no evidence to support such a conclusion. Rather, Jordan makes unfounded assertions requiring expert knowledge and training which she does not possess.

Following Petitioner's report of pain, Jordan followed the same procedures for when an employee suffers a work-related injury. Although there is dispute over when it occurred, Petitioner did report his injury to Jordan. (T. 79). Jordan filled out an accident report. (T. 91). Then, Jordan contacted Berkley Net, Respondent's workers compensation carrier. *Id.*

Jordan testified she filled out an injury/accident report for Petitioner. (T. 94). The thirteenth question on the injury/accident report states, "What machine or tool was being used?" (RX. 4). Jordan wrote "assembly, lifting." *Id.* The fifteenth question on the injury accident report states, "List all objects and substances involved." *Id.* Jordan wrote, "Cables, parts for cables." *Id.* Jordan signed the bottom of the report. *Id.* The injury/accident

report substantiates Petitioners claim that he suffered an injury after pulling cables off the assembly line.

Based on Petitioner's testimony and the evidence presented at trial, the Arbitrator finds that on May 23, 2012, an accident did occur that arose out of and in the course of Petitioner's employment with the Respondent.

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

The Arbitrator finds that based on the medical records, Dr. Chudik's Deposition and Petitioner's testimony at trial, that Petitioner's present condition of ill-being is causally connected to the work-related injury.

The Arbitrator notes that Petitioner credibly testified that on the date of injury, while covering the solder operator, he injured his right shoulder. (T. 13). Petitioner testified that he pulled six or seven cables off the conveyor belt. (T. 10). The cables measured six feet in length. *Id.* The cables weighed between 30 – 40 pounds. (T. 38). As he brought the cables over his shoulder, he felt a sharp pain in his right shoulder. (T. 13).

The evidence shows that Petitioner had not made any previous complaints of pain, injuries or sought medical attention prior to May 23, 2012 for his right shoulder. (T. 34-35). The evidence further shows that June 13, 2012 was the first date Petitioner received treatment for his shoulder pain. (T. 18). The Des Plaines Valley medical records indicate that Petitioner was there for a three-month follow-up. (PX. 1 p. 17). While the record further states that the shoulder pain is unchanged, this particular note is not time-stamped, so there is no indication when the notation was made. *Id.* Furthermore, Des Plaines Valley

has been Petitioner's primary care clinic since he was seven years old. (T. 46). Petitioner testified he has treated with Des Plaines for other illnesses and has had routine follow-ups there. (T. 44-46). Despite Petitioner treating with the same clinic for the majority of his life, no evidence was presented to show prior treatment for shoulder pain or a shoulder injury.

The Arbitrator finds that there is no evidence in the record to break the causal connection between Petitioner's present state and his work-related injury.

Petitioner consistently gave a history of the mechanism of his injury to the various medical providers as evidenced in the medical records. Petitioner consistently, reported that he suffered a work-related injury on May 23, 2012 or that he suffered sharp pain to his shoulder while lifting cable over his right shoulder.

In addition, Dr. Chudik testified that based upon a reasonable degree of medical and surgical certainty, the occurrence of May 23, 2012 caused Petitioner's injury. (PX. 7 p. 20).

Dr. Chudik is board certified in orthopedic surgery and orthopedics sports medicine. (PX. 7 p. 6). Dr. Chudik has practiced for the last ten years specializing in shoulder injuries. *Id.* Petitioner treated with Dr. Chudik at Hinsdale Orthopaedics. (PX. 4). Petitioner chose to treat at Hinsdale Orthopaedics from a list provided to him by the insurance carrier. (T. 21-22).

Dr. Chudik testified Petitioner's superior labrum tear was consistent with the injury mechanism Petitioner described. (PX. 7 p. 14). Dr. Chudik described superior labral tears, like the type Petitioner sustained, tend to happen with overhead type injuries. (PX. 7 p. 16). Dr. Chudik testified he considered several factors in making a determination as to whether the May 23, 2012 accident caused Petitioner's injury. (PX. 7 p. 17). Among those

factors were the timing and onset of the symptoms, the physical examination and his findings during surgery. (PX. 7 p. 17-18). Dr. Chudik testified a 28 year old, like Petitioner, would not expect to have a tear like the one he had without a very specific overhead injury. (PX 7 p. 18-19).

Although Dr. Pietro Tonino ("Dr. Tonino"), the IME physician, testified that it was his opinion that the May 23, 2012 did not cause Petitioner's injury, Dr. Tonino offers absolutely no basis for this opinion and, consequently, the Arbitrator gives Dr. Chudik's opinion more weight.

Dr. Tonino testified that a patient's history is important in making a diagnosis and recommendations on treatment. (RX. 1 p. 9). Dr. Tonino further testified that reviewing a patient's medical records is important for the history. (RX. 1 p. 16). However, Dr. Tonino admitted he did not have the opportunity to review medical records from Des Plaines Valley. (RX. 1 p. 15). Of the records Dr. Tonino did have, some were not legible. *Id.*

Also, in the April 8, 2012, IME report, Dr. Tonino stated he had no opinion regarding causation. (RX. 1 p. 16-17). Respondent's counsel subsequently requested from Dr. Tonino an addendum regarding causation. (RX. 1 p. 17). In response, Dr. Tonino stated the May 23, 2012 occurrence did not cause the injury. *Id.* From the April 8, 2012 IME report to the point where Dr. Tonino wrote the addendum, he did not review additional reports, MRI's, medical charts nor examine the client. Most significantly, Dr. Tonino could not articulate any basis for this new conclusion.

Based on the facts stated above, a review of the medical records and the depositions, the Arbitrator finds a causal connection between the Petitioner's present condition of ill-being and his work-related injury.

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?

The Arbitrator finds that the medical services rendered to Petitioner were reasonable and necessary; and that Respondent has not paid all appropriate charges for all of the reasonable and necessary medical services.

The Arbitrator notes that the medical records and Petitioner's credible testimony support that all medical services provided to Petitioner were reasonable and necessary. Petitioner testified that his shoulder was injured while lifting heavy cables onto his right shoulder.

Following Petitioner's injury, he sought treatment at Des Plaines Valley. (PX. 1). Des Plaines Valley referred him to LaGrange Hospital for shoulder X-rays and to follow-up with Dr. Hallman. (PX. 2 and 3). Subsequently, Petitioner treated at Hinsdale Orthopaedics, where he received physical therapy. (PX. 4). Dr. Chudik performed right shoulder surgery at Hinsdale Hospital on May 14, 2013. (PX. 5). Petitioner had work conditioning and an FCE at ATI. (PX. 6). On October 15, 2013, Dr. Chudik released Petitioner from medical care. (PX. 4).

The Arbitrator notes that Respondent failed to provide any credible evidence supporting that the medical treatment rendered by Des Plaines Valley, LaGrange Hospital, Dr. Hallman, Hinsdale Orthopaedics, Hinsdale Hospital and ATI was not reasonable and necessary. No utilization was performed.

Based on these facts and the findings stated above, the Arbitrator finds that the medical treatment provided by Des Plaines Valley, LaGrange Hospital, Dr. Hallman, Hinsdale Orthopaedics, Hinsdale Hospital and ATI were reasonable and necessary and orders Respondent to pay $255.00 to Des Plaines Valley, $164.76 to LaGrange Hospital, $546.00 to Dr. Hallman, $93,127.00 to Hinsdale Orthopaedics, $19,044.13 to Hinsdale Hospital and $18,574.21 to ATI for medical services provided to Petitioner for a total award of $131,711.10, subject to the fee schedule.

K. What temporary benefits are in dispute?

The arbitrator finds that based on the medical records, Petitioner is owed total temporary disability benefits.

On May 10, 2013, Dr. Chudik removed Petitioner from work. (PX. 4 p. 77). Dr. Chudik kept Petitioner off work until after he completed his FCE. (PX. 6 p. 65). The FCE placed Petitioner at a heavy-duty capacity. *Id.* Dr. Chudik released Petitioner to work on October 14, 2013. (PX. 4 p. 106).

Based on these facts and the findings stated above, the Arbitrator finds that Respondent shall pay Petitioner temporary total disability benefits of $266.67/week for 22.57 weeks, commencing May 10, 2013 through October 15, 2013, as provided in Section 8(b) of the Act.

L. What is the nature and extent of the injury?

The Arbitrator finds that the nature and extent of Petitioner's injury is 11% man as a whole. In rendering this award, the Arbitrator notes no 8.1(b) report (AMA impairment) is

in the record. However, an FCA performed by ATI showed that upon discharge, Petitioner was able to function at the VERY HEAVY physical demand level. (PX #6) Petitioner's occupation as a cutter at Julian Electric was considered to be a HEAVY demand level, but no job description was available to ATI at the time of the assessment. (Id.) The FCA report was valid and the Petitioner gave an excellent effort. (Id.) However, when performing the exercises, there were instances when the Petitioner complained of right shoulder pain when lifting above the shoulder level, stating, "That's it. My right shoulder was bothering me a little bit."

The Petitioner could lift nearly twice the amount of weight with his left arm (41.6 lbs.) in contrast to his injured right arm, (26.1 lbs.) while lifting above the shoulder level. (Id.)

When comparing grip strength, the Petitioner's left hand was significantly stronger than his injured right (73.8 lbs. vs. 58.8 lbs.). Petitioner stated, ("....my shoulder symptoms usually show up several minutes after I am done lifting." (Id.)

When pushing and pulling, the Petitioner reported that, "I have a little pulling and tension in my shoulder when pulling." (106 lbs.) (Id.) Later, while carrying, the Petitioner reported "sharp pain" in the right shoulder after carrying 52 lbs. (Id.)

In determining the level of permanent partial disability, the Arbitrator bases the above award on the additional five factors pursuant to Section 8.1 of the Act: (i) there was no impairment report prepared by either party, but there was an FCA report, as stated above; (ii) the Petitioner's occupation was "cutter" at Julian Electric. His post injury occupation is unknown, as Respondent terminated his position. It appears from the record that Petitioner suffered some form of a job loss as a result of his work injury, but ostensibly,

could return to work in a similar position at another company. Nevertheless, at the time of the hearing, Petitioner was unemployed; (iii) The Petitioner's age at the time of the injury was 27; which may explain why he recovered so well from his injury, but there is nothing in the record to establish this inference; (iv) there is no evidence that the Petitioner's long term future earning capacity has been affected by this injury, however, his short-term earning capacity was hindered. As stated before, at the time of the hearing, the Petitioner was unemployed. It should be noted however, that Petitioner made no demand for vocational rehabilitation at the time of trial and elected to receive a nature and extent award; (v) Petitioner showed some evidence of disability corroborated by the treating records as discussed in the FCA above.

Finally, it bears repeating that on May 14, 2013, Petitioner underwent right shoulder arthroscopic surgery, right labral debridement, right distal clavicle resection, right capsular release, right subacromial decompression and right biceps tenodesis. (PX. 5 p. 20-23). Following the surgery, Petitioner underwent several weeks of physical therapy to his right shoulder in order to regain the strength and range of motion to his right shoulder. (PX 4).

Based upon the above stated facts, medical records, and Petitioner's credible testimony; the Arbitrator finds that an award for man as a whole is warranted. Accordingly, Respondent shall pay Petitioner permanent partial disability benefits of $240.00/week for 55 weeks because the injuries sustained caused the 11% loss man as a whole, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ Affirm and adopt	☐ 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

Louis Bodie, III,
Petitioner,
vs.

15IWCC0555

NO: 10 WC 28037

City of West Chicago,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 5, 2014 is hereby affirmed and adopted.

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

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

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: JUL 2 1 2015
KWL/vf
O-7/14/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0555

BODIE III, LOUIS
Employee/Petitioner

Case# 10WC028037

10WC028036
10WC028038

CITY OF WEST CHICAGO
Employer/Respondent

On 8/5/2014, 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 0.05% 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:

2333 WOODRUFF JOHNSON & PALERMO
RUSSELL HAUGEN
4234 MERIDIAN PKWY SUITE 134
AURORA, IL 60504

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
JEFFREY N POWELL
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

☐ 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

15IWCC0555

Louis Bodie III,
Employee/Petitioner

v.

City of West Chicago,
Employer/Respondent

Case # 10 WC 28037

Consolidated cases: 10 WC 28036
10 WC 28038

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Geneva**, on **4/24/14**. 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 _____

15IWCC0555

FINDINGS

On **6/2/09**, 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 with respect to his right shoulder *is* causally related to the accident.

In the year preceding the injury, Petitioner earned $**45,451.64**; the average weekly wage was $**874.07**.

On the date of accident, Petitioner was **62** years of age, ***single*** with **no** dependent children.

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

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

Respondent shall be given a credit of $**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 reasonable and necessary medical services of $3,315.00, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $524.44 per week for 15 weeks, because the injuries sustained caused the 3% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

7/29/14
Date

AUG - 5 2014

15IWCC0555

STATEMENT OF FACTS:

Petitioner, a 62 year old maintenance worker, testified that his job duties with Respondent included repairing water mains, plowing snow, trimming trees, street repair, and many other tasks involved with the municipality.

Prior to the accident in question, Petitioner treated at Rush Copley Medical Center following a motorcycle accident on December 27, 2007. He was diagnosed with a right scapular fracture, multiple rib fractures, small pneumothorex, and adrenalhematoma. His right scapular fracture was treated conservatively. He was seen by Dr. Schinksy at Castle Orthopaedics on November 5, 2007. Petitioner subsequently underwent a course of physical therapy at Castle Orthopaedics from November 27, 2007 through January 3, 2008. On January 8, 2008, Petitioner was seen by Dr. Schinksy. Petitioner was diagnosed with a healing right scapular fracture, released back to full duty work, and was instructed to follow up with Dr. Schinksy as needed. (PX2).

On November 4, 2008, Petitioner returned to Dr. Schinksy at Castle Orthopaedics. He reported some posterior right scapular discomfort, particularly with shoulder range of motion exercises. Dr. Schinksy referred Petitioner to Dr. Saleem. Petitioner was seen by Dr. Saleem on December 18, 2008. Petitioner reported pain in the back of the scapulothoracic joint. Dr. Saleem diagnosed scapulothoracic bursitis. Petitioner was recommended to perform strengthening exercises on his own and return for a follow up as needed. (PX2)

Petitioner testified that on the date of the alleged accident, June 2, 2009, he was performing tree trimming and brush removal in order to improve the sight of traffic on one of the roads in the city of West Chicago. Petitioner further testified that he was instructed to perform these duties by his supervisor, Pat Colford. Petitioner testified that it was raining at the time he was performing these tasks. At one point while Petitioner was feeding brush into the chipper, the brush got plugged up so he had to try to unplug it with a broomstick. This required him to stand on a 2 x 2 stair that was a few feet off the ground. As he was inserting the broomstick into the chipper, which he holding with his right hand, his feet slipped off the stair he was standing on. Petitioner further testified that when he slipped off the stair, his right shoulder was jerked and he had an immediate onset of pain in his right shoulder.

Petitioner further testified that when he returned to the shop, he reported the accident to his supervisor, Pat Colford. Petitioner filled out an incident report. In the incident report, Petitioner described the accident as "occurring when he was standing on the tongue of chipper trailer trying to unplug the shoot that was full of wet leaves and chips. Working in rain and it was slippery. Slipped off and hit knee on trailer and pulled muscle in armpit area". (RX5). Petitioner testified that he initially refused treatment based upon the fact that he thought the pain he was experiencing in his shoulder would eventually go away.

Petitioner testified of ongoing scapular pain following his October 27, 2007 motor vehicle accident. However, Petitioner testified that he wasn't experiencing any type of pain in the top of the shoulder and down into the bicep. Petitioner further testified that he developed this pain following the June 2, 2009 work accident.

Petitioner testified of ongoing pain and discomfort in the shoulder and bicep area on his right arm. He described the pain radiating into his armpit and feeling similar to pain when someone punches you in the arm. He can no longer fish, throw balls, or work on his cars. He has pain when he combs his hair. He further testifies that he takes Aleve to relieve the pain. He also exercises and swims to relieve the pain.

On March 5, 2010, Petitioner was seen by Dr. Saleem at Castle Orthopaedics. By history, Petitioner reported experiencing pain and discomfort in his right shoulder that has progressed since his work injury. He described an incident when he was working with a chipper, he slipped, and his right arm was jerked. On examination,

Petitioner had discomfort with resisted elevation, five out of five rotator cuff strength, and 4/5 resisted elevation strength. Dr. Saleem diagnosed right shoulder rotator cuff strain with possible rotator cuff tear from a fall. Petitioner was recommended to undergo an MRI of the shoulder and follow up thereafter. (PX2).

On March 17, 2010, Petitioner underwent an MRI of his right shoulder. The MRI revealed moderate distal supraspinatus tendinopathy, mild degenerative changes at the acromioclavicular joint, and mild condral degeneration. (PX2).

On March 19, 2010, Dr. Saleem reviewed the right shoulder MRI. Dr. Saleem indicated that there was no rotator cuff tear and diagnosed a right rotator cuff strain. Dr. Saleem recommended Petitioner to start therapy for his right shoulder and follow with a follow up in six week. (PX2).

On April 19, 2010, Petitioner was seen at Castle Orthopaedics for an initial evaluation for physical therapy. By history, Petitioner reported the origin of his right shoulder pain relating the origin of his right shoulder pain to the June 2, 2009 work accident when he fell off a branch chipper and his arm was jerked back and up. Petitioner reported that his pain was increased with pushing a broom or shovel. Petitioner underwent physical therapy modalities on April 19, 2010, April 20, 2010, April 22, 2010, April 26, 2010, April 27, 2010, April 29, 2010, May 3, 2010, May 5, 2010, May 6, 2010, May 10, 2010, and May 13, 2010. On May 13, 2010, Petitioner was discharged from his physical therapy. (PX2).

At the request of Respondent, Petitioner was seen by Dr. Guido Marra for an evaluation of his right shoulder pursuant to Section 12. Dr. Marra issued an initial report on January 20, 2011. He then issued a second report following his review of the March 17, 2011 MRI of Petitioner's right shoulder. In his report, Dr. Marra indicated that Petitioner did not sustain a significant injury to his right shoulder at the time of the June 2, 2009 accident. Dr. Marra further opined that Petitioner's right shoulder condition of ill-being was not related to the June 2, 2009 injury. The evidence deposition of Dr. Marra was taken on December 9, 2011. (RX2).

At the request of his attorney, Petitioner was seen by Dr. Jeffrey Coe on May 31, 2011. Petitioner provided Dr. Coe with a history of the June 2, 2009 work accident. Dr. Coe performed an examination of Petitioner's right shoulder and reviewed all of the related medical records. Dr. Coe opined that Petitioner's current right shoulder condition of ill-being was related to the June 2, 2009, work accident. Dr. Coe further opined that Petitioner suffered permanent partial disability to his right arm as a result of the work accident. The evidence deposition of Dr. Coe was performed on September 6, 2013. (PX1).

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

On June 2, 2009, Petitioner was instructed to clear brush and trees on the side of a road to improve the line-of-sight for drivers. Petitioner was instructed to perform these duties by his supervisor, Pat Colfold. While performing these duties, Petitioner slipped off a wet stair and jerked his right arm and shoulder. His right arm was holding onto a broomstick in an attempt to dislodge material from the chipper. He was working outside and it was raining at that time. Petitioner filed out an incident report that same day.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of his employment on June 2, 2009.

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

Petitioner testified that he reported the June 2, 2009, work accident to his supervisor, Pat Colford, on that same day. Petitioner also filed out a written incident report explaining the work accident. The incident report was signed by his supervisor on June 4, 2009. (RX5).

Based on the above, and the record taken as a whole, the Arbitrator finds that timely notice of the accident was given to Respondent.

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

Petitioner had an onset of right shoulder pain immediately after the work accident. Petitioner testified that he thought the pain would resolve and get better. However, when the pain persisted, he sought treatment with Dr. Saleem on March 5, 2010. At that time, he provided a consistent history of the June 2, 2009, work accident.

Petitioner admitted that he sustained a scapular fracture on October 27, 2007 and that he had ongoing complains of occasional scapular pain since them. However, Petitioner indicated that the pain was located on his back, near his shoulder blade. He further testified that he wasn't having pain on the top of his shoulder and into his bicep until the June 2, 2009, work accident.

Dr. Coe testified that Petitioner's right shoulder condition was causally related to the work accident on June 2, 2009. (PX1, p.31). He further opined that Petitioner had right shoulder subacromial impingement syndrome that developed from the strain of his shoulder as he fell and twisted his arm on June 2, 2009.

The Arbitrator doesn't find the opinions of Dr. Marra persuasive. Dr. Marra opined that Petitioner didn't sustain a "serious injury" as a result of the June 2, 2009 work accident. He based this on Petitioner's delayed treatment and the MRI results. Petitioner testified credible that he continued to work even though he had ongoing pain in his shoulder. Additionally, neither Dr. Saleem nor Dr. Coe diagnosed Petitioner with a "serious" rotator cuff injury.

Based on the above, and record taken as a whole, including the medical records, the opinions of Dr. Coe, and the credible testimony of Petitioner, the Arbitrator finds that Petitioner's current condition of ill-being relative to his right shoulder is causally related to the accident on June 2, 2009.

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

Petitioner treated with Dr. Saleem and Castle Orthopaedics physical therapy for his right shoulder condition. Dr. Coe testified that the treatment was reasonable and necessary to treat this condition. Dr. Mara agreed. Therefore, based on the above, and in light of the Arbitrator's determination as to causation, the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical services as provided in the amount of $3,315.00 pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act for services provided by Castle Orthopaedics. (PX5).

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

The record shows that as a result of the accident in question, Petitioner suffered a right shoulder sprain which developed into impingement. Petitioner underwent several weeks of physical therapy to treat this condition. Petitioner testified that he continues to exercise so that he can keep his shoulder lose. Petitioner further testified that he can no longer throw a ball, work on his cars, or fish. Petitioner was able to do all these activities prior to the June 2, 2009 work accident.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 3% person-as-a-whole, pursuant to §8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Octavia Morgan,

Petitioner,

vs.

NO: 12 WC 25141
consol. with 11 WC 25614

Chicago State University,

15IWCC0549

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, improper notice, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 30, 2014, is hereby affirmed and adopted.

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

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

15IWCC0549

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: JUL 17 2015
TJT:yl
o 6/16/15
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MORGAN, OCTAVIA
Employee/Petitioner

Case# **11WC025614**

12WC025141

CHICAGO STATE UNIVERSITY
Employer/Respondent

15IWCC0549

On 4/30/2014, 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 0.45% 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:

2706 LAW OFFICE OF EVAN A HUGHES
30 N LASALLE ST
SUITE 2950
CHICAGO, IL 60603

5048 ASSISTANT ATTORNEY GENERAL
MEGAN MURPHY
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0904 STATE UNIVERSITY RETIREMENT SYS
PO BOX 2710 STATION A*
CHAMPAIGN, IL 61825

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

APR 30 2014

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

15IWCC0549

☐ 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

Octavia Morgan
Employee/Petitioner

v.

Chicago State University
Employer/Respondent

Case # **11** WC **25614**

Consolidated cases: **12 WC 25141**

An *Application for Adjustment of Claim* was filed in each of these matters, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Chicago**, on **4/10/14**. 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? (disputed as to June 9, 2011 accident/12 WC 25141 only)
D. ☒ What was the date of the accident? (disputed as to June 9, 2011 accident/12 WC 25141 only)
E. ☒ Was timely notice of the accident given to Respondent? (disputed as to June 9, 2011 accident/12 WC 25141 only)
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 15IWCC0549

On **January 11, 2011 and on June 9, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

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

On January 11, 2011, Petitioner *did* sustain an accident that arose out of and in the course of employment. On June 9, 2011, the petitioner did not sustain an accident that arose out of and in the course of employment.

Timely notice of the January 11, 2011 accident *was* given to Respondent.

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

In the year preceding the injury, Petitioner earned $**33,119.84**; the average weekly wage was $**636.92**.

On each date of accident, Petitioner was **49** years of age, ***married*** with **0** dependent children.

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

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

ORDER

No accident was demonstrated regarding June 9, 2011; the medical care at issue was related to the January 2011 date of loss.

The respondent shall pay the petitioner $75.00 in out of pocket medical expenses as provided in Section 8(a) of the Act. The respondent shall be given a credit of for medical benefits that have been paid but shall hold the petitioner harmless from any claims by any providers of the services for which the respondent is receiving this credit, as provided in Section 8(j) of the Act.

The respondent shall pay the petitioner permanent partial disability benefits of $382.15/week for 7.15 weeks, because the injuries sustained caused 1% loss to the person as a whole, as provided in Section 8(d)2 of the Act, and 1% loss to the right leg, as provided in Section 8(e) of the Act.

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.

Arbitrator Joshua D. Luskin

April 30, 2014
Date

APR 30 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

OCTAVIA MORGAN,	)	15IWCC0549
	)	
Petitioner,	)	
	)	
vs.	)	Nos. 11 WC 25614
	)	12 WC 25141
CHICAGO STATE UNIVERSITY,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

These matters were consolidated and tried jointly. The parties requested a singular decision encompassing both claims; after review of the evidence the Arbitrator concurs that this is the appropriate approach.

STATEMENT OF FACTS

The petitioner is an admissions counselor for the respondent, beginning that position in 2008. Her job duties include guidance and assisting students with enrollment issues as well as scheduling and conducting campus tours for prospective students.

On January 11, 2011, the petitioner slipped and fell on ice in an employee parking lot. She described pain in her right knee and low back following the fall. The petitioner testified she attempted self-treatment such as an Epsom bath and over-the counter medication. She reported the incident to her employer within the 45-day statutory requirement. Accident and notice were not disputed relative to that injury.

On February 7, 2011, the petitioner saw her primary care provider, Advocate Medical Center. At that time, she reported pain in her lower back and right knee. X-rays showed no acute bony problems in the knee and she was assessed with a strain. She was given ibuprofen, physical therapy and recommended weight loss and home exercise. PX1. She began physical therapy two days later. The petitioner attended six physical therapy appointments over the next five weeks. PX3. She reported improvement in both her low back and knee symptoms over the course of therapy.

On June 9, 2011, the petitioner saw her primary care provider, reporting recurrent pain in the low back and knee due to campus tours, but related the condition to the January 2011 fall. Back x-rays showed no fracture. She was given a physical therapy prescription and referred to an orthopedist. PX1. On June 28, 2011, she reported persistent symptoms to her family doctor and she was instructed to follow up with

15IWCC0549

orthopedics and physical therapy. PX1.

On July 5, 2011, the petitioner saw Dr. Strugula, an orthopedist. She reported low back pain that had good improvement in prior physical therapy but recurrent symptoms since. He recommended physical therapy and referred her for an MRI. PX2. She began physical therapy on July 7, 2011. See PX3.

The lumbar MRI was done July 16, 2011, noting a minimal diffuse disk bulge at L4-5 with no stenosis or foraminal narrowing, consistent with mild degeneration. PX2.

On July 26, 2011, Dr. Strugula reviewed the MRI and noted "very minimal degeneration" with no acute disk pathology. He recommended continuation of physical therapy and told her to follow up in a month. PX2.

On August 29, 2011, the petitioner was discharged from physical therapy, having attended eight sessions over the course of July and August. PX3. On August 30, 2011, the petitioner saw Dr. Strugula. She reported that her pain worsened with stressful situations at work. She ambulated without difficulty. He instructed her to continue home exercise and discharged her from care. PX2.

On September 1, 2011, she saw her family doctor. She reported improvement but was concerned about walking. No neurological symptoms were noted. She was released to work, told to lose weight and told to follow up as needed. PX1. The petitioner has not sought medical care for this issue since that time.

The petitioner worked regular duty in her job through June. She was off work during the summer and returned to work in August 2011. She was paid her regular salary during the summer months. She has continued to work for the respondent since her medical discharge. She reports she continues to do home exercise.

OPINION AND ORDER REGARDING DISPUTED ISSUES

Accident (June 2011 incident / 12-WC-25141 only) and Causal Connection

As these issues overlap, the Arbitrator will address them jointly. The petitioner suffered a slip and fall on ice in January 2011, which was not disputed. The petitioner reported to her physicians that her ongoing complaints were related to the January 2011 incident and that no new trauma had occurred. While the Arbitrator finds it unusual that symptoms would persist for that duration given the minimal objective findings, it appears clear that the claimant did not suffer an injury on or about June 9, 2011.

The physicians have causally related the June, July and August 2011 care to the January 2011 incident. While some of the symptoms appear related to stress rather than physical pathology, the Arbitrator views that as properly addressed under Nature and Extent of the Injury, below, and does not view that as severing the causal relationship; the

Arbitrator therefore finds that the care received in the summer of 2011 is related to the January 2011 date of loss and is not the result of a new injury.

15IWCC0549

Notice (June 2011 incident / 12-WC-25141 only)

Given the above findings as to accident and causal connection relative to the June 2011 accident allegation, this issue is moot.

Marital Status

The claimant testified she married Mark Morgan in 2006 and has been married since that time. No contrary evidence was introduced. The Arbitrator finds that the claimant was married at the time of the accident.

Medical Services Provided

The medical services provided were largely paid through group insurance. The respondent is directed to pay the petitioner $75.00 in her out-of-pocket expenses. Regarding the other medical bills identified, those appear to have zero balances; the respondent shall receive credit for those amounts previously paid but shall hold the petitioner harmless, pursuant to 8(j) of the Act, for group health carrier reimbursement requests for such payments.

Nature and Extent of the Injury

The claimant suffered a low back strain superimposed on prior mild degeneration, as well as a right knee strain. Following minimal physical therapy, the claimant returned to her regular job duties at the direction of her treating physician. The petitioner having reached maximum medical improvement, respondent shall pay the petitioner the sum of $382.15/week for a further period of 7.15 weeks, because the injuries sustained caused 1% loss to the person as a whole, as provided in Section 8(d)2 of the Act, and 1% loss to the right leg, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

☒ 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

Floridalma Funes,

Petitioner,

vs. NO: 13 WC 30373

Elite Staffing,

15IWCC0558

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses, prospective medical expenses, causal connection, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 17, 2014 is hereby affirmed and adopted.

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.

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 Circuit Court.

DATED: JUL 2 2 2015

David L. Gore

DLG/gaf
O: 7/9/15
45

Stephen Mathis

Mario Basurto

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

FUNES, FLORIDALMA
Employee/Petitioner

Case# **13WC030373**

ELITE STAFFING
Employer/Respondent

15IWCC0558

On 12/17/2014, 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 0.11% 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:

1554 ALBERT R PINO LAW OFFICE
GERALD F CONNOR
3900 MERCY DR
McHENRY, IL 60050

0233 KENNETH B GORE LTD
39 S LASALLE ST
SUITE 1205
CHICAGO, IL 60603

4866 KNELL O'CONNOR DANIELEWICZ
THOMAS R BOYD
901 W JACKSON BLVD SUITE 301
CHICAGO, IL 60607

15IWCC0558

STATE OF ILLINOIS)
)SS.
COUNTY OF DuPage)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Floridalma Funes
Employee/Petitioner

v.

Elite Staffing
Employer/Respondent

Case # 13 WC 30373

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Wheaton**, on **11/10/14 and 11/13/14**. 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. [x] 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. [x] 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. [x] 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. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

15IWCC0558

FINDINGS

On the date of accident, **8/14/13**, 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 not*** 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 $**17,924.40**; the average weekly wage was $**344.70**.

On the date of accident, Petitioner was **32** years of age, ***single*** with **5** dependent children.

Respondent ***is not liable for*** charges for 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

The petitioner failed to demonstrate accident and causal connection. Accordingly, benefits under the Act are denied.

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

December 17, 2014
Date

ICArbDec19(b)

DEC 17 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FLORIDALMA FUNES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13 WC 30373
	)	
ELITE STAFFING, INC.	)	
	)	15IWCC0558
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Sections 8(a) and 19(b) of the Act.

STATEMENT OF FACTS

The claimant is a 32-year-old right-handed female who claims injury as a result of repetitive trauma with an effective manifestation date of August 14, 2013. The petitioner worked for the respondent for seven years between four and six days per week; her job duties involved putting meat, egg and cheese on pre-made sandwiches.

The petitioner testified she had pain in her right shoulder which increased on August 14, 2013. No specific incident was described. She testified she reported it to her supervisor and changed positions on the assembly line but it did not help.

She sought medical care on August 14, 2013 at Alexian Brothers. The history reported was of intermittent right shoulder pain beginning approximately one year before without specific injury or incident and which had worsened on August 10, 2013 with no known instigating incident. She complained of pain in her right shoulder, right side of her neck, bicep, right chest and pain throughout her right arm down into her hand. Examination noted full cervical range of motion with some limit on right shoulder motion. X-rays appeared normal. The petitioner reported her work history and it was noted that "based upon the history that she provided, I was unable to determine a direct causal relation to work" and she was advised to perform range of motion exercise and take Ibuprofen. She was given light duty with limited use of the right arm. PX9. In a follow-up on August 19, 2013, she reported no improvement but "admits not doing home exercise." Symptoms were noted as "disproportionate" in a handwritten note but she was maintained on modified duty. She was instructed to follow up in one week, but it does not appear that she did so. See PX9.

On August 27, 2013, the petitioner presented to Dr. Christopher Morgan. She reported a history of reaching over shoulder height on August 14, 2013, feeling an immediate tearing sensation in her right shoulder with pain radiating down to her hand and into her neck and chest. She reported the pain had persisted since that time with weakness in the hand and arm. She denied any history of pain or symptoms in the arm or shoulder prior to August 14, 2013. Dr. Morgan recommended shoulder and neck MRI scans as well as multiple medications, and prescribed her off work. See PX10.

The petitioner underwent MRI scans on August 27, 2013. The cervical spine showed no herniations or stenosis. The right shoulder MRI suggested rotator cuff tendinosis and a probable partial tear of the infraspinatus tendon. See PX11.

On September 3, 2013, Dr. Morgan saw the claimant. He reviewed the MRI findings and she reported no improvement being off work. Dr. Morgan recommended physical therapy and ongoing medication usage and to follow up in one month. PX10.

On September 10, 2013, the petitioner saw Dr. Ronald Silver; Dr. Silver's records indicate this was a referral from Dr. Morgan's office. She reported a history of repetitive trauma with pain increasing on August 14. Dr. Silver performed a steroid injection to the right shoulder that day. He prescribed a modification to her medication regimen, and prescribed physical therapy and to be off work. PX12.

On September 16, 2013, the petitioner presented to physical therapy. At that point she related a history of pulling product from a box on August 14, 2013 and suddenly feeling weakness in her right shoulder with immediate pain. It was noted she would be having therapy three days per week for four to twelve weeks. However, she presented only three times after that day: September 19, October 2 and October 3, 2013. On October 2, 2013 it was noted she had "transportation issues" but did not elaborate. She did not follow up after October 3, 2013. See PX13.

On October 8, 2013, the claimant told Dr. Silver that she had some relief from the injection but pain had recurred. He observed significantly restricted range of motion and assessed her with rotator cuff impingement. He recommended surgical intervention. He renewed that prescription on November 12, 2013 and December 19, 2013. PX12.

On May 29, 2014, the petitioner saw Dr. Guido Marra at the employer's request pursuant to Section 12 of the Act. Dr. Marra noted significant restriction in range of motion and assertions of severe pain in the right shoulder. At that time, he was able to review the MRI report but not the MRI films. He was also able to review the other medical records. Dr. Marra assessed the claimant with adhesive capsulitis and advised that he would need to see the actual MRI films before rendering any opinion as to further diagnoses, recommendations for treatment, or causal connection. See PX14.

On September 23, 2014, Dr. Marra reviewed the MRI films of the shoulder and authored his addendum report. He opined the MRI showed a small intrasubstance tear with thickening of the ligament consistent with adhesive capsulitis. He opined that the

MRI showed structural damage to the rotator cuff. He noted that the petitioner had told him that the weights she had to lift were light, and opined that given that fact, if her work was done below shoulder height, then it would not suffice to cause the identified damage. However, if her work was 50% or more at or above shoulder height, then the damage could be causally related to her employment. See RX1.

The claimant testified that she is 4 feet 6 inches in height. The claimant testified that on August 14, 2013, she was assigned to place cheese on the sandwiches, which came in stacks weighing about two pounds. She testified that she has not worked since August 14, 2013 and has constant pain in her right arm. She expressed a desire to pursue the surgery recommended by Dr. Silver.

The respondent's on-site manager, Adrian Soto, testified. He noted that personnel on the lines will rotate positions and can choose which position to take as long as the production totals are met. The respondent introduced two pictures identifying the production line, and showing the line was 37 inches (three feet, one inch) in height, which Mr. Soto corroborated. See RX2, RX3.

After the respondent's photographs were published, the petitioner testified that there was another section of the line where the food product was that had tables and shelves, which were above shoulder height and beyond her reach.

OBSERVATION AND ANALYSIS OF WITNESS TESTIMONY

The Arbitrator must first state that the claimant has a severe credibility problem based on her trial presentation. When initially being sworn in, the Arbitrator instructed her to raise her right hand to take the oath. She indicated she could not, cradling her right arm in her lap and indicating she could not raise her forearm past her elbow or move her shoulder, effectively suggesting a nearly paralytic right arm. The Arbitrator then swore her in with her raising her left hand to take the oath. However, during her rebuttal testimony, the petitioner indicated the varying heights of the asserted food product storage tables and shelves, and she did so by freely gesturing with a fully extended right arm at and above shoulder height. The Arbitrator specifically observed these motions and concludes her earlier presentation was a significant misrepresentation of her physical status. The Arbitrator considers this credibility gap when examining all issues which rely on her testimony.

The Arbitrator further notes that the petitioner asserted that the food product she was receiving was on a table and shelves that she would have to reach for and that were at and above shoulder level. However, in examining the photograph of the line (RX2), the Arbitrator observes the cheese slices being placed on the food were on a waist-level table (being the far right side of the photograph), requiring neither considerable extension of the arm nor shoulder-level activity.

15IWCC0558

OPINION AND ORDER

Accident and Causal Relationship

A claimant has the burden of proving by the preponderance of credible evidence all elements of the claim, including that the alleged injury arose out of and in the course of employment. See, e.g., *Orsini v. Industrial Commission*, 117 Ill.2d 38 (1987).

The petitioner's trial testimony was of a history of ongoing pain which increased on August 14 without a specific precipitating incident. However, her trial testimony is at significant variance with the medical records.

When she presented to Alexian Brothers on August 14, 2013, she did report a history of symptoms of one year's duration, but notes it was "Last Saturday pain got worse." This is not an isolated reference, as they also separately note a spike in symptoms of August 10, 2013. See PX9.

When she presented to Dr. Morgan on August 27, 2013, she reported a specific acute incident on August 14 while reaching for meat and feeling a tearing sensation. She reported a history of having no prior problems to Dr. Morgan. PX10. The Arbitrator notes the petitioner was asked about that on cross-examination, and asserted that what she had meant was she had no problems before working for the respondent. However, Dr. Morgan notes she had a Spanish interpreter and the prior history form she filled out, indicating no such problems, was in Spanish. See PX10. The arbitrator provides her testimony on this point minimal credulity.

Dr. Silver noted a severe spike in pain on August 14, 2013 and noted that "Prior to the incident her right shoulder was normal without previous treatment or symptoms..." See PX12. Similarly, her physical therapist's initial appointment date of September 16, 2013 notes a sudden onset of weakness and pain on August 14, 2013. He does not have any history of prior problems noted in his record. PX12.

Dr. Marra notes she gave him a history of gradually increasing pain over time, but does not indicate any particular point where there was spike in symptoms, only noting she reported it to her supervisor on August 10. PX14.

Mr. Soto testified the claimant related that her shoulder hurt on August 14 but did not relate a particular incident. The Application for Adjustment of Claim notes repetitive trauma as the theory of injury and the Arbitrator will accept, for the sake of argument, her trial testimony that she had prior symptoms with an increase in symptoms on August 14, 2013, in order to evaluate her claim from a causal basis. In cases relying on the repetitive trauma concept, the claimant generally relies on medical testimony to establish a causal connection between the claimant's work and the claimed disability. See, e.g., *Peoria County Bellwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953).

The Arbitrator first notes that the Alexian Brothers providers, who were given the history of repetitive trauma, did not conclude her work was a causal factor in her current condition of ill-being. Drs. Morgan and Silver appear to both be working off an incorrect medical history, to wit, of an acute accident with no prior symptoms. Dr. Marra, whom the Arbitrator assesses as more credible and more persuasive, concluded that given the weights of the food product involved, the claimant would have had to do a significant amount of her job at or above shoulder level to prompt shoulder pathology. However, the photographic evidence clearly shows this is not the case.

The Arbitrator does note that the claimant attempts to argue the petitioner's short stature required her to extend her arms more than would be the case for someone taller than she. While this is certainly true, and the Arbitrator further notes the principle that a respondent takes its employees as it finds them, the production line in question is at the 37-inch mark, or three feet, one inch; even noting the petitioner's short stature, this is below the petitioner's shoulder level by about one full foot.

The Arbitrator finds the petitioner has failed to demonstrate either accident or causal connection by the preponderance of credible evidence. Issues of medical services provided, future medical treatment under Section 8(a), and temporary disability are moot.

Penalties and fees require a further showing that the respondent's position was unreasonable; here, the respondent offered witness testimony, documentary evidence and secured a Section 12 examination in contravention of the employee's causal connection argument. Penalties and fees would be denied even had the claimant credibly demonstrated a causal relationship.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ 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

David Krager,
Petitioner,

vs. NO: 08 WC 32766

Freeman United Coal Mining Company,
Respondent,

15IWCC0534

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 occupational disease, permanent partial disability, causal connection, legal error, evidentiary error, section 1(d)-(f) and section 19(d) of the occupational disease act and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 14, 2014 is hereby affirmed and adopted.

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

DATED: JUL 15 2015

MB/mam
o:5/28/15
43

Mario Basurto

David L. Gore

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KRAGEN, DAVID
Employee/Petitioner

Case# **08WC032766**

15IWCC0534

FREEMAN UNITED COAL MINING COMPANY
Employer/Respondent

On 11/14/2014, 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 0.06% 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:

0755 CULLEY & WISSORE
KIRK CAPONI
300 SMALL ST SUITE 3
HARRISBURG, IL 62946

1662 CRAIG & CRAIG
KENNETH F WERTS
PO BOX 1545
MT VERNON, IL 62864

15IWCC0534

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DAVID KRAGER,
Employee/Petitioner

v.

FREEMAN UNTED COAL MINING COMPANY,
Employer/Respondent

Case # 08 WC 32766

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Springfield**, on **10/15/14**. 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. [x] Did an occupational disease 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. [x] 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. [x] 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. [x] Other **Sections 1(d)-(f) and 19(d) of the Occupational Diseases Act**

FINDINGS

On **8/31/07**, 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 not*** sustain an occupational disease that arose out of and in the course of employment.

In the year preceding the injury, Petitioner earned $**42,425.30**; the average weekly wage was $**815.87**.

On the date of accident, Petitioner was **53** years of age, ***married*** with **no** 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 $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

Respondent is entitled to a credit of $**00.00** under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove by a preponderance of the credible evidence that he sustained an occupational disease that arose out of and in the course of his employment by respondent on 8/31/07. Petitioner's claim for compensation is denied.

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

11/10/14
Date

NOV 14 2014

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 53 year old coal miner, alleges he sustained an accidental injury that arose out of and in the course of his employment by respondent on 8/31/07. Petitioner has a high school diploma. He worked for 31 years in the coal mine. All of his work was underground and for respondent. Petitioner claims he was exposed to coal dust, silica, roof bolting glue, diesel fumes and trowel fumes while employed by respondent during this period. Petitioner worked for respondent in the coal mine until 8/31/07, the day on which the respondent's Crown 2 coal mine closed. Petitioner testified that if he was not laid off in 2007 he would have continued working in the mine. Petitioner received a full pension upon his retirement.

Petitioner was hired by respondent in 1977. Before that petitioner worked on his neighbors farms when he got out of high school. He built grain bins for a summer and sold cars for about a year and a half before going to work for respondent in 1977.

When petitioner began working for respondent he was hired as a laborer. As a laborer he was exposed to rock dust. Petitioner's duties included filling tanks with rock dust. Petitioner then worked on the belt repair. Petitioner testified that he worked in this position a couple of times while employed by respondent. This job involved moving the belts as the miners went in. Petitioner also worked as a repairman several times for respondent. This job included changing hydraulic hoses, greasing machines, replacing parts, fixing electrical cables, etc.

Other jobs petitioner performed for respondent included a shuttle car operator, miner operator, roof bolter, and driving diesel equipment. As a shuttle car operator petitioner testified that he was continually exposed to dust because he worked behind the miner. He testified that the roof bolter was a dirty hot job. He testified that he was constantly exposed to roof bolting glue while performing this job. All this work was performed underground.

When petitioner retired on 8/31/07 he had been working as a repairman. Petitioner stopped working for respondent because the mine shut down on that day. Prior to this date petitioner had undergone 2 hip replacements, had a bad back and testified that he had breathing problems. After being laid off due to the mine closing petitioner signed up with the union panel for work in another mine. Petitioner testified that he had to do this or he would lose his rights. Petitioner testified that he signed up for work on the surface, but had no expectation of ever being hired because he never worked on the surface before and had no seniority at any other mine.

After petitioner retired from respondent he looked for alternative employment and got a job driving a semi truck for a farmer. Petitioner got a CDL drivers license after leaving the mine so that he could perform this job. Petitioner would haul from the fields to the bin in the fall, and in the spring would haul from the bin to St. Louis. Petitioner testified that he did this work for two seasons. He testified that he could work whenever he wanted for as long as he wanted. Petitioner worked this job until 2010.

Petitioner testified that the first time he noticed breathing problems was when he was working as a supply man in 2000. He testified that he noticed it while moving equipment or supplies. He testified that he lost his breath and could not get it back. Petitioner testified that over time his breathing problems got worse while he worked in the mine and after he left. He testified that currently he cannot walk 150 feet without getting short of breath. He also stated that he experiences shortness of breath after walking up 12 stairs. Petitioner does not take any medications for his breathing problems. Petitioner testified that he can no longer walk a 9 hole golf course or hunt as much.

Petitioner testified that was a smoker from the age of 16 to 50, with some breaks. Petitioner would smoke up to 1 pack a day. Petitioner takes medication for hypertension.

In August of 2010 petitioner applied for Social Security Disability based on his hip replacements and avascular necrosis. He currently receives Social Security Disability benefits. Petitioner identified his date of disablement as 3/19/10. In 2012 petitioner broke his femur while golfing. He testified that after this happened everything went bad. Petitioner still plays golf a couple times a week. He also performs household chores. Petitioner goes to Florida in the spring to see his friends and family.

The evidence deposition of Dr. Glennon Paul was taken on behalf of petitioner on 10/17/11. Petitioner testified that he was sent to Dr. Paul by his attorney in 2008. Dr. Paul is the Medical Director of St. John's Respiratory Therapy where he teaches internal medicine and pulmonology. Dr. Paul is also Senior Physician at Central Illinois Allergy and Respiratory Clinic. Dr. Paul is not a B reader. Dr. Paul treated coal miners for coal mine induced lung disease in the 1970's. Dr. Paul examined petitioner once and noted that he was on breathing medication. He also noted that petitioner had occasional wheezing and coughing. He noted that petitioner has shortness of breath after walking a mile and more than a flight of stairs, by history. Dr. Paul assessed bilateral wheezes on forced expiration, and fibronodular regions throughout both lung fields on x-ray. He also reviewed the B reading that was sent to him. Dr. Paul tested petitioner and found his FEV1 was 73% of normal, which puts him in the mild obstructive range. He was also of the opinion that petitioner's carbon monoxide diffusing capacity was due to coal workers' pneumoconiosis and/or emphysema.

Dr. Paul opined that petitioner has coal worker's pneumoconiosis and emphysema caused by coal dust. He also opined that smoking may have contributed to these conditions. Dr. Paul opined that petitioner also has asthmatic bronchitis that is related to his work as a coal miner. Dr. Paul opined that based on his diagnoses of coal worker's pneumoconiosis, emphysema, and asthma that any further exposure to coal mine dust would endanger his health. Dr. Paul was of the opinion that any exposure to diesel fumes, roof bolting glues, or plant glue while working as a coal miner would worsen his asthma. He was also of the opinion that if petitioner was overcome by smoke at work in 1997 that could aggravate his asthma. He testified that if petitioner was prescribed Albuterol 6 months later that would be consistent with occupational asthma.

Dr. Paul opined that petitioner has clinically significant pulmonary impairment caused by coal dust. He further opined that based on the x-rays and pulmonary function testing petitioner has evidence consistent with pulmonary impairment caused by coal dust. He opined that these findings could also be related to pneumoconiosis, emphysema and occupational asthma. Dr. Paul opined that any further exposure to coal dust would cause a progression of his coal worker's pneumoconiosis, emphysema and asthmatic bronchitis. Dr. Paul was of the opinion that petitioner could work at the light physical demand level. Dr. Paul was of the opinion that a person can have radiographically significant coal worker's pneumoconiosis and have normal pulmonary function testing, normal blood gases and normal physical examination of the chest. He was also of the opinion that coal worker's pneumoconiosis can still progress even if exposure to the coal mine dust ends. Dr. Paul opined that other exposures in the coal mine that can injure the lungs includes silica, diesel fumes, fumes from other petroleum products, smoke and fumes from high sulfur coal fires and electrical cable fires, fumes and glues used in the roof bolting process, and welding fumes.

On cross examination Dr. Paul admitted that he did not know how often petitioner's cough was productive, how often petitioner coughed, or what his triggers for his shortness of breath were. He believed petitioner's symptoms began after he got smoke inhalation in 1997. Dr. Paul admitted that he did not review any of petitioner's medical records. Dr. Paul did not know if petitioner was smoking at the time he examined him. He was of the opinion that that information was not important when doing a black lung exam. Dr. Paul did not know if petitioner's smoking aggravated his asthma. Dr. Paul testified that a 25 pack year history of smoking was enough to cause emphysema and aggravate asthma. Dr. Paul opined that in people with category 1 simple pneumoconiosis is usually not associated with any symptoms and they usually see no progression in their disease once the exposure ceases, and may not progress even with additional exposure. Dr. Paul testified that one will see coal dust in the lower lobes.

The evidence deposition of Dr. Mulch, a family physician, was taken on behalf of petitioner on 5/9/13. Dr. Mulch treated petitioner from 9/30/86 through 5/9/13. On average Dr. Mulch saw petitioner 3-4 times a year. Dr. Mulch was of the opinion petitioner suffered from a reactive airways disease even though he never diagnosed petitioner with it. He testified that he treated petitioner for an inflammatory condition in his lungs. He also diagnosed petitioner with bronchitis several times. Dr. Mulch opined that exposure to diesel fumes, roof bolting process, and coal and rock dust in mining can aggravate reactive airways disease. He further opined that if petitioner were to return to work in the coal mine he would risk further progression or worsening of the airways disease, sinusitis, and his chronic bronchitis. Dr. Mulch was of the opinion that petitioner's smoking was part of his chronic bronchitis. Dr. Mulch was of the opinion that petitioner's sinusitis was aggravated and made worse by his exposure to coal mining. Dr. Mulch was not sure if petitioner had the respiratory capacity to perform the work of an underground coal miner on a full time basis because he had not performed any testing to see if that would be the case.

On cross examination Dr. Mulch testified that on 3/19/87 and 5/2/88 petitioner's lungs were clear. He testified that on 11/5/91 petitioner had an upper respiratory infection. On 9/21/95 he diagnosed some nasal congestion and cough. He also noted that petitioner had been smoking again for about a year. An examination of the chest and lungs revealed some rhonchi. On 12/12/96 Dr. Mulch examined petitioner and noted that the lungs were clear to auscultation and percussion. Dr. Mulch noted that when he examined petitioner on 3/6/97 after he was overcome by smoke in the mine he did not related to him any respiratory complaints associated with the exposure. A physical examination that date revealed that the lungs were normal. On 9/29/97 petitioner's lungs were clear to auscultation and percussion. Dr. Mulch prescribed Proventil to see if it would help petitioner with his cough and occasional wheezing. He strongly encouraged petitioner to stop smoking at that time. Dr. Mulch was of the opinion that a cough and wheeze are consistent with a significant smoking history. On 1/27/00 and 6/28/01 Dr. Mulch examined petitioner and noted that the lungs were clear to auscultation and percussion. On 6/28/01 petitioner also denied shortness of breath. On 11/16/01 petitioner complained of sinus symptoms with cough, productive in morning, without shortness of breath. His lungs were clear to ascultation. Petitioner was instructed to stop smoking. On 5/20/02 and 12/26/02 petitioner reported no shortness of breath and his lungs were clear to auscultation and percussion. On 11/24/03 petitioner had another case of sinusitis. He denied any shortness of breath, but had a productive cough in the morning. Petitioner was still smoking at that time. On 4/22/04 petitioner had no shortness of breath and stated that he was not smoking. An examination revealed lungs clear to auscultation and percussion. On 12/7/04, 8/8/05, 12/29/05 petitioner's lung examination was the same. However, on 12/29/05 petitioner had sinus problems. During his annual examination on 9/21/06 petitioner indicated a 30 year history of smoking one pack a day. He reported no

shortness of breath. On 3/29/07 petitioner had another annual exam and indicated that he had smoked a pack a day of cigarettes for 35 years. He again reported no shortness of breath or cough.

Dr. Mulch testified that on the last day he saw petitioner while he was still working at the mine (3/29/07) he was taking medications for his hypertension and high cholesterol, and ibuprofen for his orthopedic problems. Dr. Mulch testified that a side effect of petitioner's hypertension medication is a cough. Dr. Mulch testified that as of 3/29/07 he had not assessed petitioner with reactive airways disease or bronchitis. On 10/25/07, after he was laid off from the mine petitioner presented to Dr. Mulch and reported no new problems. His chest exam was normal. Dr. Mulch was of the opinion that if petitioner was around grain dust while working for a farmer who owns a seed corn business that would aggravate his sinusitis or bronchitis. Petitioner continued to treat with Dr. Mulch for unrelated conditions and at his annual exam on 12/8/08 he complained of some sinus pressure, without shortness of breath or cough. His chest examination also revealed that the lungs were clear to auscultation. Dr. Mulch told petitioner again to stop smoking. On 6/15/09 his chest examination was normal. Petitioner was still smoking. On 1/19/10 petitioner's physical examination of the chest was normal. On 4/15/10 petitioner presented to Dr. Mulch with complaints of sinus drainage and cough for 2 weeks. Dr. Mulch believed the cough was related to a sinus drainage. Petitioner's lungs were clear at that time. On 7/19/10 petitioner's lungs were clear. On 12/13/10 petitioner's lungs were clear. On 1/4/11 petitioner complained of cough and sinus drainage, and chest congestion. Petitioner's cough was dry and hacky. No shortness of breath was noted. In August of 2011 petitioner's chest x-ray was normal. He reported no shortness of breath, no cough, and no wheezing. On 12/30/11 petitioner had sinus complaints, without any shortness of breath and clear lungs. On 2/20/12 petitioner's lungs were clear. On 3/12/12 petitioner again had sinus complaints. No complaints of chest pain or shortness of breath were noted. His lung examination was normal. On 8/20/12 petitioner revealed no shortness of breath, cough or wheezing. His chest was clear to auscultation and percussion. On 10/29/12 and 1/16/13 petitioner had another sinus infection, with no shortness of breath, and his lungs were clear.

After reviewing all his treating records of petitioner Dr. Mulch testified that he never assessed petitioner with reactive airway disease or chronic bronchitis during the entire time he treated petitioner. Dr. Mulch testified that smoking was not good for petitioner's sinusitis, and made him prone to upper respiratory infections and sinus infections. Dr. Mulch testified that petitioner had more sinus infections after he left the mine than he had while working in the mine. He opined that petitioner does not have any permanent functional disability as a result of his sinusitis.

On 1/9/14 the evidence deposition of June Blaine, a vocational rehabilitation counselor, was taken on behalf of the petitioner. Blaine conducted a vocational assessment of petitioner at the request of the petitioner.

Blaine testified that she was asked to assume that petitioner could no longer work as a coal miner, and had no physical limitations beyond those of a person his age. Blaine reviewed no medical records. She testified that she did not know what physical limitation petitioner had as related to his occupational disease, if any. She testified that all petitioner discussed with her with regards to his physical problems was his breathing problems. She had no idea what petitioner did in terms of a job search after he left the mine, or after he left the job of hauling grain. Blaine testified that if the assumptions she was given, that petitioner had no physical limitations and he was unable to return to work in the coal mine given he had been diagnosed with a work-related lung disease, were incorrect her opinions as to petitioner's employability might be incorrect. Blaine testified that alcoholism could adversely affect one's employability. She also testified that petitioner did not ask her for assistance in job placement.

In her report dated 11/20/13, Blaine believed petitioner demonstrated the ability to work in a position that paid him about $13 an hour. However, considering factors such as his age, lack of formal computer skills or training, current employment levels in his local community, and the fact his highest level of education was a high school degree, Blaine believed the hourly wage represented the highest level he could earn, which would be less than he was earning at the coal mine, which he reported was in excess of $25 per hour.

On 6/10/08 petitioner underwent a PA and lateral B reader x-ray performed by Dr. Smith, a B-Reader. The impression was findings consistent with coal workers' pneumoconiosis with interstitial fibrosis of classification s/p, all zones involved, profusion 1/1.

On 10/23/12 Dr. Smith drafted a letter to petitioner's attorney after reviewing the CT scan performed on petitioner on 1/8/09. He was of the opinion that there were noted findings consistent with simple coal worker's pneumoconiosis with small opacities throughout both upper, mid and lower lung zones of profusion 1/1, small opacities p/p, consistent with simple coal miner's pneumoconiosis. Dr. Smith stated that a CT scan is a medically acceptable test for diagnosing the presence or absence of coal worker's pneumoconiosis, as well as grading the degree of involvement. He was of the opinion that High Resolution CT has been found to be a very useful in achieving an accurate characterization of the parenchymal changes with the spectrum of diseases referred to as pneumoconiosis, and specifically coal worker's pneumoconiosis.

On 4/17/14 Dr. Robert Cohen, a B-Reader, reviewed a CT scan of petitioner's chest dated 7/8/09. His impression was positive for the opacities of pneumoconiosis with p/q shaped opacities scattered throughout the lungs in low profusion.

On 6/30/12 Dr. Michael Alexander interpreted the chest films of petitioner dated 1/8/09. He noted small round opacities present bilaterally, consistent with pneumoconiosis, category p/p, 1/1. He also interpreted the chest films of petitioner dated 6/10/08. His impression was the same. Dr. Alexander interpreted the Chest CT scan of petitioner performed 1/8/09. His impression was that it showed a slight subtle prominence of tiny round nodular densities, that could be consistent with simple coal worker's pneumoconiosis of low profusion. No areas of coalescence or large pulmonary opacities were noted. There was no evidence of complicated coal worker's pneumoconiosis or pulmonary mass or pleural abnormalities.

The evidence deposition of Dr. Jerome Wiot, a diagnostic radiologist, was taken on behalf of respondent. Dr. Wiot is a B-Reader. He has been board certified in radiology since 1959 and was part of the Task Force on Pneumoconiosis which developed the B-reader training program. Dr. Wiot reviewed a PA and lateral chest x-ray of petitioner's dated 6/10/08. He saw no evidence of coal worker's pneumoconiosis. He noted a single calcified granuloma at the anterior end of the right second rib. He noted that he disagreed with Dr. Smith's report dated 7/9/08. He was of the opinion that there were absolutely no findings to suggest coal worker's pneumoconiosis.

Dr. Wiot was of the opinion that coal worker's pneumoconiosis invariably begins in the upper lung fields. He testified that asbestos begins in the lower lung fields. He stated that coal worker's pneumoconiosis doesn't cause pleural changes. He was of the opinion that CT scans are useful in the assessment of patients for lung disease, and are standard.

On cross examination Dr. Wiot testified that if he reads a chest x-ray as being consistent with coal worker's pneumoconiosis and he is satisfied that there has been adequate coal mine exposure to support those changes, entries and treatment records of clear lungs on physical examination of the chest would not have anything to do with his reading. He also testified that pulmonary function testing, or complaints of shortness of breath would not have anything to do with his reading. Dr. Wiot agreed that when coal miners work in the coal mine environment for 10, 20, 30 or more years and then leave the coal mine, they are all going to come out with some coal dust deposit in their lungs, but won't all have tissue reaction to that coal dust. Dr. Wiot opined that the scarring and emphysema of coal worker's pneumoconiosis is permanent. He opined that by definition if a person does have coal worker's pneumoconiosis, they would have an impairment in the function of their lungs at the site of the scar tissue and emphysema even though that impairment may not be measured by pulmonary function testing. Dr. Wiot was of the opinion that most of the time coal worker's pneumoconiosis tends not to be progressive after exposure ceases. Dr. Wiot did not think simple coal worker's pneumoconiosis can result in cor pulmonale. Dr. Wiot assumed that petitioner had sufficient exposure to cause coal worker's pneumoconiosis.

On 7/25/14 the evidence deposition of Dr. Christopher Meyer, a radiologist and B-Reader, was taken on behalf of the respondent. On 11/27/13 Dr. Meyers reviewed a chest CT scan of petitioner dated 1/8/09. His impression of the chest CT scan was no HRCT findings of coal worker's pneumoconiosis. He also reviewed the report provided by Dr. Smith dated 10/23/12 with respect to the Chest CT scan. Dr. Meyer disagreed with Dr. Smith's interpretation. He was of the opinion that were absolutely no findings of diffuse interstitial fibrosis, small opacities or abnormal branching opacities in the centrilobular location. In summary, he noted that there were no findings of coal worker's pneumoconiosis. Dr. Meyer was of the opinion that a CT scan may be useful in confirming or refuting the presence of simple coal worker's pneumoconiosis, as well as documenting the presence of complicated coal worker's pneumoconiosis when not well demonstrated on routine chest x-rays. He also reviewed the chest x-rays taken 6/10/08. His impression was that the lungs were well expanded and that there were no findings of coal worker's pneumoconiosis. He noted a calcified granuloma in the right upper zone. He did not see any opacities.

Dr. Meyer was of the opinion that coal worker's pneumoconiosis is typically an upper zone predominant process. On cross examination Dr. Meyer stated that NIOSH does not accept CT scans for the purpose of making B-Readings. Dr. Meyers testified that you have to make sure that the individual who is interpreting the examination has ample experience reading them to be able to sort out what is the background variation in normal. Dr. Meyer testified that he spends his entire career as a chest radiologist devoted to looking at chest radiographs day in and day out to establish this spectrum of normal. Dr. Meyer agreed with Dr. Wiot that nothing in the medical records would change what he saw on the x-ray. He also agreed that all long-time coal miners are going to come out with some dust deposit trapped in their lungs, and the majority of those will not have changes in their lungs that qualify for coal worker's pneumoconiosis. Dr. Meyer was of the opinion that coal worker's pneumoconiosis can develop at any time during a miner's career or within a month or so after he left the coal mine. Dr. Meyer was of the opinion that simple pneumoconiosis typically won't progress once exposure ceases.

On 10/22/13 the evidence deposition of Dr. Selby, a pulmonologist and B-Reader, was taken on behalf of the respondent. Dr. Selby examined petitioner on 1/8/09 at the request of respondent. He performed oxygen saturation, carbon monoxide breath analysis, complete blood count, a comprehensive metabolic profile, a carboxyhemoglobin, an arterial blood gas, and EKG tests. He also ordered a chest x-ray that he did a B-reading on, and a high resolution CT scan of the chest, and a pulmonary function test. He also took an occupational history from petitioner. Dr. Selby was of the opinion that petitioner's exposure to grain dust while operating a grain truck could exacerbate any airway disease that he had, such as asthma or bronchitis, or sinus problems.

He noted that petitioner's chief complaint on examination was shortness of breath if exerted. He stated that he noticed this during the last year he worked in the mines. Petitioner stated that he wheezes and coughs up phlegm every morning. Dr. Selby was concerned petitioner may have sleep apnea. Dr. Selby was of the opinion that petitioner's Atenolol can cause a side effect of wheezing, and his Lisinopril can cause a side effect of a cough. He noted that petitioner was a smoker when he examined him. Dr. Selby reviewed the chest x-ray he ordered. He noted that it was a quality 2 film due to overexposure. He was of the opinion that it was negative for coal worker's pneumoconiosis. He also opined that the CT scan was negative for coal worker's pneumoconiosis and emphysema. His overall interpretation was mild obstruction without improvement postbrochodilator; mild hyperinflation and normal diffusion capacity. He testified that it was the reduction in the FEV1/FVC ratio that caused him to find that petitioner had a mild obstruction. He was of the opinion that the clinically low ratio basically had no effect and it could be due to a physiological variant. Relying on the American Thoracic Society/European Respiratory Society Task Force Standardization of Lung Function Testing, Dr. Selby was of the opinion that the meaning of a low FEV1/FVC ratio accompanied by a FEV1 within the normal range is unclear. He was of the opinion that additional testing would be necessary to determine if it was representative of airflow obstruction. Dr. Selby believed that Dr. Paul's methodology for methacholine challenge testing was not the accepted methodology of the American Thoracic Society.

Dr. Selby also reviewed a chest x-ray performed 6/10/08. This was a grade 1 quality that was negative for any parenchymal or pleural abnormalities consistent with pneumoconiosis. It also showed calcified granulomas and a well healed left clavicle fracture.

Dr. Selby testified that the literature indicates that it is normal for the upper lung zones to be affected in coal worker's pneumoconiosis, not the lower lung zones. He was of the opinion that petitioner's forced vital capacity, diffusion capacity, lung volumes, and forced expiratory volume were in normal ranges. He opined that petitioner has the pulmonary and respiratory capacity to perform any and all previous coal mine duties, including his last duty on the job as laborer, miner operator, buggy runner, or rock-duster. He further opined that petitioner's asthma was not caused or exacerbated by coal mine dust inhalation. He opined that petitioner's mild obstructive respiratory disease is due to past and continuing cigarette smoking and poorly treated asthma, not coal mine dust inhalation.

On cross examination Dr. Selby admitted that when a film is overexposed that tends to wash out or make it more difficult to read the abnormalities of coal worker's pneumoconiosis. Dr. Selby stated that macules, the nodules of coal worker's pneumoconiosis, can be the same size and shape as granulomas. He testified that it is possible for coal worker's pneumoconiosis to manifest itself in the lower zones. Dr. Selby agreed that there are

a number of exposures in a coal mine that can cause or aggravate asthma, such as roof bolting glue, diesel fumes, and dust. Dr. Selby agreed that if a person has pneumoconiosis they would have impairment in the function of their lung at the very site of the scarring, whether or not it can be measured by spirometry. Dr. Selby admitted that CT scans are not recognized by NIOSH.

C. DID AN OCCUPATIONAL DISEASE OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner claims he sustained an occupational disease that arose out of and in the course of his employment be respondent. Respondent denies that petitioner sustained an occupation disease that arose out of and in the course of his employment by respondent.

In support of whether or not petitioner has radiograph evidence of coal miner's pneumoconiosis, petitioner offered into evidence the opinions of Dr. Smith, Dr. Cohen and Dr. Alexander. Respondent offered into evidence the opinions of Dr. Wiot, Dr. Meyer and Dr. Selby.

Dr. Smith had petitioner undergo PA and lateral chest x-rays. The findings were slight interstitial fibrosis s/p, all zones involved, profusion 1/1. He noted no chest wall plaques, calcifications or large opacities. He noted only a slightly thickened minor interlobar fissure, and minimal linear parenchymal scar in the anterior lung base. He also noted that there were possibly some small old calcified granuloma in the mid right upper lung. His impression was that his findings were consistent with coal worker's pneumoconiosis with interstitial fibrosis of classification s/p, all zones involved, profusion 1/1. He also reviewed the results of a chest CT scan performed on 1/8/09. He noted findings consistent with simple coal worker's pneumoconiosis with small opacities throughout both upper, mid and lower lung zones of profusion 1/1, small opacities p/p, consistent with simple coal miner's pneumoconiosis. He was of the opinion that a CT scan is a medically accepted test for diagnosing the presence or absence of pneumoconiosis. Dr. Smith has been a certified B-Reader since August of 1987.

Dr. Cohen, reviewed the CT scan of the petitioner's chest dated 1/8/09. His impression was positive for the opacities of pneumoconiosis with p/q shaped opacities scattered throughout the lungs in the low profusion. Dr. Cohen has been certified as a B-Reader since 1998.

Dr. Alexander also reviewed the chest x-rays dated 1/8/09. He noted small round opacities present bilaterally, consistent with pneumoconiosis, category p/p, 1/1. He also interpreted the chest films dated 6/10/08, and his impression was the same. He interpreted the chest CT scan dated 1/8/09 and his impression was that it showed a slight subtle prominence of tiny round nodular densities, that could be consistent with simple coal miner's pneumoconiosis of low profusion. The arbitrator notes that Dr. Alexander could not opine whether or

not those findings clearly demonstrated simple coal miner's pneumoconiosis. Dr. Alexander has been certified as a B-Reader since 1992.

Dr. Wiot, reviewed the PA and lateral chest x-ray of petitioner's dated 6/10/08. He saw no evidence of coal worker's pneumoconiosis. He noted a single calcified granuloma at the anterior end of the right second rib. He was of the opinion that coal worker's pneumoconiosis does not cause pleural changes. Dr. Wiot has been a B-Reader since 1959 and was part of the Task Force on Pneumoconiosis which developed the B-Reader training program.

Dr. Meyer, reviewed the chest x-rays taken 6/10/08. His impression was no findings of coal worker's pneumoconiosis. He also noted calcified granuloma in the right upper zone. He did not see any opacities. Dr. Meyer also reviewed the chest CT scan dated 1/8/09. His impression was no HRCT findings of coal worker's pneumoconiosis. He was of the opinion that there were absolutely no findings of diffuse interstitial fibrosis, small opacities, or abnormal branching opacities in the cetrilobular location. Dr. Meyer has been a B-Reader since 1992.

Dr. Selby, a B-Reader and pulmonologist took his own chest x-rays, but they were quality 2 due to overexposure. He was of the opinion that these x-rays were negative for coal worker's pneumoconiosis. He also reviewed the chest x-rays performed 6/10/08 that was a grade 1 quality and was of the opinion that it was negative for parenchymal abnormalities consistent with pneumoconiosis. He noted that it showed calcified granulomas. He reviewed the chest CT scan and was of the opinion that it was negative for coal worker's pneumoconiosis and emphysema. Dr. Selby has been a B-Reader since 1985.

In addition to the B-Reader opinions listed herein, the evidence deposition of Dr. Mulch, petitioner's treating physician from 1986 through at least 5/9/13 was taken on behalf petitioner. Dr. Mulch testified at his deposition that petitioner suffered from a reactive airways disease. However, the arbitrator notes Dr. Mulch never diagnosed petitioner with a reactive airways disease in the 27 years he treated him. Dr. Mulch also testified that he treated petitioner for an inflammatory condition in his lungs and diagnosed petitioner with bronchitis several times. However, after reviewing Dr. Mulch's records the arbitrator finds that during the 27 years he only treated petitioner for an upper respiratory infection on 11/5/91 and some rhonchi on 9/21/95. His records also reveal that when petitioner was overcome by smoke in the mine, he presented on 3/6/97 and did not relate any respiratory complaints. On 9/29/97 Dr. Mulch attributed petitioner's coughing and occasional wheezing to his significant smoking history. During the 27 years Dr. Mulch treated petitioner, he diagnosed petitioner with sinus symptoms approximately 10 times. Each time petitioner reported no shortness of breath and his lungs were clear to auscultation and percussion. Each time he diagnosed this he noted petitioner's 30

plus years of smoking and his repeated attempts to get petitioner to stop smoking. Dr. Mulch also opined that exposure to diesel fumes, roof bolting process, and coal and rock dust can aggravate reactive airway disease, and if petitioner was returned to work in the coal mine he would risk further progression or worsening of his airway disease, sinusitis and chronic bronchitis. However, the arbitrator finds it significant that Dr. Mulch's records include no mention of airway disease or chronic bronchitis. Dr. Mulch then stated that he believed that petitioner's sinusitis was aggravated by and made worse by his exposure to coal mining. However, the arbitrator noted that Dr. Mulch never indicated the same in any of his treating records.

When questioned on cross examination regarding his opinions, Dr. Mulch admitted that he never assessed petitioner with reactive airway disease or chronic bronchitis during the entire time he treated petitioner. He also testified that petitioner's smoking was not good for his sinusitis and made him prone to sinus infections. Dr. Mulch also noted that petitioner had more sinus infections after he left the mine. In fact, after petitioner left the mine petitioner had over 6 sinus infections in a 4 year period. In the previous 21 year period petitioner only had 4 sinus infections.

Petitioner also relies on the opinions of Dr. Paul, who examined petitioner on 10/17/11 at the request of his attorney. Dr. Paul testified that he treated coal miners for coal mining induced lung disease in the 1970's. Petitioner told Dr. Paul that he had shortness of breath after walking a mile and more than a flight of stairs. However, when one looks that the treating records of Dr. Mulch, petitioner's primary care physician from 1986 through at least 5/9/13, petitioner had no complaints of shortness of breath, including the period before and after he was examined by Dr. Paul. Dr. Paul was of the opinion that petitioner tested in the mild obstructive range, and this was caused by coal dust. However, he also opined that smoking may have contributed to these conditions. Dr. Paul also opined that petitioner has asthmatic bronchitis related to his work as a coal miner. However, Dr. Mulch testified that he never diagnosed petitioner with chronic bronchitis. Dr. Paul was of the opinion that if petitioner was overcome by smoke at work in 1997 that could aggravate his asthma. However, Dr. Mulch's records show that when petitioner presented to him after his exposure to smoke at work on 3/6/97 he did not relate any respiratory complaints, and when he saw him on 9/29/97 Dr. Mulch attributed petitioner's coughing and occasional wheezing to his significant smoking history, and not to any occupational factor. Dr. Paul assessed clinically significant pulmonary impairment caused by coal dust, and evidence consistent with pulmonary impairment caused by coal dust. However, Dr. Paul admitted that he had no idea what triggered petitioner's reported shortness of breath, but believed it began after his smoke inhalation. As stated earlier, petitioner did not report any shortness of breath complaints after his smoke inhalation. In summary, the arbitrator finds the basis of Dr. Paul's opinions are not supported by Dr. Mulch's treating records from 1986 to

2013. In fact. Dr. Paul admitted that he did not review any of petitioner's treating records. He also admitted that a 25 year pack history of smoking was enough, in and of itself, to cause emphysema and aggravate asthma.

Dr. Wiot opined that when coal miner's work in the coal mines for 10, 20, 30 or more years and they leave the coal mines, they are all going to come out with some coal dust deposit in their lungs, but they all won't have tissue reaction to coal dust. Dr. Meyer also opined that all long-time coal miners are going to come out with some dust deposit trapped in their lungs, and the majority of those will not have changes in their lungs that qualify for coal worker's pneumoconiosis.

Dr. Selby was of the opinion that petitioner's exposure to grain dust while operating a grain truck could exacerbate any airway disease that he had, such as asthma, bronchitis, or sinus problems. Petitioner admitted that he hauled grain in 2009 and 2010. Dr. Selby noted that petitioner reported that his chief complaint of shortness of breath began during his last year in the mine. However, Dr. Mulch's records for the period 2006-2007 included no reports of any shortness of breath. In fact, the arbitrator finds it significant that Dr. Mulch never assessed petitioner with reactive airways disease or bronchitis while treating him. Dr. Selby opined that petitioner's mild obstructive respiratory disease was due to past and continuing cigarette smoking and poorly treated asthma, not coal mine dust inhalation.

Based on the above, as well as the credible evidence, although the petitioner and respondent offered into evidence the same number of B-Reader interpretations to support their allegations, the arbitrator adopts the opinions of Dr. Wiot that petitioner does not have coal worker's pneumoconiosis, finding his opinion more persuasive than those of Dr. Smith, Alexander and Cohen. The arbitrator's basis for adopting the opinion of Dr. Wiot over the opinions of Dr. Smith, Alexander and Cohen, is the fact that Dr. Wiot is the most experienced B-Reader and he was part of the Task Force on Pneumoconiosis which developed the B-Reader training program. In addition to Dr. Wiot's opinion that the chest x-rays do not show any coal worker's pneumoconiosis, the arbitrator relies on the treating records of Dr. Mulch that show he never assessed petitioner with any reactive airways disease or chronic bronchitis in the 27 years he treated petitioner. Dr. Mulch's records also show that other than an upper respiratory infection in 1991 and some rhonchi in 1995 petitioner's lungs were always clear to auscultation and percussion each time he checked them, and petitioner never complained of any shortness of breath.

Also, based on the credible records of Dr. Mulch, the arbitrator questions the opinions of Dr. Paul, given they are based on petitioner's complaint that he has had shortness of breath since 2006, and there is nothing in the records of Dr. Mulch that support a finding that petitioner was experiencing any shortness of breath during that period. The arbitrator further finds it significant that petitioner had a 35 year history of smoking a pack a

day that Dr. Mulch repeatedly tied to the problems petitioner was experiencing, including his recurrent sinusitis. The arbitrator also finds it significant that at no time in the 27 years Dr. Mulch treated petitioner, are there any references to any complaints petitioner attributed to his work in the coal mines. As a result, the arbitrator questions the validity of the alleged complaints petitioner provided Dr. Paul, especially as they relate to his breathing problems. The arbitrator adopts the opinion of Dr. Selby that petitioner's reduction in his FEV1/FVC ratio was explainable by his ongoing habit of smoking cigarettes for 35 years. The arbitrator finds Dr. Selby's opinion more persuasive than Dr. Paul's given the medical history denoted in Dr. Mulch's records, especially as it relates to petitioner's smoking history and its contributory effect on his various medical conditions, especially his asthma.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an occupational disease that arose out of and in the course of his employment by respondent on 8/31/07.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?
L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?
O. SECTIONS 1(d-f) AND SECTION 19(d) OF THE OCCUPATIONAL DISEASES ACT?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an occupational disease that arose out of and in the course of his employment by respondent on 8/31/07, the arbitrator finds these remaining issues moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ Affirm and adopt	☐ 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

15IWCC0556

Louis Bodie III,
Petitioner,
vs.

NO: 10 WC 28036

City of West Chicago,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 5, 2014, is hereby affirmed and adopted.

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

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

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: JUL 2 1 2015
KWL/vf
O-7/14/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0556

BODIE III, LOUIS
Employee/Petitioner

Case# 10WC028036

10WC028037
10WC028038

CITY OF WEST CHICAGO
Employer/Respondent

On 8/5/2014, 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 0.05% 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:

2333 WOODRUFF JOHNSON & PALERMO
RUSSELL HAUGEN
4234 MERIDIAN PKWY SUITE 134
AURORA, IL 60504

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
JEFFREY N POWELL
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

15IWCC0556

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 15IWCC0551

Louis Bodie III,
Employee/Petitioner

v.

Case # 10 WC 28036

Consolidated cases: 10 WC 28037
10 WC 28038

City of West Chicago,
Employer/Respondent

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 **Peter M. O'Malley**, Arbitrator of the Commission, in the city of **Geneva**, on **4/24/14**. 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. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 _____

15IWCC0556

FINDINGS

On **10/20/09**, 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 with respect to his groin ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**45,975.08**; the average weekly wage was $**884.15**.

On the date of accident, Petitioner was **63** years of age, ***single*** with **no** dependent children.

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

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

Respondent shall be given a credit of $**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 temporary total disability benefits of $589.43 per week for 6-5/7 weeks, commencing 12/2/09 through 1/17/10, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 10/21/09 through 4/24/14, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay reasonable and necessary medical services of $25,995.50, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $530.49 per week for 15 weeks, because the injuries sustained caused the 3% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

7/29/14
Date

AUG - 5 2014

15IWCC0556

STATEMENT OF FACTS:

Petitioner, a 63 year old maintenance worker, testified that on October 20, 2009 he was instructed to go over to City Hall and move filing cabinets. He was instructed to perform this activity by his supervisor, Pat Colford. He was performing these activities with a co-worker, Ron Milam. Petitioner testified that they had to move these filing cabinets because this particular office was setting up cubicles for a new employee. Petitioner further testified that Ron and he had to move a total of three filing cabinets. The first two were moved by Ron without too much difficulty. However, the third filing cabinet was a lateral cabinet 4 feet tall, 5 feet long, and 18 to 24 inches deep. This filing cabinet was full of files and the doors were locked. Petitioner further testified that he and Ron got on one side of the filing cabinet in an attempt to push it. While pushing the cabinet, Petitioner developed an immediate onset of pain in his groin. It felt like someone had stabbed him on the right side of his groin. The filing cabinet did not move as it was too heavy and was sitting on berber carpet.
Petitioner testified that there was another individual with him and Ron. His name was Pete. Petitioner testified that Pete didn't want them to leave without the job accomplished. It took all three of them to move the cabinet. It was too heavy to put on a dolly. They all had to push. They could not find a key to unlock the doors to unload the file and make it lighter. Petitioner further testified that although he was feeling pain, he continued to work. He testified that he reported the onset of pain to both Ron and Peter.

Petitioner also reported the accident to his supervisor, Pat Colford. Petitioner filled out an incident report on that same day. The incident report filled out on October 20, 2009, indicates that while Petitioner was moving a very heavy filing cabinet with Ron and Pete, he developed a sharp pain in his groin area. (RX3). Petitioner initially refused medical treatment. He testified that he thought the pain would eventually go away. However, when it did not, he sought medical care.

Petitioner testified that he was off of work from December 2, 2009 through January 17, 2010 at the instruction of Dr. Weinstein. Petitioner further testified that he did not work on December 24, 2009 or on December 31, 2009. Petitioner testified that he returned to work on January 18, 2010.

At the time of arbitration hearing, Petitioner reported a dull pain in his left groin when he stands still. The dull sensation is at the site of the hernia. He further testified that he didn't have this type of discomfort prior to the October 20, 2009 work accident.

Peter Zaikowski testified on behalf of the Respondent. Mr. Zaikowski is a 6' 5", 300 lb individual. He is currently employed by the City of West Chicago as an IT manager. He initially worked as a consultant for two years and has now been a City employee for four years.
Mr. Zaikowski testified that he was called upon to help move a couple of filing cabinets with Petitioner and Ron Milam on October 20, 2009. He further testified that he was with Petitioner and Ron at all times while they were moving the filing cabinets. He thought that they had moved three cabinets. He further testified that Linda Martin was also present at the time these filing cabinets were moved. Mr. Zaikowski testified that he took on the majority of the weight while moving the cabinets. He testified that he manned the dolly which was inserted underneath the filing cabinet, by the Petitioner. Then, Mr. Milam helped guide the cabinet. He further testified that he didn't notice Petitioner complaining of pain or exhibiting any type of pain behavior.

Ronald Milam testified on behalf of the Respondent. Mr. Milam is currently a Maintenance II employee for Respondent. He was Maintenance I at the time of the October 20, 2009 accident. He was promoted to a Maintenance II employee as of January 14, 2014.

Mr. Milam testified that on October 20, 2009, Petitioner and he were instructed to move filing cabinets. He further testified that there were only two cabinets that needed to be moved and that Mr. Zaikowski was also there to help them. Mr. Milam further testified that Pete was on the dolly doing most of the lifting. He further testified that Petitioner didn't ever push or pull on the cabinets. He further testified that he didn't notice Petitioner exhibiting any type of pain behavior following this task.

Mr. Milam further testified that it was protocol for employees of Respondent to report accidents to their supervisor. He further confirmed that Pat Colford was still his supervisor with the Respondent. At the time of the October 20, 2009 incident, Petitioner was Mr. Milam's supervisor.

On November 17, 2009, Petitioner was seen by Dr. Craig Weinstein. By history, Petitioner reported a recent onset of a bulge in his left groin while lifting at work. On examination, a palpable hernia defect was evident. Dr. Weinstein diagnosed a left inguinal hernia and recommended surgical intervention. (PX3).

On December 2, 2009, Petitioner underwent a laparoscopic repair of the left inguinal hernia with Dr. Weinstein. At the time of the operation, a large piece of mesh was inserted into Petitioner to preserve the repair. (PX3).

On October 10, 2009, Dr. Weinstein indicated that Petitioner underwent surgery on December 2, 2009 and was unable to return to work until further evaluation was performed. On December 17, 2009, Petitioner followed up with Dr. Weinstein. At that time, Petitioner reported an improvement in his pain. On examination, Dr. Weinstein indicated that there was no hernial defect and the incisions were intact. Dr. Weinstein indicated that Petitioner could return to work without restrictions as of January 18, 2010. (PX3).

At the request of his attorney, Petitioner was examined by Dr. Jeffrey Coe on May 31, 2011. At that time, Petitioner provided Dr. Coe with a history of the October 20, 2009, work accident. Petitioner indicated that he felt a sharp pain in his groin after pushing hard on a cabinet. Dr. Coe preformed an examination and reviewed the pertinent medical records. Dr. Coe opined that Petitioner's left inguinal hernia was caused by the October 27, 2009 work accident. He further opined that the injury caused a permanent partial disability of Petitioners whole person. Dr. Coe's evidence deposition was conducted on September 6, 2013.

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

On October 20, 2009, Petitioner was instructed to move filing cabinets by his supervisor, Pat Colford. This was confirmed by Ron Milam. While he was pushing a large filing cabinet, he had an immediate onset of pain in his left groin. This is consistent with the incident report he filled out that same day and with all of the treating medical records.

While the testimony of Mr. Milam and Mr. Zaikowski would appear to call into question Petitioner's recollections surrounding the moving the filing cabinets, it would not appear that any of these inconsistencies would call into question the fact that Petitioner was moving filing cabinets on the date in question, whether Mr. Zaikowski was doing the brunt of the work or not. Nor does their testimony necessarily negate the possibility that Petitioner suffered the injury in question and was able to continue working.

Therefore, based on the above, and the record as a whole, the Arbitrator finds that Petitioner sustained accidental injuries arising out of and in the course of his employment on October 20, 2009.

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

Petitioner testified that he reported the October 20, 2009 work accident to his supervisor, Pat Colford, on the day of the incident. Petitioner also filed out a written incident report explaining the work accident. The incident report was signed by his supervisor on October 21, 2009. (RX3).

Based on the above, and the record taken as a whole, the Arbitrator finds that timely notice of the accident was given to Respondent.

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

Petitioner had an onset of left groin pain after he helped move heavy filing cabinets on October 20, 2009. Petitioner had never experienced this type of pain prior to the work accident. Petitioner further testified that his left groin pain continued until he sought treatment with Dr. Weinstein on November, 17, 2009. At that time, Petitioner provided a consistent history of the work accident. On examination, a left groin hernia defect was observed. The inguinal hernia was confirmed at the time of laparacopic intervention on December 2, 2009.

Additionally, Dr. Coe testified that the October 20, 2009, work accident caused Petitioner's left inguinal hernia that required surgery with Dr. Weinstein. (PX1, p. 33). Respondent offered no medical opinion to rebut the testimony of Dr. Coe.

Based on the above, and the record taken as a whole, and in light of the Arbitrator's determination as to accident (issues "C" and "D", supra), the Arbitrator finds that a causal relationship existed between Petitioner's inguinal hernia and the accident on October 20, 2009.

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

Petitioner treated with Dr. Weinstein with respect to his inguinal hernia. Dr. Coe testified that the treatment was reasonable and necessary to treat this condition.

Therefore, based on the above, and record taken as a whole, as well as the Arbitrator's determination as to accident and causation (issues "C", "D" and "F", supra), the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses totaling $25,995.50, pursuant to §8(a) and the fee schedule provisions of §8.2 of the Act. These expenses include $2,385.00 for services provided by Surgical Health Associates, $1,288.00 for services provided by Guardian Anesthesia Associates and $22,322.50 for services provided by Rush-Copley. (PX5).

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

Petitioner was taken off work by Dr. Weinstein from December 2, 2009 through January 17, 2010. Petitioner testified that he was off work during this entire period of time. Petitioner testified that he returned to work for Respondent on January 18, 2010.

Based on the above, and record taken as a whole, as well as the Arbitrator's determination as to accident and causation (issues "C", "D" and "F", supra), the Arbitrator finds that Petitioner was temporarily totally disabled from December 2, 2009 through January 17, 2010, for a period of 6-5/7 weeks.

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

The record shows that as a result of the accident in question, Petitioner suffered an inguinal hernia. The records further show that Petitioner underwent surgical intervention to repair the hernia. The operation included the implementation of mesh into Petitioner's groin to secure the repair. Petitioner testified that he continues to have a dull pain in his groin while standing still.

Based on the above, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 3% person-as-a-whole pursuant to §8(d)2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

☒ Affirm and adopt	☐ 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

Robbi Peterson,
Petitioner,
vs.

15IWCC0557

NO: 12 WC 12061

City of West Chicago,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 29, 2014, is hereby affirmed and adopted.

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

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

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: JUL 2 1 2015
KWL/vf
O-7/14/15
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0557

Case# 12WC012061

PETERSON, ROBBI
Employee/Petitioner

CITY OF WEST CHICAGO
Employer/Respondent

On 9/29/2014, 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 0.04% 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:

1109 GAROFALO SCHREIBER & HART LLC
TODD E WEGMAN
55 W WACKER DR 10TH FL
CHICAGO, IL 60601

0507 RUSIN & MACIOROWSKI LTD
DANIEL W ARKIN
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

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 15IWCC0557

Robbi Peterson
Employee/Petitioner

v.

City of West Chicago
Employer/Respondent

Case # 12 WC 12061

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Wheaton**, on **August 8 and 12, 2014**. 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 _____

15IWCC0557

FINDINGS

On **January 25, 2012**, 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of the allegation of accident ***was*** given to Respondent.

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

In the year preceding the injury, Petitioner earned $**84,555.64**; the average weekly wage was $**1,626.07**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **4** dependent children.

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

Respondent ***is not liable for*** 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 would be entitled to credit under Section 8(j) of the Act for all medical benefits paid by its group carrier.

The Arbitrator's findings of fact and conclusions of law are attached and incorporated herein.

ORDER

For reasons set forth in the attached decision, benefits under the Act are denied.

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

Sept. 29, 2014
Date

SEP 29 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBBI PETERSON,	)	15IWCC0557
Petitioner,	)	
vs.	)	No. 12 WC 12061
CITY OF WEST CHICAGO,	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner is a plainclothes detective in the West Chicago police department. His duties include both preparation of reports and other desk work at police headquarters as well as on-site investigations, including witness interviews, surveillance, serving warrants and making arrests, which are obviously conducted away from the station. He normally works a 40-hour week in four ten-hour shifts.

The claimant testified that on January 25, 2012, he reported to work at about 8:00 A.M. He testified he felt fine in the morning. He signed in and went to his cubicle. At the time, he was assigned to investigate a burglary. He left the station to seek a witness for interview purposes. He went to the witness' apartment complex and walked up several flights of stairs to the unit, but no one was home. He left the same way. He then went to another home residence, and walked up the sidewalk to that location, but no one was there either. He then returned to the business, spoke to a different witness, and left there going to a different location in Wheaton. Following a meeting with someone there, he returned to the original business location. Thereafter, he returned to the police station. He testified that upon his return to the station he noted he was limping and did not know why. He acknowledged that several people saw him, asked about it and he responded that he did not know why he was limping. The petitioner acknowledged that he did not slip, trip, fall, stumble, twist his ankle, run, or engage in any activity that day which would be characterized as particularly physically rigorous, and at no time did he feel a snap or pop in his ankle. The petitioner acknowledged an accident/investigation report (see PX1, RX1) which noted that he could not recall any specific incident and noted that he felt symptoms at his desk in the afternoon when his right ankle began to stiffen up and feel tight. The petitioner acknowledged that he had a prior right ankle Achilles tendon rupture in 2004 as the result of a football injury, which was surgically treated at that time.

The petitioner called Chris Shackleford, who was a detective sergeant and the petitioner's direct supervisor in January 2012. Sgt. Shackleford first noted the claimant

limping in the afternoon of January 25, 2012 and asked about it. The petitioner replied "my ankle is bothering me," and Sgt. Shackleford asked why. Sgt. Shackleford the petitioner "said he didn't know." Sgt. Shackleford further testified as to the later preparation of accident reports (see RX1, RX2, RX3).

The petitioner called William Hall to testify; he was the Investigation Division Commander in 2012. He also noted the claimant limping in the afternoon of January 25 and that after asking what was wrong or if anything had happened, the petitioner "said he didn't know."

The petitioner called Anthony Cargola to testify; he is a fellow detective with the city and a coworker of the claimant. Detective Cargola testified he saw the claimant limping, asked the claimant what he had done, and the claimant said "I don't know."

The medical records show that the petitioner had been referred to Dr. Paul Bishop, a podiatrist, on November 29, 2011, for left foot and ankle complaints which had been becoming progressively worse over the prior two years without specific injury. Dr. Bishop had prescribed orthotics and an MRI to evaluate possible tendon tear or ossicle disruption. The petitioner had an MRI of the left foot and ankle on December 16, 2011, suggesting tendinopathy and partial tearing of the tibialis posterior tendon; he presented on December 21, 2011, to discuss the results. PX2.

Following the date of loss at issue, on January 26, 2012, Dr. Bishop saw the claimant. The claimant described right Achilles tendon pain and Dr. Bishop noted a history of "started hurting it couple of days ago." Dr. Bishop noted the prior Achilles tendon surgery and examination noted a bulge at the scar area and noted the claimant had possibly "ruptured or starting to rupture his previous repair area." He prescribed an MRI and a walking boot. PX2. The claimant had an MRI of the right foot and ankle on January 30, 2012. It revealed fatty infiltration of the muscle consistent with disuse or atrophy and suggestion of a rupture of the Achilles tendon. PX2. On February 6, 2012, Dr. Bishop saw the claimant, reviewed the MRI and recommended surgical repair. PX2.

On February 16, 2012, the petitioner had Achilles tendon surgery with debridement and tendon transfer. The postoperative diagnosis was of a chronic rupture of the right Achilles tendon with reinjury. PX2. On February 20, 2012, sutures were removed to allow drainage of a hematoma and he was given medication and his dressing was changed. PX2.

The petitioner presented for wound checks and dressing changes thereafter and was placed into a cast on March 8, 2012. PX2. On April 2, 2012, pain had reduced substantially and the cast was removed. The petitioner was prescribed aquatic and physical therapy and he was given a boot but was still not weightbearing. PX2. On April 18, it was noted he would be transitioning to a land-based therapy program. PX2.

On May 1, 2012, Dr. Bishop penned a letter in which he advised that the claimant had presented at his office on January 26, 2012 while accompanying the claimant's

daughters for their appointments. The claimant had not scheduled an appointment. The claimant had reported pain in the Achilles tendon and noted difficulty pressing down with his foot. The petitioner reported running regularly about three miles and that day had been going up and down stairs and getting in and out of his car. Dr. Bishop noted the treatment course and need for further recovery. PX2.

On May 3, 2012, the petitioner saw Dr. Bishop, who noted a continued wound location on the right heel and recommended debridement and wound care. PX2. The debridement and removal of necrotic edges and a Matrix graft was done on May 16, 2012. No complications were noted. PX2. Postoperative checks on May 21 and 29, 2012 noted good healing. PX2.

On June 6, 2012, Dr. Bishop noted good granulation in the wound and recommended further rehabilitation to correct atrophy. PX2. The petitioner did undergo therapy thereafter, and on June 21, 2012, Dr. Bishop released the petitioner to light duty work for "the next couple of weeks" with full duty thereafter. PX2.

On July 9, 2012, the petitioner presented for debridement and cleansing of the wound. PX2. It was noted on July 13, 2012, that an infection had been detected in his lab work and the petitioner was on antibiotics. PX2.

The petitioner attended physical therapy at Atlas Physical Therapy and remained in therapy through September 25, 2012. See generally PX4. In addition, following the debridement, the petitioner was referred for wound care at Fox Valley Wound Care and underwent a course of treatment beginning on July 23, 2012. He underwent periodic evaluation, cleaning of the wound and reapplication of dressings there until he was discharged January 18, 2013. See generally PX3.

On January 11, 2013, the petitioner returned to Dr. Bishop. He noted 99% closure of the wound with some residual crusting in the area. The tendon appeared strong and the petitioner could lift the foot and flex the big toe. Dr. Bishop advised him to continue therapy and do jogging and follow up if there were any ongoing problems, but otherwise discharged him from surgical care. PX2.

On May 10, 2013, the petitioner saw Dr. Bishop. He noted a persistent pinhole at the incision site "but overall is doing quite well." He had good strength and could flex the great toe. He was discharged from care at that point. PX2.

Dr. Bishop testified in deposition on February 6, 2014. See generally PX6. He testified that the petitioner reported a history that "he had injured it running the day before." PX6, p.7. Dr. Bishop testified that at some later date the petitioner said he had been running up and down stairs at an apartment building to apprehend someone. See PX6, pp.7-8 and 22. Dr. Bishop was asked if equipment being carried would have contributed to the stress on the tendon, and Dr. Bishop testified "...if you are adding 20 or 30 pounds to his body weight, yes." See PX6, p.11.

The petitioner is a plainclothes officer and does not wear a uniform, but does carry a firearm, badge, handcuffs and radio. He sometimes wears a Kevlar vest, depending on the circumstances; if he was serving a warrant, he would wear it, but testified he was not serving warrants on January 25 and does not know if he was wearing it that day. The petitioner estimated his gear, including the vest, would weigh between fifteen and eighteen pounds, of which the vest accounted for about ten pounds. This information was corroborated by Deputy Chief Uplegger, who testified that he used a scale to weigh the petitioner's gear, including the vest, and the total weight was 15 pounds, 2.88 ounces (see also RX8).

OPINION AND ORDER

A claimant must prove by the preponderance of credible evidence that an injury arose out of and was in the course of employment in order to receive compensation under the Act. See, e.g., *Orsini v. Industrial Commission*, 117 Ill.2d 38, 44-45 (1987), *Parro v. Industrial Commission*, 260 Ill.App.3d 551 (1st Dist. 1993). "In the course of" refers to the time, place and circumstance under which the accident occurred, while "arising out of" refers to the origin or cause of the accident that gave rise to the injury. *Illinois Bell Telephone Co. v. Industrial Commission*, 131 Ill.2d 478, 483 (1989). It should be noted that the Commission need not award compensation even if the claimant's version of relevant events is undisputed. *Smith v. Industrial Commission*, 98 Ill.2d 20 (1983).

The claimant argues the petitioner should be considered a travelling employee; in such cases, the "in the course of" element is subject to a relaxed standard based on the reasonableness of the conduct and the employer's ability to anticipate same, even when engaged in recreational activities or outside normal working hours. "In cases of traveling employees, the determination of whether the injury is in the course of employment 'depends upon the reasonableness of the specific conduct and whether it might normally be anticipated or foreseen by the employer.'" *Humphrey v. Industrial Commission*, 76 Ill.2d 333, 336 (1979), internally citing *U.S. Industries v. Industrial Commission*, 40 Ill.2d 469, 475 (1968) and *Ace Pest Control, Inc. v. Industrial Commission*, 32 Ill.2d 386, 388-90 (1965); *David Wexler & Co. v. Industrial Commission* 52 Ill.2d 506, 510 (1972), *Wright v. Industrial Commission*, 62 Ill.2d 65, 69-71 (1975). With regard to the "arising out of" element, however, even though the traveling employee standard is relaxed, the positional risk doctrine does not apply; the travelling employee must still establish the accident arose out of employment. "'The Workmen's Compensation Act was not intended to insure employees against all accidental injuries' but only those arising out of and occurring in the course of employment." See, e.g., *Ace Pest Control, Inc. v. Industrial Commission*, supra at 388. The fact that a claimant's duties took him to the place of injury and that, but for the employment, he would not have been there, is not in and of itself sufficient to support a finding that the injuries arose out of employment. *Illinois Bell Telephone Co. v. Industrial Commission*, 131 Ill.2d at 485-86; *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill.2d 52, 58 (1989).

It should surprise no one that a police detective might need to leave the police station to appropriately conduct an investigation. In this case, it actually matters very little as to whether the petitioner should or should not be considered a "travelling" employee, as the petitioner was clearly engaged in his usual work practice during his usual business hours, and has thus satisfied the "in the course of" element regardless of his characterization. The real questions posed by this claim are, first, whether an accident did in fact actually occur, and second, whether any accident played a causal role in the development of the petitioner's medical condition.

The petitioner repeatedly acknowledged, and testified, that he did not slip, trip, fall, stumble, twist his ankle, run, or engage in any activity that day which would be characterized as particularly physically rigorous, and at no time did he feel a snap or pop in his ankle. He verbally acknowledged to multiple co-workers that day that he did not know what, if anything, had happened to his ankle (and they in turn testified to such interactions). And he completed a written report which noted that he could not recall any specific incident and noted that he felt symptoms at his desk in the afternoon when his right ankle began to stiffen up and feel tight. See also PX1, RX1-4.

Dr. Bishop testified his understanding was that the petitioner was running on January 25, apparently under the impression that the petitioner had injured his ankle in a foot pursuit of a suspect. See PX6, pp.7-8 and 22. The petitioner testified that he had neither engaged in such physical activity nor told the doctor that he had done so. The Arbitrator notes that rather than somehow making up a factually incorrect history out of thin air, the petitioner most likely used the term "running" in the colloquial sense rather than a literal one[1] and Dr. Bishop simply misinterpreted it. Regardless, however, Dr. Bishop clearly misapprehended the kind of physical stressors the petitioner was under in evaluating the potential causes of his medical condition.

Dr. Bishop suggests a second alternative causal factor, specifically carrying a significant amount of equipment; Dr. Bishop testified "...adding 20 or 30 pounds" to the petitioner's body weight of 280-290 pounds would suffice to do so. PX6, p.11. The Arbitrator notes the total weight of the petitioner's gear, including his vest, to be about fifteen pounds. See, e.g., RX8. The petitioner testified he did not know if the vest was being worn, and further testified that had he been wearing the vest, his radio would be inserted into one of the vest pockets. He testified that day he was carrying his radio, suggesting that he was not wearing the vest; this in turn suggests that the weight of the petitioner's gear was approximately five to eight pounds, much less than what Dr. Bishop would have considered a factor.

In this case, the petitioner acknowledged that he does not know what happened to him, if anything did in fact happen at all. A claimant's burden of proof requires more than describing an onset of symptoms while at work without any demonstration of accident, regardless of whether the employee is travelling or not. Moreover, the Arbitrator cannot simply infer that something happened just because a medical state of

[1] For instance, "Jane Doe ran some errands" as opposed to "Roger Bannister ran the first sub-four-minute mile in 1954."

15IWCC0557

ill-being exists. As the Appellate Court has noted:

> ...circumstantial evidence can only support an inference which is reasonable and probable, not merely possible. Where the evidence allows for the inference of the nonexistence of a fact to be just as probable as its existence, the conclusion that the fact exists is a matter of speculation, surmise, and conjecture, and the inference cannot reasonably be drawn.

First Cash Financial Services v. Industrial Commission, 367 Ill.App.3d 102, 106 (1st Dist. 2006), internally citing *Mann v. Producer's Chemical Co.*, 356 Ill.App.3d 967 (2005), *Stojkovich v. Monadnock Building*, 281 Ill.App.3d 733 (1996), *Carter v. Azaran*, 332 Ill.App.3d 948 (2002), and *Wiegman v. Hitch-Inn Post of Libertyville*, 308 Ill.App.3d 789 (1999). That requirement has not been satisfied in this case, as it is well settled that a claimant's right to recover benefits cannot rest upon speculation or conjecture. See, e.g., *County of Cook v. Industrial Commission*, 68 Ill.2d 24 (1977).

Considering the evidence adduced in its entirety, the Arbitrator finds the petitioner failed to demonstrate accidental injuries causing a state of ill-being within the meaning of the Act. Issues of medical benefits, temporary and permanent disability, and the petitioner's request for penalties and fees are moot given the above findings.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDITH HERMAN LOPEZ,

Petitioner,

vs.

NO: 12 WC 31689

METROPOLITAN BANK GROUP,

15IWCC0567

Respondent,

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County in an order dated December 9, 2014, with "specific instructions to provide the basis for its conclusions." On February 18, 2013, Arbitrator Williams issued a decision finding that Petitioner failed to prove that her current cervical spine condition is causally related to her work injury on May 30, 2012. The Commission (DeVriendt, White, Donohoo) affirmed and adopted the decision on March 24, 2014. The Circuit Court found:

> In the case at bar, the Arbitrator recites all the facts of the case and makes conclusory statements in his analysis. Specifically, the Arbitrator states that Plaintiff "is not credible or believable" without explaining why. As this Court is not allowed to make its own inferences, the Arbitrator must explain what led him to the conclusion that she is not credible. The Arbitrator also states that the "opinion of Dr. Slack is not consistent with the evidence and is conjecture." Again, what about Dr. Slack's opinion is inconsistent? Which opinions are conjectures? This is information that must be provided in order for the Court to be able to perform its function on administrative review.

(Circuit Court Order at 3-4). Pursuant to the court's remand order, the Commission affirms and adopts the Arbitrator's original decision, which is attached hereto and made a part hereof, but makes the following additional findings to explain why Petitioner was found to be not credible and why Dr. Slack's opinion is not consistent with the evidence. The Commission further

remands this case to the Arbitrator for further proceedings for a determination of permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Petitioner testified that she felt a "lightning bolt" pain in her shoulder blade on the left side of her neck on May 30, 2012 while lifting a box at work. Although Respondent did not dispute that Petitioner sustained accidental injuries on that date and stipulated that Petitioner provided timely notice, Respondent does dispute the extent of Petitioner's cervical condition as being causally related to her work injury.

The Arbitrator found that Petitioner was "not credible or believable" that her current cervical condition was related to a work injury on May 30, 2012. Petitioner claimed that she injured her neck on that date but she continued working. She testified that she thought it was just a "pulled muscle" so she took Flexeril and Vicodin, which she already had due to a chronic low back condition.

Petitioner was actively engaged in physical therapy for her non-work-related low back condition during this time. On May 30, 2012, Petitioner cancelled her appointment because her "car broke down." There was no mention of any neck injury at work. On May 31st, Petitioner reported that her lumbar pain was moderate to severe "because of the weather and I have been lifting/carrying a lot for work." However, there was no mention of any new upper back, shoulder, scapula, or neck problems and Petitioner was able to perform 50 min. of therapeutic exercises. Petitioner had physical therapy sessions on June 7th and 8th also with no mention of any upper back or neck problems. The June 8th note indicates that Petitioner's pain increased after playing with her daughter the day before.

Petitioner testified that her pain got worse every day until June 13th when she went to the emergency room because she couldn't take a deep breath since her shoulder blade area and neck hurt so bad. She also complained about a "fullness, heaviness" in her left arm and numbness in her thumb. The records indicate that Petitioner first went to physical therapy that day to cancel her appointment due to "feeling like she is getting pneumonia or pulling muscle." She was advised to call her doctor or go to the emergency room. Petitioner then went to Mercy Hospital using her husband's insurance and was admitted for cardiac testing, which turned out negative. The Commission notes that there is no mention of any work injury in these medical records. To the contrary, Petitioner complained about having left chest and arm pain with severe pain to the left "back" for two days. On examination, Petitioner's neck was "supple." The records don't mention any neck complaints at all. The most specific entry indicates left scapular and left upper chest pain. Another entry in the records indicates that Petitioner had the symptoms for only one day and that Petitioner "woke with sharp left back pain." There is also reference to Petitioner having had a productive cough with green sputum for about one week. The record reflects that Petitioner stated this pain was "new, different from prior arthritis."

On June 15, 2012, a physical therapy note indicates that Petitioner had been in the hospital but was okay and had a negative stress test. On June 20th, the physical therapy record indicates that Petitioner reported, "My low back is hard to tell if it hurts because still dealing with the incident at my upper back. **I think I figured out what I may have done. I think when I was throwing my grandkids in the pool, I must have pulled something.**" (Emphasis added.)

Petitioner attempted to explain this physical therapy record by testifying that she wasn't complaining to her therapist about neck pain but rather pain in her mid-back on the right. Petitioner testified that she first told her therapist that she didn't know how she did it but then

15IWCC0567

told her that it could be from "throwing things *to* my grandkids in the pool" referring to small pool toys. Petitioner claimed that she did not throw people in the pool. On cross-exam, Petitioner reiterated that she "can't" throw the kids in the pool because of her low back. However, she then admitted that "the most I can do when I play with the kids is to take a seated position and let them jump off my legs, you know, kind of stand and let them jump." Despite Petitioner's attempt to discredit the physical therapy record, it appears that Petitioner most likely did injure herself in the pool. If Petitioner's "neck" injury at work on May 30th was so bad and getting worse to the point that she had to go to the hospital, why didn't she mention that incident to any of her medical providers? Why would she mention the swimming pool incident to her therapist and not the alleged work injury? Even if Petitioner did tell her therapist that she thinks she "pulled something" while throwing "to" her kids in the pool as opposed to actually "throwing" her kids, this record still indicates that Petitioner herself related her complaints to that incident as opposed to anything at work. Also, we do not find it credible that Petitioner was talking about a new, right-side mid-back injury that occurred in the pool. The "incident at my upper back" seems to be most consistent with what Petitioner was complaining about when she went to the hospital on June 13th.

It wasn't until Petitioner saw her primary-care-physician, Dr. Garcelon, on June 22nd for a follow up after her hospitalization for chest pain that there is any reference in the records to a work-related cervical injury. Dr. Garcelon recorded that Petitioner's pain started "2 weeks ago as searing pain L upper back and radiating to anterior chest. Occurred while changing office location and doing a lot of lifting boxes." Dr. Garcelon diagnosed cervical radiculitis and sent Petitioner for an MRI, which showed mild spondylosis of discs at C5-6 and 6-7 with disc related osteophytes that encroach on the neural foramina. The Commission finds that Petitioner's history given to Dr. Garcelon, that her pain started two weeks prior, is not consistent with any alleged work injury on May 30th while lifting boxes. Rather, it is much more consistent with an injury occurring shortly before she went to the emergency room on June 13th. This injury, more likely than not, occurred while throwing her grandchildren in a swimming pool.

On July 19, 2012, Petitioner saw Dr. Slack, who had been treating Petitioner previously for her chronic low back problems, and gave a history of developing severe pain in her "neck" after attempting to lift a heavy box at work. Dr. Slack recorded that Petitioner was seen at Mercy Hospital "due to the pain with deep breaths and she was not able to sleep." The Commission finds that this record seems to imply that Petitioner had an injury at work and went to the hospital very shortly thereafter. However, this is not at all what happened. We also note that Dr. Slack never testified in this matter and did not address the serious inconsistencies in Petitioner's version of events (e.g., no mention to medical providers about work injury for three weeks, probable intervening accident in the pool, etc.). Dr. Slack diagnosed "symptomatic aggravation" of cervical DDD with radiculopathy and recommended medications, epidural steroid injections, and took Petitioner off work.

On August 2nd, Dr. Slack wrote that Petitioner "once again reiterated when I questioned her as far as the date of her injury, and she noted that it was on 5/30, at which time she was at her job at the bank and was lifting boxes." Again, Dr. Slack does not seem to be aware that Petitioner told her therapist that she believed her condition was related to an incident that happened in the swimming pool nor does he address the fact that Petitioner never mentioned any neck complaints or work injury to her therapist or even during her hospital admission on June 13th.

Based on all of the above, the Commission finds that Petitioner is not credible in this

15IWCC0567

case. Even if she felt some sort of pain while lifting boxes at work during the branch closing, it was not significant enough for her to seek treatment and she never mentioned anything to her therapists. She was able to continue working and also able to do her exercises at physical therapy for her unrelated lumbar condition until something happened in the swimming pool, which is what the records show Petitioner herself attributed her pain. It should also be considered that Petitioner went to the hospital on June 13, 2012 with complaints of productive cough for one week and Petitioner herself told her therapist that she might have pneumonia. Even though there is no medical opinion on this issue, it seems to be at least as likely (based on the timeline of events) that Petitioner's degenerative cervical condition was aggravated by her aggressive coughing in the days leading up to her hospitalization or even that the symptoms began spontaneously since some of those records indicate that Petitioner had only had her pain for a day or two and that Petitioner "woke up" with it.

Petitioner argues that the Arbitrator erred because Respondent had stipulated to accident and notice but found no causation without even mentioning the opinion of Respondent's Section 12 physician, Dr. Bernstein. However, it is Petitioner's burden to prove her case and since the initial medical records and timeline contradict Petitioner's testimony, and her own Dr. Slack failed to give a solid causation opinion consistent with the facts, the Arbitrator apparently felt that it wasn't necessary to base the denial of benefits on Dr. Bernstein's opinion.

We agree with the Arbitrator and clarify that the initial medical records and chain-of-events do not support Petitioner's testimony. In addition, Dr. Slack's "opinion" is simply based on what Petitioner told him, which, again, is not credible. As such, reliance on the opinion of Dr. Bernstein was not necessary because Petitioner failed to meet her burden of proof in the first place.

For the sake of completeness, however, Dr. Bernstein found slightly diminished range of motion in the cervical spine that was consistent with Petitioner's "physiomorph" (i.e., morbid obesity) without any obvious pain guarding. Petitioner reported posterior neck pain with all maneuvers of the head and neck but she was nontender to palpation and there was no paraspinal muscle spasm. He felt the MRI showed some minor degenerative changes in the lower cervical spine but there was no disc herniation or evidence of nerve root compression. He reviewed the surveillance videos which showed no evidence of any pain guarding or functional limitation. He also noted the June 20th, physical therapy record in which Petitioner reported pulling something while throwing her grandkids in the pool. Dr. Bernstein found that Petitioner had a benign exam and an age-appropriate MRI. He opined that Petitioner *may have* suffered a cervical strain as a result of her work accident but the records suggest another injury (i.e., the swimming pool). He opined that Petitioner was at maximum medical improvement, no further therapy or diagnostic treatment was necessary, and that Petitioner was capable of performing her job without restrictions. We find that Dr. Bernstein's opinion is more persuasive than that of Dr. Slack or Dr. Garcelon.

Regarding the surveillance videos, although they don't show Petitioner doing anything particularly strenuous, they also don't indicate that she was having serious problems with her neck. She is seen walking, bending over, turning her head, looking up, opening a house window, driving, sitting with her head tilted down to manipulate her smartphone, etc. There is one time that Petitioner is seen "rolling her" neck for a few seconds as if to stretch it. In all, however, it is hard to see why, regardless of causation, Petitioner wouldn't have been able to perform her relatively sedentary job as a bank manager and, instead, was taken off all work by Dr. Slack.

Based on all of the above, we find that Petitioner has failed to prove that her current

15IWCC0567

condition of ill-being is causally related to her work injury. Therefore, she is not entitled to prospective medical treatment or temporary total disability related to her alleged work accident on May 30, 2012. Furthermore, although Respondent had stipulated to accident, we find that, if anything and at most, Petitioner sustained a very minor cervical or upper back strain or muscle aches, which resolved within a few days without the need for treatment. Petitioner's subsequent medical treatment and current condition are not causally related to her work injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 28, 2013, is hereby affirmed and adopted with the modifications and explanations outlined above.

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.

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.

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: JUL 23 2015

Charles J. DeVriendt

Ruth W. White

Joshua D. Luskin

SE/
O: 4/22/15
49

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Estate of George Jernigan, (Deceased),
Petitioner,

vs.

NO: 01 WC 08383

Rockwell International Goss Graphic Systems,
Respondent.

15IWCC0551

DECISION AND OPINION ON REMAND

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, permanent partial disability, medical expenses, notice, penalties/attorneys' fees, statue of limitations and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 6, 2012 is hereby affirmed and adopted.

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: JUL 20 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-07/14/15
jdl/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ESTATE OF JERNIGAN, GEORGE E DECEASED
Employee/Petitioner

Case# 01WC008383

15IWCC0551

ROCKWELL INTERNATIONAL GOSS GRAPHIC SYSTEMS
Employer/Respondent

On 9/6/2012, 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 0.13% 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:

2830 THE MARGOLIS FIRM PC
CHARLES CANDIANO
55 W MONROE ST SUITE 2455
CHICAGO, IL 60603

0210 GANAN & SHAPIRO PC
ELAINE T NEWQUIST
210 W ILLINOIS ST
CHICAGO, IL 60654

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

ESTATE OF GEORGE E. JERNIGAN, deceased,
Employee/Petitioner

v.

ROCKWELL INTERNATIONAL,
GOSS GRAPHICS SYSTEMS,
Employer/Respondent

Case # 01 WC 008383

Consolidated cases: NONE.

15IWCC0551

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 **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Wheaton**, on **April 19, 2012**. 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 **September 23, 1997**, 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 not* sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged accident *was not* given to Respondent.

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

In the year preceding the alleged injury, Petitioner earned **$125,000.00**; the average weekly wage was **$2,244.68**.

On the date of the alleged accident, Petitioner was **47** years of age, ***single*** with **no** dependent children.

Petitioner *has not* received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $ **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

Petitioner failed to prove that the Decedent sustained accidental injuries arising out of and in the course of his employment with Respondent on **September 23, 1997.**

Petitioner further failed to prove that the Decedent's current condition of ill-being is causally related to any work incident or injury while in the employ of Respondent.

All claims for compensation by Petitioner in this matter are thus hereby denied.

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 JOANN M. FRATIANNI

August 24, 2012
Date

SEP - 6 2012

15IWCC0551

PROCEDURAL HISTORY

On February 13, 2001, Decedent filed this Application for Adjustment of Claim alleging injuries to his lower back after a fall at work on September 23, 1997, while working in Westmont, Illinois.

Following his death from unrelated cause on May 15, 2006, the Application was amended on August 7, 2006 to name as Petitioner the Estate of George Jernigan. On October 4, 2006, the Application was amended a second time to change the alleged date of accident to July 2, 1996, and the location of the alleged accident to Miami, Florida. On May 5, 2011, the Application was amended a third time to change the alleged date of accident to September 23, 1997, and the location of the alleged accident to Denver, Colorado.

Apart from the above history, Decedent previously filed an Application for Adjustment of Claim on September 17, 2004 alleging accidental injuries to his back when he fell while working on August 2, 2000. The location of that alleged accident was Recifi, Brazil. The case number for that claim was 04 WC 44504.

Case No. 04 WC 44504 was tried before this Arbitrator with Decedent testifying on April 6, 2005. Following that testimony, Decedent passed away and the claim was amended to reflect the Estate of George Jernigan as Petitioner. On September 8, 2006 exhibits were introduced into evidence and proofs were closed. On January 13, 2007, this Arbitrator filed a decision in that matter. This Arbitrator found that Petitioner failed to prove that Decedent sustained accidental injuries arising out of and in the course of his employment with Respondent on August 2, 2000. No findings were rendered as to an alleged date of accident of September 23, 2007. This Arbitrator cited testimony of prior injuries to the lower back when Decedent slipped and fell in Respondent's parking lot in 1993 and while working for Respondent in Miami, Florida in 1996. This Arbitrator's decision at that time reflected a finding of no "real corroborating evidence that such an injury occurred" (on August 2, 2000). This Arbitrator also found that no causation existed between an alleged lower back injury and the alleged accident of August 2, 2000, citing significant lower back findings dating back to 1996 and earlier. This Arbitrator also found the filing of that Application of Adjustment of Claim did not occur within the Statute of Limitations, which ran out on August 2, 2003.

That decision was appealed to the Commission, which affirmed this Arbitrator's decision on April 3, 2009. The Commission decision was appealed to the Circuit Court of Cook County, where Judge Tailor affirmed the decision by order dated October 27, 2009. The order was then appealed to the Appellate Court, where in a decision filed December 20, 2010, the Commission decision was affirmed.

The transcript in case no. 04 WC 44504 was introduced into evidence before this Arbitrator in the case at bar. This transcript includes Decedent's testimony and voluminous medical evidence.

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

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

Decedent in the transcript of proceedings in case no. 04 WC 44504 testified that he was employed with Respondent on September 23, 1997. He testified that he injured his back in 1993 when he slipped and fell in a company parking lot. He received treatment from multiple medical providers and physicians and ultimately underwent lower back surgery. He returned to work for Respondent following surgery in 1996. Decendent testified that in 1996 he sustained a second injury when he slipped and fell down some stairs while working at a facility in Miami, Florida. He could not recall how much time he might have missed from work following that incident.

Decedent testified that he was next injured on August 2, 2000, which was the subject matter of the extensively previously litigated matter of case no. 04 WC 44504. Following that date, he stopped working for Respondent after September 7, 2000. He testified to radiating pain down both legs and severe pain in his lower back. He testified that these symptoms began in 1996 and were only down one leg and that he underwent epidural injections, but that the pain was tolerable. Decedent testified the pain became worse after August 2, 2000 and became severe enough that he could no longer work. He then underwent surgery and a second surgery in 2004. He never returned to any work and he received some long-term non-worked related disability benefits.

Decedent testified that he did not file a Workers' Compensation Claim for the 1993 fall. When he saw Dr. Heyer, his family physician, in June of 1993, Decedent informed him he was already under medical care for his low back with doctors in California and Ohio. Decedent received treatment with Phoenix Orthopedics for his low back in 1994. He continued working until some time in 1996. Decedent testified to a slip and fall while working in Miami sometime in 1996, but could not recall the month. He testified that he did not file an Application for Adjustment of Claim for that fall. Decedent testified that he received treatment to his lower back with Dr. Rosen and Dr. Bennett in 1996 and admitted to experiencing flare-ups of lower back pain between 1993 and 1996, with or without any particular aggravations.

A careful review of the transcript reflects that decedent did not testify to an accidental injury of September 23, 1997.

Decedent testified that he saw Dr. Lederman in November of 1997 and reported to him that he experienced low back pain for four years. Decedent continued treatment with doctors at Phoenix Orthopedics for episodes of low back pain in 1998 and 1999. He admitted experiencing ongoing low back pain and radiation down his legs throughout the 1990's.

Decedent during his testimony identified an accident report (Px27) his supervisor prepared on October 15, 2000. That report reflects a history of accident in September, 1997. When asked during that trial if the history of injury in September, 1997 was correct, Decedent testified "No, that's not correct." In addition, no history of any injury to the lower back is reflected in Decedent's self-prepared job log of activities. (Px23)

Dr. Kaster did examine Decedent with reference to a September 23, 1997 claimed occurrence, but Decedent related his low back condition to a slip and fall on ice. No proof was offered as to weather conditions on that date in Illinois and the Arbitrator finds it highly unlikely that ice was present on the ground in Illinois at that time. On that same doctor visit, Decedent denied any prior low back problems or injuries, which was clearly refuted by the doctor's review of prior records of treatment, histories and reports of failed surgeries.

This Arbitrator finds that Decedent has established evidence of extensive treatment to his lumbar and cervical spines, none of which can be identified with any special work injury.

Based further upon the above, the Arbitrator finds that Petitioner failed to prove by any credible evidence that Decedent sustained an accidental injury that arose out of and in the course of his employment with Respondent on September 23, 1997.

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?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for medical expenses in this matter are hereby denied.

15IWCC0551

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for temporary total disability benefits in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made by Petitioner for permanent partial disability benefits in this matter are hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ 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

Stephen Smith,

Petitioner,

vs. NO: 14 WC 20111

APET, 15IWCC0560

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, prospective medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 28, 2014 is hereby affirmed and adopted.

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.

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 Circuit Court.

DATED: JUL 2 2 2015

David L. Gore

DLG/gaf
O: 7/9/15
45

Stephen Mathis

Mario Basurto

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

SMITH, STEPHEN
Employee/Petitioner

Case# **14WC020111**

15IWCC0560

APET
Employer/Respondent

On 10/28/2014, 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 0.05% 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:

1871 ZANCK COEN WRIGHT & SALADIN
CAROLINA SCHOTTLAND
40 BRINK ST
CRYSTAL LAKE, IL 60014

0445 RODDY LAW LTD
RICHARD S ZENZ
303 W MADISON ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF Kane)

☐ 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
19(b)

Stephen Smith
Employee/Petitioner

v.

APET
Employer/Respondent

Case # **14** WC **20111**

Consolidated cases: _____

15IWCC0560

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 **Geneva**, on **September 15, 2014**. 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

15IWCC0560

On the date of accident, **May 27, 2014**, 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 not*** 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 $**28,080.00**; the average weekly wage was $**540.00**.

On the date of accident, Petitioner was **41** years of age, ***single*** with **4** dependent children.

Respondent ***has not*** paid all reasonable and necessary 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 $

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

ORDER

Petitioner failed to meet his burden of proof on the issues of accident and causation. Therefore the claim for compensation is denied.

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

10/27/14
Date

Stephen Smith v. Apet, 14 WC 20111 - ICArbDec19(b)

OCT 28 2014

15IWCC0560

FINDINGS OF FACT

The petitioner alleges that on May 27, 2014 he was working with a pallet jack when his knee buckled and he suffered an injury to his left shoulder and right knee. The respondent disputed an incident at work as well as the causal relationship between the accident and the alleged injury.

At the time of the incident the petitioner was on light duty for prior injuries to his left shoulder and right knee. The Petitioner claimed that Rob Lyons ordered him to perform tasks that were beyond his restrictions. Mr. Lyons testified that this was not true. Further, he testified that the pallets being pulled on the jack were loaded with empty boxes that weighed very little and that only minimal effort is needed to pull the jack under those circumstances. In addition, Mr. Lyons identified that he received Respondent's exhibit number 2, an email from Mr. Smith dated June 17, 2014. In that note, Smith stated that he never had an issue with his shoulder prior to the event at work. Joe Locke, the General Manager of APET, testified that on the morning of May 27, 2014, he observed the Petitioner pushing a pallet jack in the warehouse. This was at about 7:15 AM. He testified that all of a sudden the Petitioner stopped and went into the dispatch office. He also testified that he encountered Smith prior to this accident and that Smith told him he had fallen off a ladder at home and injured himself. Rob Lyons, Smith's immediate supervisor, also testified that Smith had told him about the incident of falling off a ladder at home.

Jesus Nunez testified that he arrived at work at 4:00 AM on the morning of May 27, 2014. At about 7:00 AM he saw the Petitioner move two or three pallets of boxes. He then went into the dispatch office. Nunez never saw Smith appear to injure himself.

Iran Zamora saw Smith pushing a pallet jack with empty boxes. Suddenly he grabbed his knee and said he had twisted it. There was no mention of a shoulder problem.
The medical records are very clear that the Petitioner had long-standing problems with the left shoulder and the right knee. Petitioner's Exhibit 6, the records of Dr. Elstrom, is very illuminating. On May 17, 2014, ten days prior to the alleged incident at work, he was complaining about the left shoulder and the right knee. In spite of treatment, he now wanted to have surgery because the shoulder had not gotten any better. He had a painful arc of internal rotation along with positive impingement testing. He also complained of the right knee being swollen and painful. The knee swelled with weather changes, it crunched and popped. He indicated that the symptoms were aggravated by activity and were even worse with rest. Doctor Elstrom's handwritten notes from May 17, 2014 indicate that the knee was "a little wobbly" side to side. That conclusion could easily explain the petitioner grabbing his knee as described to Iran Zamora.

CONCLUSIONS OF LAW

1. With regard to the issue of accident, the Arbitrator finds that the Petitioner has failed to meet his burden of proof. In support of this finding, the Arbitrator notes the questions of credibility in Petitioner's testimony when considering the testimony of the Respondent's witnesses and the medical evidence. Petitioner's testimony regarding the circumstances surrounding his injury and the mechanism of his injury, lack credibility. Petitioner did not explain how he twisted his knee. Petitioner did not explain any increased risk of injury from his employment that could have explained the mechanism of injury, other than his description of "twerking" his shoulder and his knee buckling while he was operating a pallet jack. There was no indicating that there was any problems with the pallet jack or any unsafe condition of the work floor. However, Petitioner's own medical evidence casts a darker cloud on his credibility. The Respondent presented evidence that the petitioner had hurt himself at home two weeks prior to the

15IWCC0560

alleged incident on May 27, 2014. The medical records demonstrate that the Petitioner's pre-existing problems were most likely the cause of his current condition. Under these circumstances, given the evidence presented at trial, the Arbitrator cannot conclude that the Petitioner sustained an accident on May 27, 2014.

2. Petitioner failed to meet his burden of proof on the issue of causation. The Arbitrator relies on the treating medical records that clearly show Petitioner had pre-existing conditions in both his arm and his knee, for which Petitioner was actively treating before his alleged accident date. These records do not provide any medical opinions indicating the Petitioner's pre-existing conditions were either directly caused or aggravated by the alleged incident on May 27, 2014. While the records show conclusory statements about an accident at work, there is no reasonable opinion or set of statements by any treating doctor that relate the Petitioner's current condition to the work injury. Based on this lack of evidence, the Arbitrator cannot conclude that the Petitioner's current condition of ill-being is causally related to the alleged incident from May 27, 2014.

3. Based on the findings above, all other issues are rendered moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

☒ 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

Enedina Islas,

Petitioner,

vs. NO: 12 WC 20669

Mid-American Growers,

15IWCC0561

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, prospective medical expenses, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2015 is hereby affirmed and adopted.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $27,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUL 22 2015

David L. Gore

DLG/gaf
O: 7/16/15
45

Stephen Mathis

Mario Basurto

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

ISLAS, ENEDINA
Employee/Petitioner

Case# **12WC020669**

MID-AMERICAN GROWERS
Employer/Respondent

15IWCC0561

On 1/5/2015, 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 0.13% 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:

0400 LOUIS E OLIVERO & ASSOC
DAVID W OLIVERO
1615 4TH ST
PERU, IL 61354

5265 WOLF LAW LTD
LEE LAUDICINA
25 E WASHINGTON ST SUITE 801
CHICAGO, IL 60602

15IWCC0561

STATE OF ILLINOIS)
)SS.
COUNTY OF LASALLE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ENEDINA ISLAS,
Employee/Petitioner

v.

MID-AMERICAN GROWERS,
Employer/Respondent

Case # **12** WC **20669**

Consolidated cases: **N/A**

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 **Ottawa**, on **November 24, 2014**. 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. [x] 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. [x] 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. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

15IWCC0561

FINDINGS

On the date of accident, **09/23/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**13,510.60**; the average weekly wage was $**337.77**.

On the date of accident, Petitioner was **36** years of age, ***married*** with **1** dependent children.

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

Respondent shall be given a credit of $**12,232.64** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**12,232.64**.

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 $253.00 /week for 155-3/7 weeks, commencing 11/28/11 through 11/24/14, as provided in Section 8(b) of the Act. Respondent shall receive credit for any amount of benefits it has paid thus far, whether in the form of TTD, TTD advances or disability benefits.

Respondent shall authorize, pay and provide medical treatment as prescribed by Dr. Orteza, including all medical charges and period of temporary total disability relating to same.

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

12/29/14
Date

JAN 5 - 2015

15IWCC0561

FINDINGS OF FACT

This claim stems from an alleged accident sustained by Petitioner on September 23, 2011. This matter proceeded to hearing pursuant to Section 19(b) of the Act. The following issues were in dispute: 1) accident, 2) causation, 3) TTD and 4) prospective medical care. Petitioner testified via a Spanish translator.

Petitioner testified that she was employed by Respondent and worked in a department consisting of eight employees who placed hangers on poinsettia plants, at a rate of five hundred plants every hour. She also testified that she never had any injuries to her back and never had any medical treatment to her back.

Petitioner testified that on September 23, 2011, while at work, she was constantly bent over placing hangers on poinsettia plants and when she stood up, she instantly experienced low back pain. She continued to work the next several days, but did not have any improvement in her back pain.

Illinois Valley Community Hospital - Records (PX. 1)
According to the Illinois Valley Community Hospital records on September 26, 2011, Petitioner received medical treatment from the Occupational Health Department, where she gave a history of having low back pain since September 23, 2011, when she repeatedly bent at waist to place hangers on plants. Petitioner was diagnosed with a lumbar strain and referred to the Physical Therapy Department.

On October 26, 2011, the physical therapist reported that Petitioner had nerve involvement in her lower extremity. On October 28, 2011, the Occupational Health Department's records stated that her back pain was not improving and that she was now having numbness and tingling into her right thigh.

On January 25, 2012, Petitioner went to Illinois Valley Community Hospital to consult with pain management specialist, Dr. Eugene Becker. On three separate occasions, Dr. Becker treated employee Islas' back pain by administering lumbar epidural steroid injections at the L4-5 interspace.

On January 15, 2013, Petitioner had a functional capacity evaluation which showed that she had limited active motion of the lumbar spine, hips and shoulders, along with general muscle weakness and pain rated at 8-9/10. Petitioner cooperated during the entire evaluation, however, she displayed consistency on only five of thirteen tests that she completed. She self restricted on five tests and refused to attempt three tests, primarily due to increased low back pain. The physical therapist recommended that Petitioner would benefit from a program for pain control to enable her to participate more fully in a physical therapy program for stretching and strengthening specific musculature. Following successful accomplishment of pain control and completion of the skilled physical therapy program, Petitioner would be a candidate for a work conditioning program.

St. Margaret's Hospital - Records (PX.2)
On November 8, 2011, Petitioner had a lumbar MRI, which showed an annular tear at L4-5. A repeat lumbar MRI on April 5, 2012, showed a disc bulge at L4-5 with desiccation of the disc.

Dr. C. Perales - Records (PX. 3)
On November 28, 2011, Petitioner started treating with Dr. Perales and gave a history of working continuously bent over and unable to straighten up around September 23, 2011. Dr. Perales diagnosed

15IWCC0561

her with a lumbar strain and referred her to Dr. Thomas Szymke and back to Dr. Jason Bergandi for further treatment. Dr. Perales also prescribed medication and restricted Petitioner from all work. Dr. Perales continued to see and treat Petitioner for her back pain over the course of the next year and a half and at all times, restricted her from work activities.

On July 30, 2013, Dr. Perales diagnosed Petitioner with a lumbosacral myofascial pain and left sciatica and again referred her to Dr. Thomas Szymke for consultation and EMG of her lower extremities.

Illinois Valley Spine Institute / Dr. Jason Bergandi - Records (PX.4)
On January 6, 2012, Petitioner saw Dr. Bergandi and informed him that while at work, she had to stand on her feet and perform repetitive motion of bending forward and also had pain radiating into her right leg. Dr. Bergandi then referred her to pain management specialist, Dr. Eugene Becker, so that he could administer a series of lumbar epidural steroid injections.

On March 15, 2012, Petitioner returned to Dr. Bergandi and reported that after receiving three lumbar epidural injections, she received only limited benefit. Dr. Bergandi then ordered a repeat lumbar MRI and EMG test.

UnityPoint Clinic / Dr. Thomas Szymke - Records (PX. 5)
On December 19, 2013, Petitioner saw Dr. Thomas Szymke for an electromyographic evaluation and she complained of lower back pain along with pain radiating towards her left hip and occasional sensation of her legs falling asleep. Dr. Szymke determined that the needle electrode exam demonstrated denervation in her lower lumbar paraspinals. These findings suggested to Dr. Szymke that Petitioner may have facet impingement. Dr. Szymke recommended that standing lumbosacral spine films be taken, including extension views, to ensure that she did not have segmental instability, and a bone scan as well.

Dr. Gregg Davis - Records (PX. 6)
On April 17, 2014, Petitioner saw Dr. Gregg Davis, as a new patient and complained of constant low back pain radiating into her thigh. Dr. Davis' physical examination revealed that Petitioner had paraspinal muscle spasms and parasacral muscle spasms. Dr. Davis diagnosed her with lumbago and facet syndrome and referred her to pain management specialist, Dr. Orteza.

Bureau Valley Interventional Pain Management - Records (PX. 7)
On April 22, 2014, Petitioner saw Dr. Orteza of Bureau Valley Interventional Pain Management for her low back pain that radiated into her lower extremities. It was Dr. Orteza's impression that Petitioner had myofascial type syndrome involving lumbosacral paraspinal muscle area. Dr. Orteza suggested a course of treatment consisting of prescription medication and follow-up with him in one month.

On May 19, 2014, Petitioner returned to see Dr. Orteza and reported that the medication only helped for a limited period. Dr. Orteza recommended scheduling employee Islas for a bilateral diagnostic facet joint block at L3-4, L4-5 and L5-S1 in order to determine if the pain generation was coming from the facet joints.

15IWCC0561

Dr. Robert Eilers - IME (PX. 8)
On May 2, 2013, Dr. Robert Eilers performed an independent medical evaluation and found that Petitioner had a reduced lumbar lordosis consistent with profound myofascial pain, involving the lumbosacral paraspinals. Dr. Eilers recommended that she undergo an EMG and further physical therapy. Dr. Eilers concluded that Petitioner was not at maximum medical improvement and could not return to work.

Dr. Michael Lewis - IME 06/15/12 & 09/18/14
On June 15, 2012, Petitioner was examined by Dr. Michael Lewis at the request of employer, Mid-American Growers. On examination, Petitioner had pain with any motion to the low back area. Dr. Lewis found several Waddell signs during his examination and expressed difficulty with reaching a specific diagnosis. He found employee Islas to be at MMI, but needed an FCE to determine an impairment rating. In his IME Quick Report, he noted that Petitioner could only perform sedentary work.

On September 8, 2014, Dr. Michael Lewis re-examined Petitioner and reached the identical conclusions as before. The IME Quick Report that Dr. Lewis attached to his report, indicates that Petitioner's lumbar strain was resolved.

CONCLUSIONS OF LAW

1. With regard to the issue of accident, the Arbitrator finds that the Petitioner has met her burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted and credible testimony, in addition to the supporting medical evidence. Petitioner's testimony that while working for Respondent, on September 23, 2011, she was constantly bent over putting hangers on plants, when she noticed low back pain, is supported by the medical evidence, which all reflect a similar history. There was no evidence provided to rebut this testimony. Based on these facts, the Arbitrator concludes that the Petitioner sustained an accident on September 23, 2011.

2. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met her burden of proof. In support of this finding ,the Arbitrator relies on the Petitioner's testimony and the medical evidence presented at hearing. The evidence shows that the Petitioner did not have any prior back injuries, and following the incident on September 23, 2011, she was initially diagnosed with a back sprain. A subsequent lumbar MRI test indicates Petitioner had an annular tear at L4-5. Her December 19, 2013 EMG test revealed denervation in the lower lumbar paraspinals, which suggested facet impingement. Dr. Davis diagnosed Petitioner with lumbago and facet syndrome on April 17, 2014. And Dr. Eilers found Petitioner had myofascial pain involving the lumbosacral paraspinals due to the repetitive bending and muscle strain. The Arbitrator finds all this evidence outweighs the Respondent's IME opinion that the Petitioner's condition is not causally related to her September 23, 2011 accident. As such, the Arbitrator concludes that the Petitioner's current condition of ill-being is causally related to her Septebmer 23, 2011 accident.

3. Based on the Arbitrator's findings with respect to the issues of accident and causation, the Arbitrator further finds that the Petitioner is entitled to the prospective medical care as recommended by the Petitioner's treating physicians. This includes Dr. Deofil Orteza's May 19, 2014, medical plan, which was to continue Petitioner's current medications and schedule her for a bilateral diagnostic lumbar facet joint block at L3-4, L4-5 and L5-S1 facet joint levels to see if the pain generator is the joints.

15IWCC0561

Respondent is ordered to authorize, provide and pay for the treatment recommended by Dr. Orteza, including all medical charges and periods of temporary total disability incurred.

4. Based on the Arbitrator's findings above, the Petitioner is awarded TTD from November 28, 2011 through the date of this arbitration hearing. In support of this finding, the Arbitrator relies on the Petitioner's medical evidence, which indicate that her various medical provides had authorized Petitioner to remain off work. The medical records of Dr. Perales indicate that he restricted Petitioner from all work on November 28, 2011, and during his entire care, Dr. Perales never released her to return to work. On June 15, 2012, when Dr. Michael Lewis examined Petitioner at the request of Respondent, he determined that Petitioner could only perform sedentary work. On May 2, 2013, Dr. Robert Eilers, performed an independent medical evaluation and found that Petitioner was not at MMI and could not return to work. Based on this evidence, the Arbitrator concludes that the Responsible is liable for the Petitioner's TTD and awards the Petitioner TTD from November 28, 2011 through November 24, 2014 pursuant to Section 19(b) of the Act. Respondent shall receive a credit for any amounts of TTD or TTD advances it has paid thus far.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Noe Ernesto Mayorga,

Petitioner,

vs. NO: 07 WC 16413

Tyson Fresh Meats, Inc.

Respondent.

15IWCC0564

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 accident, temporary total disability, causal connection, medical expenses, permanent partial disability, penalties and fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 20, 2013 is hereby affirmed and adopted.

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

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 Circuit Court.

DATED: JUL 2 2 2015

David L. Gore

DLG/gaf
O: 7/16/15
45

Stephen Mathis

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MAYORGA, NOE ERNESTO
Employee/Petitioner

Case# **07WC016413**

07WC016411

TYSON FRESH MEATS INC
Employer/Respondent

15IWCC0564

On 11/20/2013, 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 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0190 LAW OFFICES OF PETER F FERRACUTI PC
KALI PEHRSON
PO BOX 859
OTTAWA, IL 61350

2593 GANAN & SHAPIRO PC
PAUL D DYKSTRA
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

☐ 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

NOE ERNESTO MAYORGA,
Employee/Petitioner

v.

TYSON FRESH MEATS, INC.,
Employer/Respondent

Case # 07 WC 16413

Consolidated cases: 07 WC 16411

15IWCC0564

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was consolidated with claim no. 07 WC 16411, and heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Rock Island**, on **June 6, 2013**. 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

15IWCC0564

On **August 31, 2006**, 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 not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the alleged injury, Petitioner earned **$17,134.99**; the average weekly wage was **$407.98**.

On the date of the alleged accident, Petitioner was **60** years of age, *married* with **one** dependent child.

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

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

Respondent shall be given a credit of $ **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 $ **88,956.40** for payment of medical benefits under Section 8(j) of the Act.

ORDER

Petitioner further failed to prove that he sustained an accidental injury arising out of and in the course of his employment with Respondent on **August 31, 2006.**

Petitioner further failed to prove that his current condition of ill-being as claimed is causally related to an alleged accidental injury of August 31, 2006.

All claims made for compensation by Petitioner in this matter are thus hereby denied.

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 JOANN M. FRATIANNI

November 15, 2013
Date

NOV 20 2013

15IWCC0564

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Petitioner is claiming a work injury to his right knee that occurred on August 31, 2006. Petitioner testified he started working for Respondent in 1990. For the first two years, he used a knife to cut meat on a line. For the next 15 years, he worked a job where he put chemicals on food while on a conveyor line.

Petitioner testified that as part of his conveyor job, a forklift would bring materials on a pallet. Petitioner would then lift boxes containing meat. These boxes would weigh approximately 60 pounds each. He would lift these boxes from one pallet to another, then to the "worm." Petitioner would also lift and carry boxes to the grinder line. On occasion he would also have to lift and carry boxes under the conveyor belt, which was approximately 1-1/2 to 2 meters high.

Petitioner testified he would lift and carry 20-30 boxes an hour and approximately 250 boxes a day. He was required to stand all day long. Petitioner testified Respondent required him to wear a pair of work boots, and his job also required him to kneel and squat frequently.

Petitioner testified he noticed a gradual onset of pain in both knees while lifting heavy boxes, constantly squatting, kneeling, twisting and pivoting while holding boxes. Petitioner is claiming that his activities resulted in repetitive trauma, which resulted in a total right knee replacement surgery on August 31, 2006.

Petitioner consulted with Dr. Potaczek on February 3, 2005. Dr. Potaczek recorded complaints of bilateral knee pain and when up for a very long period of time it hurt bilaterally. Petitioner then returned to see Dr. Potaczek on March 9, 2005. Dr. Potaczek noted complaints of when standing for a long time his knees hurt. When he is at work and walks to the bathroom downstairs, it bothers him a great deal. He says he can walk 2 to 3 blocks but it is uncomfortable and it hurts.

Petitioner also completed an "Employee Injury/Illness Statement" through an interpreter. He signed this statement on May 19, 2005. Petitioner identified his signature at trial, but did not recall completing the form. Petitioner reported "pain in both knees" on this form and noted that this problem was noticed 3 or 4 years ago." When asked on the form to describe what he was doing when he first noticed this problem, Petitioner answered "start hurting and with time start getting worse." When asked to explain how the injury occurred, Petitioner answered "unknown." When asked what he believed the cause or aggravation of his condition, Petitioner answered: "standing for long periods of time starts hurting."

Petitioner saw Dr. Eilers for examination. Dr. Eilers recorded a history that for 17 years, Petitioner walked on concrete floors, lifted and carried 60 pound boxes of fat, rotated, walked, and dumped boxes, approximately 30 boxes an hour, noticing bilateral knee pain. Dr. Eilers testified by evidence deposition that Petitioner's lifting, bending, twisting, turning, walking and standing at work aggravated the bilateral knee degenerative joint disease, necessitating medical treatment. Dr. Eilers also testified that the bilateral knee condition was so advanced and deteriorated, that Petitioner would experience symptoms with performance of simple activities of ordinary life, such as walking.

Dr. Hagman also saw Petitioner. He examined Petitioner at the request of Respondent. On July 3, 2009, Dr. Hagman noted Petitioner was 63 years of age with advanced arthritis to both knees. Dr. Hagman also noted in an addendum report dated October 9, 2009 that Petitioner was 5 feet 5 inches tall, and weighed 216 pounds. Dr. Hagman felt that Petitioner's advanced bilateral knee arthritis was the result of age and heavy weight, and once this condition is present, any activity of ordinary life would cause it to become symptomatic.

Based upon the above, the Arbitrator finds that Petitioner failed to prove that his condition of ill-being complained of was causally related to the accidental injury which allegedly manifested itself on June 19, 2006. Petitioner in particular has failed to prove which activity, if any, performed at work on a repetitive basis, would cause an injury to arise out of and in the course of the employment by Respondent.

E. Was timely notice of the accident given to Respondent?

See findings of this Arbitrator in "C" above. The evidence shows that Petitioner actually gave notice to Respondent as through the preparation and signature of the Employee Injury/Illness Statement, which he completed and dated on May 19, 2005.

Based upon the above, the Arbitrator finds that the Petitioner gave Respondent timely notice of this alleged injury in a timely fashion, as defined by the Act.

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

See findings of this Arbitrator in "C" above.

Based upon said findings, the Arbitrator finds that the condition of ill-being complained of is not causally related to any work activities performed on behalf of Respondent by the Petitioner.

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?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made for medical charges or expenses by Petitioner in this matter are hereby denied.

K. What temporary benefits were in dispute?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made for temporary total disability benefits by Petitioner in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made for permanent partial disability benefits by Petitioner in this matter are hereby denied.

O. Should penalties or fees be imposed upon Respondent?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims for penalties and attorneys fees made by Petitioner are hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Roman-Estrada, Leah,
Petitioner,
vs.
University of Illinois Police Dept.,
Respondent,

15IWCC0547

NO: 13WC 000471

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 10, 2014, is hereby affirmed and adopted.

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

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

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: JUL 17 2015
MJB/bm
o-07/14/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ROMAN-ESTRADA, LEAH
Employee/Petitioner

Case# 13WC000471

15IWCC0547

UNIVERSITY OF ILLINOIS POLICE DEPT
Employer/Respondent

On 11/10/2014, 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 0.06% 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:

0704 SANDMAN LEVY & PETRICH
WILLIAM H MARTAY
134 N LASALLE ST 9TH FL
CHICAGO, IL 60602

1408 HEYL ROYSTER VOELKER & ALLEN
DANA HUGHES
120 W STATE ST 2ND FL
ROCKFORD, IL 61105

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Leah Roman-Estrada
Employee/Petitioner

v.

University of Illinois Police Department
Employer/Respondent

Case # 13 WC 000471

15IWCC0547

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **October 28, 2014**. 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 _____

15IWCC0547

FINDINGS

On **December 12, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**58,323.22**; the average weekly wage was $**1,121.41**.

On the date of accident, Petitioner was **26** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**00.00** for TTD, $**00.00** for TPD, $**00.00** for maintenance, and $**00.00** for other benefits, for a total credit of $**00.00**.

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

ORDER

1. The Arbitrator finds that Petitioner was injured at work on December 12, 2012, and the accident arose out of and in the course of Petitioner's employment by Respondent.
2. The Arbitrator finds Petitioner's current condition of ill-being is causally related to her work injury on December 12, 2012.
3. The Parties agreed that Respondent is entitled to a credit for group insurance payments reflected in Pet. Group Ex. 2.
4. Respondent shall pay, if unpaid, per the Fee Schedule those medical bills listed in Pet. Group Ex. 2: University of Illinois at Chicago $960.00; University of Illinois Hospital $2,126.75 and $1,279.00 direct to the providers.
5. Respondent shall reimburse Petitioner $265.00 for co-pays Petitioner for therapy care.
6. Respondent shall hold Petitioner harmless on medical bills paid by group insurance.
7. The Arbitrator finds Petitioner has sustained 7½% loss of use of the left leg and Respondent shall pay Petitioner the sum of $672.85 per week for a period of 16.125 weeks as provided in Section 8(e) of the Act.

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.

David A. Kane
Signature of Arbitrator

November 10, 2014
Date

NOV 10 2014

Attachment - Arbitration Decision 15IWCC0547

Re: Leah Roman-Estrada vs. University of Illinois Police Department
IWCC No.: 13WC000471

The matters in dispute included accident, causal connection, medical bills, and the nature and extent of the injury.

Only Petitioner testified and her testimony was truthful and credible.

TESTIMONY AT HEARING

Petitioner testified she was hired by Respondent in 2010 as a patrol officer. Petitioner had various duties including riding in a patrol car and walking the property. Petitioner had a back injury in 2011 which is still pending at the Commission. Petitioner was working full time, full duty as a patrol officer for Respondent in 2012. Petitioner had no prior left knee injury.

On December 12, 2012, at about 10:30 pm or so, it was cold outside, and as Petitioner exited her patrol car, she slipped on a patch of ice and twisted her left knee. A police department report was signed by the supervisor. (Pet. Ex. 1)

Petitioner received emergency care, wore a brace, and had therapy. Petitioner lost about two (2) weeks from work and was paid full salary. When Petitioner returned to work she was on light duty, sedentary work per

the doctor for two (2) to three (3) months. Thereafter Petitioner did return to full duty as a patrol officer and continues to work full duty up to this hearing date. Petitioner last had medical care in early March, 2013. Petitioner has had no new left knee injury and is receiving no active medical care now. Petitioner still uses a brace when necessary and ices her left knee if it swells. Petitioner takes over-the-counter medication when needed.

Petitioner's current complaints include swelling; some pain; stiffness; and the left knee sometimes gives out when climbing stairs. Petitioner never had these complaints to her left knee before this accident.

Petitioner also testified concerning unpaid medical bills (Pet. Group. Ex. 2); co-pays for therapy care she made in the amount of $265.00 (Pet. Group Ex. 3); and bills paid by group insurance, Cigna, for which she requested a hold harmless.

On cross-exam Petitioner testified she was dropping off her partner at the station when the accident occurred. It was cold outside on the night she slipped and twisted her left knee on the ice. She is still working full duty as a patrol officer and is earning more money today as an officer than in December, 2012. Petitioner last had medical care March 5, 2013. Petitioner saw Dr. Joseph Monaco for a Respondent exam.

Respondent called no rebuttal witness. Petitioner introduced the Police Report for her accident (Pet. Ex. 1); the medical bills from University of Illinois (Pet. Group Ex. 2); Petitioner's co-pays for therapy $265.00 (Pet. Group Ex. 3); medical bills paid by group insurance, Cigna (Pet. Group Ex. 4); and the medical records from University of Illinois Health. (Pet. Ex. 5)

Respondent introduced the medical evidence deposition of Dr. Joseph Monaco (Resp. Ex. 1); the U.S. Department of Commerce weather chart for December, 2012 (Resp. Ex. 2); and the last doctor visit report from Dr. Jeffrey Mjaanes, a treating doctor, dated March 5, 2013. (Resp. Ex. 3)

CONCLUSIONS OF LAW

ACCIDENT

The testimony of Petitioner was truthful and credible. The police report (Pet. Ex. 1) and the medical records indicate Petitioner was injured on December 12, 2012 when she slipped and twisted her left knee on a patch of ice.

The weather information contained in Resp. Ex. 2 indicates a high temperature of 45 degrees and a low of 27 degrees on December 12, 2012. The reported also notes a trace of rain, melted snow, etc. on December 11, 2012. The injury occurred late at night in cold weather and Respondent called no rebuttal witness concerning accident. A reasonable

inference is that some of the rain or melted snow formed ice which caused Petitioner to slip and twist her left knee exiting the patrol car.

The Arbitrator finds that Petitioner was injured at work on December 12, 2012, and the accident arose out of and in the course of Petitioner's employment by Respondent.

CAUSAL CONNECTION

Petitioner's current left knee condition is a left knee medial collateral ligament sprain, grade 2, healed. All medical treating records note this diagnosis, and Dr. Monaco confirms this in his deposition at page 21. "***It was my opinion to a reasonable degree of medical certainty that as a result of that work related incident of December 12, 2012...that she had incurred a sprain of the medial collateral ligament of her left knee.***"

The Arbitrator finds Petitioner's current condition of ill-being is causally related to her injury on December 12, 2012.

MEDICAL BILLS

The medical bills incurred by Petitioner were necessary and reasonable medical charges to help cure and relieve Petitioner's left knee injury.

The parties agreed that Respondent is entitled to a credit for group insurance payments as reflected in exhibit Pet. Group Ex. 2.

Respondent shall pay, if unpaid per the Fee Schedule, those medical bills listed in Petitioner's Group Ex. 2, University of Illinois at Chicago $960.00; University of Illinois Hospital $2,126.75 and $1,279.00; direct to the providers.

Respondent shall reimburse Petitioner $265.00 for the co-pays Petitioner paid for therapy care.

Respondent shall also hold Petitioner harmless on medical bills by group insurance, Cigna.

What is the nature and extent to Petitioner's injury?

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

a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall 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.

b) Also the Commission shall base its determination of the following factors:

(i) the reported level of impairment;

(ii) the occupation of the injured employee;

(iii) the age of the employee at the time of injury;

(iv) the employee's future earning capacity; and

(v) evidence of disability corroborated by medical records.

Concerning (i) of Section 8.1(b) Petitioner testified as to her care and treatment which is supported by the treating medical records.

Dr. Monaco, Respondent's exam doctor also performed an AMA impairment exam and found "zero" percent lower extremity impairment. Dr. Monaco testified at his deposition as to how he arrived at his impairment zero rating, but did note Petitioner's left knee complaints as of his May 27, 2014 exam and his diagnosis. Dr. Monaco noted tenderness to palpatation even after seventeen (17) months from the accident date.

The Arbitrator notes impairment does not equate to permanent disability. Dr. Monaco is rating impairment only, not permanent partial disability. Also, the impairment rating does not consider future earnings;

the type of work a person performs; and future medical problems due to an injury.

Concerning (ii) of Section 8.1(b), Petitioner is a police officer and must get in and out of her patrol car numerous times per day and her job also requires walking the property, and the permanent partial disability may well be larger than an individual who performs sedentary desk work.

Concerning (iii) of Section 8.1(b), Petitioner is 28 years old, and is a younger individual, and the Arbitrator concludes Petitioner's permanent disability may be greater than that of an older individual because she will have to live with the disability longer.

Concerning (iv) of Section 8.1(b), Petitioner's earning capacity has not diminished because she returned to her full time duties.

Concerning (v) of Section 8.1(b), Petitioner testified as to her current complaints and they are supported by the medical records. Petitioner's credible complaints supported by the records does evidence a disability as indicated by prior Commission decisions pursuant to Section 19(e).

The determination of permanent partial disability (PPD) is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, applying Section

8.1(b) of the Act, 820 ILCS 305/8.1b, Petitioner has sustained an accidental injury that caused 7½% loss of the use of the left leg. The Arbitrator further finds Respondent shall pay Petitioner the sum of $672.85/week for a further period of 16.125 weeks, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Leah Bryan,

Petitioner,

vs. NO: 09 WC 48397

Bloomington Normal Public Transit Association,

15IWCC0518

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of causal connection, medical expenses, prospective medical care, temporary total disability, permanent partial disability and credit, and being advised of the facts and law, modifies the corrected Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner bears the burden of proving each element of her claim by a preponderance of the evidence. Petitioner, a bus driver, testified that on June 11, 2009 she felt a distinct "pop" in her left hip while she was assisting a wheelchair bound passenger.

This incident was followed by pain in her left hip that led her to seek medical attention that same day from Dr. Moore. Petitioner's x-rays showed: "Mild narrowing and spurring of the left hip joint, subchondral areas of lucency involving the left acetabulum and femoral head may be due to areas of erosion." The medical evidence elicited at hearing was that these were chronic findings indicative of at least moderate degenerative osteoarthritis in the left hip.

Petitioner was diagnosed with a left hip sprain and left greater trochanteric bursitis. She was placed on work restrictions. On July 15, 2009 Petitioner consulted Dr. Christopher Rink for an orthopedic consult. He injected the left hip joint with Kenalog and Marcaine and ordered an

15IWCC0518

MRI.

The MRI of the left hip was performed on July 21, 2009. The impression was trochanteric bursitis of the left hip with a minimal partial tear of the gluteus minimus tendon near its insertion on the greater trochanter. At least moderate degenerative joint disease of the left hip was present with minimal degenerative change in the right hip. The evidence is that Petitioner had pre-existing degenerative joint disease in her left hip.

Dr. Rink prescribed physical therapy. Petitioner was discharged for non-compliance on August 18, 2009. On August 23, 2009, Petitioner was returned to work full duty by Dr. Rink. She returned to Dr. Rink on September 4, 2009 and reported that she was tolerating her activities well.

On November 5, 2009 Petitioner complained to Dr. Rink of hip pain that was prominent in cold weather. She was assessed as stable with good range of motion and good strength with resisted hip movements. She was directed to return as needed.

Petitioner sought no further medical attention from Dr. Rink. Dr. Rink authored a report at the request of Petitioner's counsel. The April 26, 2010 report concluded that it was not anticipated that Petitioner would have long term disability related to her June 11, 2009 injury and she was not scheduled for any follow-up.

Petitioner's family physician was Dr. Steve Kindred. It is notable that in the records of Dr. Kindred that there is a June 24, 2010 reference to a fall that Petitioner sustained in her home resulting in injury to her right shoulder and arm significant enough that Petitioner reported she had been to the emergency room three days prior and was not able to steer the bus. There are no medical records in evidence that relate to this fall so little is known about it other than that Petitioner was prescribed Vicodin. This episode was not commented upon by any witness.

Petitioner received no treatment for her June 11, 2009 accident after November 5, 2009. The next medical attention Petitioner received for her left hip was on November 11, 2010 when she consulted Dr. Carmichael for hip pain. This was 17 months after the June 2009 accident. During the intervening period the Petitioner continued to work full-duty.

In addition to filing an application for adjustment of claim with case No. 09 WC 48397 for a specific accident on June 11, 2009, Petitioner filed an application for benefits in case No. 11 WC 27401 which asserted that on December 1, 2010 an injury secondary to repetitive trauma manifested itself when she was informed by Dr. Novotny that she would require total hip replacement surgery on her left hip due to severe osteoarthritis. She was referred to Dr. Novotny by his partner Dr. Craig Carmichael at McLean County orthopedics. The two claims were tried together.

In case No. 09 WC 48937 the arbitrator awarded: TTD commencing June 12, 2009 through August 22, 2009 and December 1, 2010 through April 25, 2011; "reasonable and necessary medical services, pursuant to the medical fee schedule, of $2,659.24 to McLean County Orthopedics and $1,005.92 to Advocate BroMenn Medical Center, as provided in

Sections 8(a) and 8.2 of the Act;" Section 8(j) credit of $33,590.92 to Respondent for medical benefits that have been paid with a corresponding hold harmless provision, and a credit of $6,679.06 for the TTD benefits paid. The Arbitrator addressed all permanent partial disability in the companion case No. 11 WC 27401.

The Commission affirms the award of TTD benefits from June 12, 2009, through August 22, 2009 and credit for the TTD benefits paid. Further, the Commission awards related medical bills in evidence that Petitioner incurred from the date of the accident through her release from treatment with Dr. Rink on November 5, 2009.

In the request for hearing form, addressing both claims, the parties stipulated that "Respondent shall receive a credit for all medical bills paid by Petitioner's group health insurance." The Commission gives Respondent credit accordingly--- to the extent the payments pertain to the instant claim No. 09 WC 48397.

Lastly, the Commission finds that the injuries sustained in the June 2009 accident caused loss of use of the left leg to the extent of 12.5% thereof. All else is vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits in the amount of $642.84 per week for 10 weeks commencing June 12, 2009 through August 22, 2009 as provided in Section 8(b) of the Act. Respondent shall be given a credit of $6,679.06 for temporary total disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner related medical bills in evidence from June 11, 2009 through November 5, 2009, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that pursuant to the stipulation of the parties Respondent shall receive a credit for the medical bills paid by Petitioner's group health insurance to the extent the payments pertain to the instant claim No. 09 WC 48397 and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which the Respondent is receiving this credit, as provided in Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 584.41 per week for a period of 26.875 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the left leg.

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

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.

15IWCC0518

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

DATED: JUL 8 - 2015
o:5/27/15
SJM/msb
44

Stephen Mathis

David Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

BRYAN, LEAH
Employee/Petitioner

Case# **09WC048397**

BLOOMINGTON NORMAL PUBLIC TRANSIT ASSOCIATION
Employer/Respondent

15IWCC0518

On 9/25/2014, 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 0.04% 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:

0564 WILLIAMS & SWEE LTD
STEVEN R WILLIAMS
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
ADAM COX
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

15IWCC0518

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Leah Bryan
Employee/Petitioner

v.

Bloomington Normal Public Transit Association
Employer/Respondent

Case # 09 WC 048397

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Bloomington**, on **June 27, 2014**. 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. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
L. [x] 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 **6/11/09**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**50,674.04**; the average weekly wage was $**974.02**.

On the date of accident, Petitioner was **45** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**6,679.06** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**6,679.06**.

Respondent is entitled to a credit of $33,590.92 under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $642.84/week for 31 1/7weeks, commencing 6/12/09 through 8/22/09 and 12/1/10 through 4/25/11 as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 6/9/09 through 6/27/14, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $6,679.06 for temporary total disability benefits that have been paid.

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $2,659.24 to McLean County Orthopedics and $1,005.92 to Advocate BroMenn Medical Center, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of $33,590.92 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 Section 8(j) of the Act.

Permanent Partial Disability: Schedule injury

The Arbitrator will address this issue in his decision in the companion case, 11 WC 27041.

Signature of Arbitrator

September 22, 2014
Date

SEP 25 2014

Leah Bryan vs. Bloomington Normal Public Transit Association
09 WC 048397

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

The Petitioner testified that on July 11, 2009 she worked for the Respondent for 12 years. She described the condition of her left hip as good before this date. She had not had any restrictions, or had any surgery. She had not had any injections, seen any Doctors or lost any time due to her left hip.

On June 11, 2009 she described that she was in a cramped space on the bus. She bent over to strap down a wheelchair in and felt a pop in her left hip.

On June 11, 2009 the Petitioner sought medical treatment. It was noted she was helping secure some wheelchairs into her bus and as she bent over she felt a pop in her hip. She was diagnosed with a left hip sprain and a left greater trochanteric bursitis. (PX4)

Dr. Rink authored a letter on April 26, 2010. He noted an onset of left hip pain when the Petitioner was bent over to put a wheel chair on the bus. He noted an MRI of the left hip. The MRI showed a tear of the Gluteus minimus tendon at its insertion. He treated the Petitioner from July 14, 2009 through November 6, 2009, and she continued to have intermittent exacerbation of discomfort in the lateral hip region. This would be consistent with her injury. He anticipated that she would have short periods of functional limitations. He noted that her injury was consistent with her history. (PX2)

The Petitioner did not receive any medical treatment between November 6, 2009 and November 11, 2010. On that date she was seen by Dr. Carmichael, an orthopedic surgeon. She told him about her accident in June 2009 along with her treatment. She said that her symptoms had gotten substantially worse since that time. (PX 11)

The Petitioner had seen Dr. Jacobs approximately six weeks earlier on September 27, 2010. Dr. Jacobs was an orthopedic surgeon who saw the Petitioner for a Section 12 examination. She also told Dr. Jacobs about her accident in June 2009 along with a summary of her treatment. She said her lateral hip pain was getting worse. (RX 1 at 11)

The Petitioner provided testimony consistent with what she told Drs. Carmichael and Jacobs. She said that she resumed driving her bus on August 22, 2009 and noticed that her left hip pain was increasing.

On November 17, 2010 the Petitioner had an MRI of the left hip. The MRI showed severe left hip degenerative arthrosis. There was a degenerated atretic labrum. (PX6)

On December 1, 2010 the Petitioner saw Dr. Novotny, an orthopedist in the same group as Dr. Carmichael. Dr. Novotny noted left hip pain over the last couple of years. She related her left hip pain to the fact that she had been a bus driver for years. She had an onset of pain about a year ago placing a wheelchair on the bus and felt a pop in her left hip. He described her gate as antalgic. The X-rays showed advanced degenerative arthritis of the left hip. He recommended a hip arthroplasty. (PX5)

On January 26, 2011 Dr. Novotny performed a left total hip arthroplasty. The diagnosis was left hip degenerative joint disease. (PX7)

Dr. Novotny authored a letter. It is dated April 26, 2011. Dr. Novotny noted the Petitioner described an incident while bending over. This involved a wheelchair. She felt a pop in her hip and exacerbation of hip pain.

The Petitioner described many years of driving a bus and driving the bus caused the exacerbation of hip discomfort. He believed the recurring jarring the hip while driving the bus could have contributed and aggravated her preexisting hip condition. (PX3)

Dr. Joshua Jacobs testified on behalf of the Respondent. He testified on March 27, 2012.

Dr. Jacobs agreed with Dr. Novotny's statement that a person who has osteoarthritis and has to do these types of activities including twisting, turning, bending, lifting and jarring to the hip certainly can aggravate hip arthritis. (P30) He stated that Ms. Bryan was not obese. (P31) He noted that she had left hip dysplasia, a condition she developed early in life which affected the left hip joint. He said that it could have been a causative factor in the development of her arthritis, but agreed that there may be other factors that could contribute to her osteoarthritis. (P32) Dr. Jacobs reviewed the claimants chart before the date of injury and concluded there were not records pertaining to the left hip. (P36) He did not find any medical records that showed she had prior discomfort in the left hip. (P37) Dr. Jacobs agreed that degenerative joint disease can be aggravated by activities such as operating a bus. He agreed that jarring of the bus seat could aggravate the symptoms of osteoarthritis. (P44) He also agreed that bending over and tying down the wheelchair could aggravate the symptoms of osteoarthritis. (P44) Dr. Jacobs stated that the accident tying down the wheelchair could be the type of event that could cause injury to the cartilage. He stated it could cause an injury in diseased cartilage that it wouldn't cause in normal cartilage. (P45) He stated it was possible that it could accelerate the osteoarthritis.

Dr. Novotny also testified. Dr. Novotny reviewed the job duties of the Petitioner. He opined that the Petitioner's job duties including twisting, turning, bending, lifting and jarring to the hip could aggravate the hip arthritis. (PX1 at 28, 30, 33) He further explained that by aggravation he meant that the job activities could have caused her symptoms to become more noticeable and cause her to obtain treatment. (Id)

Based on the above the Arbitrator finds that there is a causal relationship between the Petitioner's injury in June of 2009 and her condition of ill-being. Her initial symptoms reported to Dr. Rink were of severe left hip pain following her accident. His diagnosis was an acute onset of left trochanteric bursitis, along with a partially torn tendon consistent with that diagnosis. (PX 9) She still had tenderness in the hip in November after undergoing various types of conservative treatment, and Dr. Rink said in his letter written five months later that she would continue to experience intermittent periods of dysfunction. Her testimony that her symptoms continued after her treatment ended as she operated her bus was consistent with what she told both Dr. Jacobs and Dr. Carmichael. Once she saw Dr. Novotny on December 1, 2010, he diagnosed severe osteoarthritis, performing a hip replacement a month later. Post surgery, Dr. Novotny noted improvement and returned the Petitioner to her regular job as of April 25, 2011. She performed the job until March 7, 2012, when she was fired for absenteeism. There was no evidence of any symptoms or treatment prior to June 11, 2009, and no evidence of any intervening accidents between that date and the date of her surgery.

K. What temporary benefits are in dispute?

The Petitioner was unable to work from June 12, 2009 through August 22, 2009 and from December 1, 2010 through April 25, 2011.

Based on the above the Arbitrator finds that the Petitioner is entitled to TTD during this period.

During the period of June 12, 2009 through August 22, 2009 the Petitioner was taken off work. The Respondent did not dispute this period of time and did pay TTD benefits.

The Petitioner was unable to work from December 1, 2010 through April 25, 2011. During this time the Petitioner was under the care and treatment of Dr. Novotny.

L. Nature and extent.

The Arbitrator will award permanent partial disability as part of his decision in the Petitioner's companion case, which is 11 WC 27041.

J. Medical

In light of his above findings concerning causal connection, the Arbitrator awards the unpaid medical bills of $2659.24 to McLean County Orthopedics and $1005.92 to Advocate BroMenn Medical Center, as provided in Section 8 and 8.2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kelly Leka,

Petitioner,

vs. No. 13WC25812

City of Springfield,

Respondent.

15IWCC0570

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary disability and permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator for the reasons stated below.

On August 8, 2013, Petitioner filed an application for adjustment of claim alleging repetitive trauma to the hands, arms and neck, with the manifestation date of July 3, 2013. Petitioner, a right hand dominant union electrician, testified that he worked for Respondent since 1991. For the first four years, he was an apprentice in the traffic and meter department. Then he became a journeyman, and in 2004 a service foreman. Petitioner stated that after completing the apprenticeship, he was classified as a lineman because "[t]he school [he] went through was a journeyman lineman school." Between 1995 and 2004, Petitioner maintained traffic signals, tornado sirens, as well as "school crossing, commercial metering, [and] residential metering." Most days, he worked on a maintenance crew. Petitioner stated that Petitioner's Exhibit 10, which is a job description of a lineman he obtained from a local union hall, described the job activities he performed during his employment with Respondent, with the exception of operating a digger derrick or a crane. Petitioner further testified that he operated various electrical testing equipment, electrical hand tools, gas powered tools, and pneumatic and hydraulic tools. He was

required to exert in excess of 20 pounds of force constantly to move objects. He was also required to be able to lift 50 pounds frequently and in excess of 100 pounds occasionally. The job description of a lineman states that lifting was required 40 percent of the time, and grasping was required 80 percent of the time. When asked what he grasped throughout the course of the workday, Petitioner responded: "Meters, tools, lineman pliers or if we're pulling cable we do a lot of grasping there. Yeah, pulling cable, digging." Petitioner stated his job was very heavy duty.

Petitioner next testified regarding Petitioner's Exhibit 9, which is a job description of service foreman in the substation department.[1] Petitioner admitted he did not work in the substation department. He was a service foreman in the traffic and meter department from 2004 through 2009. After 2009, he returned to the journeyman position, acting as a service foreman on and off as needed. Petitioner stated as a service foreman he performed essentially the job duties listed in Petitioner's Exhibit 9. Upon further questioning, Petitioner testified his job title was meter and traffic repairman. When asked whether he was a lineman as well, Petitioner responded: "That's what my ticket says." When asked whether his actual job activities in the traffic and meter department were medium duty or heavy duty, Petitioner responded: "It varies but I'd say a lot of times it's heavy." Petitioner also testified regarding the photographs in Petitioner's Exhibits 12 through 44. Petitioner described how he used the various hand tools depicted in the photographs to place, repair or replace different kinds of wires and cables.

The parties introduced into evidence an employee accident report Petitioner prepared on July 30, 2013. Petitioner alleged his job activities "as a journeyman lineman" over the years caused bilateral carpal tunnel syndrome and cubital tunnel syndrome, giving the manifestation date of July 3, 2013. Petitioner testified that "the day [he] cited on [his] incident report *** [t]hey set a new pole so we had to trench by hand from the pole to a pedestal, put in new pipe, pulling cable, backfilled the trench, go up and heat up—well, we hooked it up in the meter base first, skinned the wire, put it under the terminal, crimp it down, go up in the bucket, put your riser up on the pole, string your wire back." Petitioner indicated he developed severe pain and problems with his arms during that particularly exerting day as a result of "[t]he digging of the trench across and once you get that and the pipe all run, just the pulling of the cable. You're just doing a lot of—there was only two of us on that job so you have one guy trying to feed it and another guy trying to pull it."

Petitioner next testified regarding connecting, disconnecting and replacing electrical meters. Petitioner explained that for the past two to four years, Respondent used meters that weighed two pounds. The meters that were used before were heavier, maybe weighing as much as ten pounds. Removing an older meter might be difficult if the buckle on the lock ring was rusted. Petitioner did not specify how often he replaced meters and how many of them were difficult to remove. Rather, he described how he had a problem with a meter a couple of weeks

[1] This exhibit was referred to as Exhibit 2 during the deposition of Petitioner's treating physician, Dr. Michael Watson.

before the arbitration hearing, explaining that the meter was stuck in the ring base, and he and a coworker had to pry it out.

Next, Petitioner testified regarding the tools he used to bolt a traffic signal base to the ground, right a knocked down traffic pole, and tighten it to the base. When asked how much force was required, Petitioner responded: "There's usually at least two guys on it to get it." Petitioner also described some traditional lineman job duties, although he did not specify how often he performed them, or when he last performed them. Petitioner again testified regarding the hand tools and the parts he used in the performance of his job duties.

Next, Petitioner was asked to describe his typical workday. Petitioner testified that he started work at 7:30 a.m. "We usually get there, we do our stretches, we get the tickets, unload the truck, load the truck and then we usually go take our break at—get to the job or close to the job and take a [15 minute] break." Petitioner also took a half hour lunch and another 15 minute break in the afternoon. Petitioner's workday typically ended a 4 p.m. Petitioner described his regular job activities as follows: "Sometimes it's the same thing every day, sometimes it varies," and agreed that he generally used the tools he described in his testimony. Petitioner did not provide any specifics about his typical workday, other than to say the symptoms in his hands increased throughout the workweek. Near the end of his testimony on direct examination, Petitioner stated he mostly replaced electric meters. However, "the day that it really set it over the edge *** was the digging and pulling of that cable. It just got unbearable."

On cross-examination, Petitioner testified that as a foreman, he did the work of the repairman, but with the added responsibility of being a foreman. Petitioner mostly worked on a two-man crew. Petitioner admitted being off work for a couple of months and then working on light duty for three more months following a left shoulder surgery in 2009. In 2011, Petitioner underwent surgery on the right shoulder and was off work or on light duty for a similar time period. Petitioner affirmed that after having shoulder surgery at the end of October of 2011, he did not return to work full duty until June of 2012. While on light duty, he mainly worked in the repair shop.

Petitioner further testified on cross-examination that his hands hurt for approximately a year and a half before he consulted Dr. Michael Watson about the symptoms. Petitioner affirmed that for the past three years, most of his job activities involved the removal and installation of electric meters as part of a meter replacement project. Meter replacement was done with a two-man crew. "[O]ne guy's doing the paperwork and knocking on the door letting them know that we're going to change the meter out, the other guy, usually me, is trying to get that meter base open and then you basically grab that meter and jerk on it and hope it comes out." When Petitioner had difficulty removing the meter, his coworker helped. Installing the replacement meter involved putting a new band on it, screwing it in place, and putting a seal on it. Changing a meter typically took a couple of minutes. Petitioner and his coworker usually changed the meters on six houses at a time, going door to door, then moved the truck and changed six more meters. Petitioner also did meter cuts for nonpayment, which involved

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unlocking and removing the meter, and putting a boot in its place. Cutting a meter also took a couple of minutes. Petitioner agreed it was not unusual for him to replace only one meter a day.

On redirect examination, Petitioner testified that changing meters caused him the most problems with his hands, explaining: "The gripping and squeezing, fighting the lock bands and using a lot of pressure to get them out. And you have to shove them in. It's just a lot of upper body and hand work." Petitioner clarified that changing a meter took a couple of minutes only if there were no problems with the lock. Often, something was jammed, and changing the meter took close to 15 minutes.

The medical records in evidence show that on June 21, 2013, Petitioner saw his primary care physician, Dr. Ralph Gauen, who noted complaints of pain in the hands for over a year, amongst other things. Dr. Gauen referred Petitioner to Dr. Edward Trudeau. On July 3, 2013, Petitioner saw Dr. Trudeau, who recorded the following complaints and history: "This gentleman who is right handed has symptoms about equal in both upper extremities; he has worked for the city for twenty-one years; he is a union electrician; in the course of his repetitive work duties he has severe discomfort in both extremities. In fact about two weeks ago he was pulling cable and he has to pull cable and he has to grip and twist and he has to put wires together and do clipping and it is constant gripping and pulling use of the upper extremities. He had such severe pain he went home pretty much in agony after that work day about two weeks ago and finally sought help from Dr. Gauen to figure out what the problem is with the upper extremities." Dr. Trudeau further noted that Petitioner reported having numbness and pain in the hands for several years, and elbow pain for the past few months. Dr. Trudeau performed an EMG/NCV, which showed moderately severe bilateral carpal tunnel syndrome, and mild left cubital tunnel syndrome. Petitioner then sought treatment with Dr. Watson. In the workers' compensation questionnaire Petitioner completed for Dr. Watson, he described the mechanism of injury as follows: "Thru the repetitive work for my job as a journeyman lineman."

Dr. Watson, an orthopedic surgeon, testified via evidence deposition on April 30, 2014, that he first saw Petitioner on August 27, 2013. Petitioner complained of problems with the hands and elbows, attributing the problems to repetitive work as a journeyman lineman. Petitioner reported the symptoms began two years earlier and progressively worsened. "[H]e attributed these symptoms to the work that he does as a lineman and described them to me as repetitive work with his hands, repetitive work with using hand tools, and he also explained that there was a lot of pushing, pulling, gripping, and lifting involved with his job, and when he would do these activities, it would make his hands go to sleep, and it would also cause pain." When asked whether Petitioner subsequently clarified the history, Dr. Watson responded: "He gave me the history that he had been having symptoms for several years, although on the input form he wrote July 3rd of 2013. He also told Dr. Trudeau at the time of his nerve conduction studies that things became much worse or things got more severe when he was pulling cables on July 3, 2013." Physical examination findings were consistent with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

Dr. Watson was presented with the job description of a lineman. Dr. Watson opined the job duties involved repetitive handwork and gripping, "a contributor to carpal tunnel syndrome." Petitioner's counsel then posed the following hypothetical:

> "I would like you to assume *** that [Petitioner] was employed as a lineman by [Respondent], and had worked there for a period of 20 plus years. Further assume that he provided the job duties that you recorded in your office note of August 27, 2013. Further assume the history that was provided in Dr. Trudeau's note, and further assume the job description as set forth in Petitioner's Exhibit Number 3 [the job description of a lineman]. Do you have an opinion within a reasonable degree of medical certainty as to whether those job duties set forth in the hypothetical were a cause of the bilateral carpal tunnel syndrome that you had diagnosed?"

Dr. Watson opined there is a causal connection. Petitioner's counsel then posed another hypothetical:

> "[R]emoving the job description marked as Exhibit Number 3, assuming the same length of time of employment, assume the same job duties that he provided to you during your evaluation of August 27, 2013, and to Dr. Trudeau on July 3 of 2013, do you have an opinion as to whether those job duties were causative of his bilateral carpal tunnel syndrome?"

Dr. Watson again opined there is a causal connection. Dr. Watson then gave essentially the same opinions regarding the cause of Petitioner's bilateral cubital tunnel syndrome.

Dr. Watson further testified that on January 23, 2014, he performed a left carpal tunnel and cubital tunnel release, and on February 28, 2014, he performed the same procedure on the right side. Postoperatively, Petitioner underwent physical therapy. On April 1, 2014, Petitioner reported doing well and that his neurological symptoms had resolved. On April 7, 2014, Dr. Watson released Petitioner to return to work full duty, effective April 30, 2014. Dr. Watson expected Petitioner to reach maximum medical improvement by the end of June of 2014.

On cross-examination, Dr. Watson testified that he did not know how often Petitioner pushed, pulled, lifted and gripped at work. He also did not know what percentage of the workday Petitioner used hand tools. Dr. Watson confirmed that Petitioner did not give a history of specific accident, only reporting repetitive trauma. On redirect examination, Dr. Watson testified that he had treated Respondent's linemen for over 20 years and had a good general understanding of what they do. Based on the information Petitioner provided, Dr. Watson thought he was a lineman.

Dr. Michael Lewis, an orthopedic surgeon who examined Petitioner at Respondent's request, testified via evidence deposition on March 3, 2014, that he examined Petitioner on

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November 22, 2013. Petitioner stated he was a journeyman lineman. However, in terms of his job duties, "he stated that he used hand pliers to cut a meter clamp, that this was a—one cut, and that he performed this activity approximately four to six times an hour. He said that *** in addition to cutting this wire, on occasion he had to remove a meter, and the meter weighed approximately two pounds." Regarding his symptoms, Petitioner reported increasing pain in the hands and elbows during the past several months. Dr. Lewis diagnosed bilateral carpal tunnel syndrome and ulnar nerve neuropathy at the left elbow. Dr. Lewis opined there is no causal connection between the diagnoses and Petitioner's work activities, explaining: "[In the] AMA Guides to the Evaluation of Disease and Injury Causation, it discusses carpal tunnel syndrome and cubital tunnel syndrome and talks about causation. And my reading of causation is that *** the amount of force that [the patient] used *** and the amount of repetition that he used did not come close to meeting the criteria that the AMA Guides to the Evaluation of Disease and Injury Causation would list for carpal tunnel syndrome." Dr. Lewis's opinion was the same with respect to the cubital tunnel syndrome.

On cross-examination, Dr. Lewis stated: "My understanding from [Petitioner] *** is that most of his activity *** was traveling from one meter to another and that the actual work involved at the meter, such as cutting the wire or, on occasion, removing the meter, was a relatively small portion of his time." Dr. Lewis did not discuss with Petitioner the episode noted by Dr. Trudeau of developing significant pain while gripping and pulling a cable. On redirect examination, Dr. Lewis testified that he gave Petitioner ample opportunity to describe his job duties. Dr. Lewis's understanding of Petitioner's job duties came from Petitioner. Dr. Lewis thought Petitioner's carpal tunnel syndrome and cubital tunnel syndrome are idiopathic.

The Arbitrator found that Petitioner proved accident and causal connection, and awarded benefits. The Commission disagrees and finds that Petitioner's claim of repetitive trauma is not supported by the weight of the evidence. The Commission notes Petitioner's lack of candor regarding his actual work activities. Beginning with the accident report, Petitioner attributed his carpal tunnel syndrome and cubital tunnel syndrome to performing the job duties of a lineman. Petitioner told Dr. Watson he was a lineman. At the arbitration hearing, Petitioner introduced into evidence the job description of a lineman and 33 photographs of various tools and equipment, and described how various repairs were performed. Most of this evidence is misleading, as it is not indicative of Petitioner's actual typical activities at work. When asked to describe his typical day at work, Petitioner described loading the work truck, driving to areas where work needed to be performed, and mostly working on meters with a partner. It was not unusual for him to work on only one meter during the workday. Cutting off service or changing a meter typically took only a couple of minutes, unless the lock was jammed. Petitioner also completed paperwork as part of his job duties.

The Commission further notes that Petitioner reported to Dr. Watson developing the symptoms two years before the initial visit on August 27, 2013. In other words, Petitioner developed the symptoms in mid 2011, after being off work or on light duty following a left shoulder surgery in 2009 and before a right shoulder surgery in October of 2011. Petitioner did

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not return to work full duty following the right shoulder surgery until June of 2012. Petitioner did not tell Dr. Watson or Dr. Lewis that he developed severe pain in his arms after digging a trench and pulling cable. The Commission finds the opinion of Dr. Lewis—that Petitioner's carpal tunnel syndrome and cubital tunnel syndrome are idiopathic and not work-related—to be more sound than the opinion of Dr. Watson to the contrary.

For the foregoing reasons, the Commission denies Petitioner's claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 15, 2014, is hereby reversed and Petitioner's claim is denied.

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

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

DATED: JUL 23 2015
o-05/28/2015
SM/sk
44

Stephen J. Mathis

Mario Basurto

DISSENT

I respectfully dissent from the majority decision and would affirm the Arbitrator's well reasoned decision in its entirety.

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LEKA, KELLY
Employee/Petitioner

Case# 13WC025812

15IWCC0570

CITY OF SPRINGFIELD
Employer/Respondent

On 8/15/2014, 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 0.05% 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:

2217 SHAY & ASSOCIATES
TIMOTHY M SHAY
1030 S DURKIN DR
SPRINGFIELD, IL 62704

0332 LIVINGSTONE MUELLER ET AL
L ROBERT MUELLER
PO BOX 335
SPRINGFIELD, IL 62705

15IWCC0570

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

KELLY LEKA
Employee/Petitioner

Case # 13 WC 025812

v.

Consolidated cases: _____

CITY OF SPRINGFIELD
Employer/Respondent

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 **Molly Dearing**, Arbitrator of the Commission, in the city of **Springfield**, on **June 13, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

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FINDINGS

On **July 3, 2013**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$85,339.90**; the average weekly wage was **$1,641.15**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$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 all reasonable and necessary medical services set forth in Petitioner's Exhibit 6, as provided in Sections 8(a) and 8.2 of the Act, and subject to the fee schedule. Respondent shall further reimburse Petitioner for his out-of-pocket expenses. Respondent is entitled to a credit for all medical benefits previously paid.

Respondent shall pay Petitioner temporary total disability benefits at a rate of $1,094.10/week for a period of 11 5/7 weeks, commencing January 23, 2014 through April 14, 2014, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits at a rate of $721.66/week for a period of 101.25 weeks, representing 10% loss of the left hand, 10% loss of the right hand, 12.5% loss of the left arm, and 12.5% loss of the right arm, as provided in Section 8(e) of the Act.

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

August 12, 2014
Date

AUG 15 2014

15IWCC0570

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KELLY LEKA
Employee/Petitioner

v. Case # 13 WC 25812

CITY OF SPRINGFIELD
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

At the time of his accident, Petitioner was fifty one years of age (Arb. X 1) and he is right-hand dominant. He is employed through Respondent's City Water, Light and Power division. Petitioner has been employed by Respondent since 1991. Petitioner worked as an apprentice Journeyman for Respondent for four years in the traffic and metering department before becoming a Journeyman in the traffic and meter department in 1995. Petitioner testified that from 1991 through April 2004, his job duties included maintaining traffic signals in the City of Springfield, as well as maintaining the tornado sirens, school crossing signs, commercial metering signals, and residential meters. Petitioner became a Service Foreman in April 2004. He resigned his position as a Service Foreman in 2009 and returned to being a Repairman in the traffic and meter department. Petitioner testified that while he has held various titles as a Journeyman Lineman for Respondent, he has worked as a Lineman consistently throughout the duration of his employment for Respondent.

Prior to working for Respondent, Petitioner worked at McDonnell Douglas for four and a half years as an Electrician Tech, and then later as an Electrician. Petitioner testified that since 1982, he has worked as an electrician in some form. Petitioner completed high school and obtained an Electronics Certificate from DeVry Institute of Technology. He is a member of the IBEW Local Union.

The job description of a Lineman was admitted as Petitioner's Exhibit 10. Petitioner testified that he obtained the job description through his local union hall, and that the job description accurately depicts the job duties of a Lineman. Petitioner stated that, in his job as a Lineman for Respondent, he holds a CDL Class A license, operates electrical testing equipment and various detection devices such as volt meters, and he used all referenced equipment except for the digger derrick, crane and boring machine. He testified that he uses jack hammers, saws, electrical hand tools, gas powered tools, and drills. Petitioner was required to lift in excess of 100 pounds occasionally and 50 pounds frequently, which comprised 40% of Petitioner's job duties. Petitioner was also required to push, pull, and lift on a regular basis, grasp heavy construction tools, and perform precise, intricate work. He agreed that 80% of his job duties required grasping. Petitioner

was required to grasp meters, tools, lineman pliers and cables, which were all characterized as very heavy work. Petitioner was required to exert in excess of 20 pounds of force constantly in order to move objects. PX 10.

The job description of a Service Foreman for the City Water, Light and Power Substation Department was admitted as Petitioner's Exhibit 9. Petitioner agreed that as a Service Foreman, he performed general shop work and was required to exert up to 100 pounds of force occasionally and up 50 pounds of force constantly to move objects. He did not perform work on regulators, motors or air conditioners in that position. The job description for the position of a Service Foreman is reflected as heavy demand work, requiring lifting 10% of the time, fingering 5% of the time, grasping 5% of the time, and "repetitive motions" 2% of the time. PX 9.

The job description for a Meter and Traffic Repairman was admitted as Respondent's Exhibit 1. That position is reflected as requiring medium demand work, exerting up to 100 pounds of force occasionally, and/or up to 20 pounds of force constantly. The physical activity description indicates that a Meter and Traffic Repairman pushes for 5% of the time, pulls for 5% of the time, lifts objects from a lower to a higher position or moving objects horizontally from position to position 15% of the time, picks, pinches types or otherwise works primarily with the fingers rather than with the whole hand or arm for 40% of the time, and grasps with the hands applying pressure to an object with the fingers and palm 15% of the time. "Repetitive Motions" in which substantial movements of the wrists, hands, and/or fingers is not assigned any amount of time. RX 2.

Petitioner testified that, under his union contract, his title is Meter and Traffic Repairman, but his ticket also indicates him to be a Lineman as well. Petitioner testified that he believed his job duties performed in the meter and traffic department were varied, but were nonetheless heavy duty. Petitioner testified that in the performance of his job duties, he worked in extreme cold temperatures, and that he utilizes both hands and arms, though he is right hand dominant. On most days, Petitioner is a member of a crew.

Petitioner's Exhibits 12 through 45 depict various tools Petitioner was required to use in the course of his job duties. These tools required repetitive bilateral hand movement, including bilateral hand gripping and grasping, forceful pushing and pulling, and intricate manipulation and twisting. Some of these tools were vibratory and required significant force in order to repair many components that had rusted because of the weather. Numerous tools were used for ratcheting, cutting, stripping, crimping, and placement of the wires in various terminals.

Petitioner testified to a work day in June 2013 that he described as especially exerting on his upper extremities. A new electrical pole had been set, and Petitioner and another employee had to manually dig a trench from the pole to a pedestal, install a new pipe, pull cable wire, backfill the trench, connect the meter base, skin the wire, crimp the wire, and string the wire. That incident is also set forth in Petitioner's Employee Accident Report. Joint X 1.

Petitioner testified that his upper extremity symptoms progressed through the course of his work week. He would ice his hands when he got home from work, and he indicated that his symptoms would lessen prior to the beginning of the work week. Petitioner testified that for the last three years, the vast majority of his work has been in the installation and removal of electrical meters, which cause him the greatest problems with his hands due to the gripping and grasping involved in removing the lock bands. Petitioner testified that he continues to perform significant

meter cutting, which involves unlocking the meter, pulling and isolating the meter, placing it back in position and locking it up. Petitioner described this as "a lot of upper body and hand work". Petitioner acknowledged that it may only take a few minutes to change a meter, or it may take as long as fifteen minutes. He testified that he performed a significant amount of meter cuts last year, mostly for nonpayment, which requires him to unlock the meter, pull the meter out, place a boot on the meter to prevent electricity from running to it, and lock the meter back. Petitioner acknowledged that cutting meters may only take a few minutes to perform, and may be sporadic in frequency.

On June 21, 2013, Petitioner presented to Dr. Ralph Gauen, his primary care physician, with complaints of pain in his hands for over a year. Petitioner's review of symptoms indicates that Petitioner's examination was positive for vague aching of hands for a couple of years, which sometimes limit gardening. He was referred to Dr. Edward Trudeau for electrical studies. PX 4.

On July 3, 2013, Petitioner presented Dr. Edward Trudeau, a physiatrist, for a consultation of Petitioner's bilateral upper extremities. Petitioner reported to Dr. Trudeau that he has worked for Respondent for twenty one years, performing repetitive work duties that caused severe discomfort in both upper extremities. Dr. Trudeau noted, "[a]bout two weeks ago, he was pulling cables and he has to grip and wrist and put wires together and do clipping and it is constant gripping and pulling use of the upper extremities." Petitioner complained that his symptoms were worse on his right elbow than on the left, and he had bilateral hand and wrist pain as well as bilateral shoulder discomfort and neck pain. He complained that his pain had increased over the past several years. Dr. Trudeau opined that "[c]learly the history given here is that this gentleman has work related difficulties involving the upper extremities." PX 3.

An EMG/nerve conduction study revealed bilateral prolongations of median motor and sensory latencies as compared to ulnar, right essentially equal to left in electro-neurophysiologic testing terms; and bilateral decreased amplitudes of median sensory evoked responses. The study further revealed decrement of evoked response with above to below elbow stimulation in the left ulnar motor distribution and slowing of nerve conduction velocity across the elbow in the left ulnar motor distribution, as well as decreased amplitudes of left ulnar sensory and left dorsal ulnar cutaneous evoked responses. Dr. Trudeau diagnosed moderately severe bilateral median neuropathies at the wrists, right essentially equal to left in electro-neurophysiologic testing quantification, and mild ulnar neuropathy at the left elbow. Dr. Trudeau recommended non-steroidal and anti-inflammatory medications, injections, or an operative intervention such as decompression of the median nerves at the wrists and the ulnar nerve at the left elbow. PX 3.

Petitioner testified that he related his bilateral hand and elbow pain to his job duties when he saw Dr. Trudeau on July 3, 2013 following a detailed discussion with Dr. Trudeau about his job duties. He completed an accident report on July 30, 2013. Joint X 1.

Petitioner presented to Dr. Michael Watson on August 27, 2013. Petitioner complained of bilateral arm pain with hand numbness and tingling, and attributed his symptoms to his repetitive job duties as a Lineman. He described that his symptomatology had progressively worsened from two years prior, and were now interfering with his daily activities and his job duties. Petitioner explained that his job duties involved significant repetitive work with hand tools as well as pushing, pulling, gripping and lifting. He complained of loss of sleep and that over-the-counter pain medication provided no relief. Upon physical examination, Petitioner had a positive Tinel's test and

positive Phalen's test bilaterally at the wrists. He further had a positive Tinel's test at the ulnar nerve at both elbows. Dr. Watson diagnosed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, despite the negative findings for cubital tunnel syndrome on the right upper extremity. He stated that an individual can have clinical findings of compression neuropathy but have normal electroneurophysiologic testing. Dr. Watson recommended a left carpal tunnel release and left ulnar nerve transposition and allowed Petitioner to continue work without restrictions. PX 2.

On January 23, 2014, Dr. Watson performed a left carpal tunnel release and left ulnar nerve transposition. Dr. Watson's post-operative diagnoses included left carpal tunnel syndrome and left cubital tunnel syndrome. PX 2.

On January 29, 2014, Petitioner returned to Dr. Watson for a post-operative examination. Dr. Watson recommended Petitioner continue wearing his sling and to begin physical therapy. PX 2.

On February 6, 2014, Petitioner presented to St. John's Hospital for occupational therapy, as referred by Dr. Watson. Petitioner underwent four occupational therapy sessions until February 25, 2014. PX 1.

On February 24, 2014, Petitioner presented to Dr. Watson, who noted a positive Tinel's test of the right elbow and wrist as well a positive Phalen's test with diminished sensation throughout the entire right hand. PX 2.

On February 28, 2014, Dr. Watson performed a right carpal tunnel release and right ulnar nerve transposition. Petitioner's post-operative diagnoses included right carpal tunnel syndrome and right cubital tunnel syndrome. Following surgery, Petitioner's right arm was placed in a sling. PX 2, 8.

On March 5, 2014, Petitioner presented to Dr. Watson for a post-operative examination. Dr. Watson recommended Petitioner continue to wear his sling and begin physical therapy. PX 2.

Petitioner underwent four occupational therapy sessions at St. John's Hospital Occupational Therapy from March 18, 2014 through April 15, 2014. Petitioner was instructed to continue with a home exercise program as well as avoid repetitive strained activities. PX 5.

On April 1, 2014, Petitioner returned to Dr. Watson who opined that Petitioner could return to work without restriction upon completion of the physical therapy program on April 16. PX 2.

On April 7, 2014, Petitioner requested that he not be released to return to work without restrictions until April 30, 2014, which Dr. Watson approved. PX 2. Petitioner testified that he requested an extension of his return to work because he was still experiencing significant pain and wanted more time to heal. Petitioner testified that he ultimately returned back to work on April 15, 2014, as his pain began to diminish through home exercises and occupational therapy.

At Arbitration, Petitioner testified that he continues to experience pain in his hands, aggravated by gripping. He has difficulty in opening objects such as jar lids, and he testified that removing and installing meters, as well as digging and pulling cables, cause unbearable pain. Petitioner testified that he also experiences pain in his elbows, which he described as dull and

increasing with activity. Petitioner testified that he cannot place his arms on chairs for very long without pain and irritation. Petitioner testified that he has lost grip strength in both of his hands, which affects his ability to use his work tools throughout the course of the day. Petitioner specifically testified that he is unable to break lock bands off electrical meters due to his diminished grip strength.

Dr. Michael D. Watson, a board certified orthopedic surgeon, testified by way of evidence deposition on April 30, 2014. Dr. Watson's reviewed a job description for a Lineman. He opined that Petitioner's job duty of lifting and raising objects from a lower to higher position or moving objects horizontally from position to position, characterized as 40% of his work duties, would be considered repetitive hand work and would contribute to Petitioner's bilateral carpal tunnel syndrome. Dr. Watson opined that Petitioner's job duties of gripping and grasping, which involved applying pressure to an object with the fingers and palm, characterized as 80% of his work duties, was also a contributing factor in the development of Petitioner's bilateral carpal tunnel syndrome. Dr. Watson opined that Petitioner's job duties as a Lineman for a period in excess of twenty years have a causal relationship to the development of Petitioner's bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. PX 1.

Dr. Watson opined as to the causal connection of Petitioner's job duties to his bilateral carpal tunnel syndrome and cubital tunnel syndrome both with and without the description of the Lineman Job Description. Dr. Watson acknowledged that he did not know the frequency with which Petitioner performed job duties involving pushing, pulling, lifting and gripping, nor was he aware of what percentage of Petitioner's day he utilized hand tools. Dr. Watson testified that he treated linemen for over 20 years and as a result, has a general understanding of their job duties. Dr. Watson testified that the information provided by Petitioner as well as his understanding of Petitioner's job, was sufficient to render a causal connection opinion. PX 1.

Dr. Watson testified that he recommended surgery during his first office visit with Petitioner because he had already taken over-the-counter anti-inflammatory medications without success. Dr. Watson testified that because Petitioner was having difficulty performing activities of daily living in his personal life and in his job, he felt surgery was necessary. PX 1.

Dr. Watson opined that Petitioner had not reached maximum medical improvement at the April 30, 2014 office visit, but he opined Petitioner would reach maximum medial improvement at the end of June 2014. Dr. Watson further opined it takes three to four months to reach maximum medical improvement following cubital tunnel surgery. Dr. Watson opined that Petitioner is at a greater risk of redeveloping carpal tunnel syndrome and cubital tunnel syndrome, given the type of work he performs. PX 1.

Dr. Michael Lewis, a board certified orthopedic surgeon, testified by way of evidence deposition on March 3, 2014. Petition underwent an examination with Dr. Lewis pursuant to Section 12 of the Act on November 22, 2013. During that examination, Petitioner reported to Dr. Lewis that as a Journeyman Lineman, he used hand pliers to cut a meter clamp, which involved one cut that he performed approximately four to six times per hour. Petitioner also reported that occasionally, he must remove a meter that weighed approximately two pounds. Dr. Lewis diagnosed Petitioner with bilateral carpal tunnel syndrome and left ulnar neuropathy at the left elbow. RX 1.

Dr. Lewis testified that there was no causal connection between Petitioner's job duties and his diagnoses. He reasoned that, after reviewing the AMA Guides to the evaluation of Disease and Injury Causation, the amount of repetitious job activities that Petitioner performed was not sufficient to meet the criteria that the AMA Guides finds to be causative of carpal or cubital tunnel syndrome. According to Dr. Lewis, the AMA Guides state that, with regard to carpal tunnel syndrome, an activity must be repeated within 30-second cycles for something to be considered repetitious, and must be accomplished with a force more than 50% of the individual's maximum force. Dr. Lewis indicated that the guidelines for repetitiousness and force are more strict in regards to cubital tunnel syndrome, though he was unaware of such guidelines at the time of his deposition. He did not believe that squeezing hand pliers for four to six times per hour met the criteria for repetition or force to be a causative factor in the development of carpal tunnel syndrome. He felt that Petitioner's carpal and cubital tunnel syndromes were idiopathic. RX 1.

Dr. Lewis was unaware of how long Petitioner had worked as a Journeyman Lineman, or how long he had worked for Respondent. Dr. Lewis testified that he saw Petitioner for approximately 45 minutes to an hour during his examination. Dr. Lewis testified that it was his understanding that Petitioner squeezed hand pliers one time every four to six hours and that Petitioner must remove meters that weighed two pounds, though he was unaware as to what tools are involved in removing a meter. Dr. Lewis testified that it was his understanding that most Petitioner's job duties involved traveling from one work site to another and that the actual work involved at the electrical meter, such as cutting the wire or removing the meter, was a relatively small portion of his time. Dr. Lewis testified that he was unaware of any other lifting Petition was required to do other than lifting a two-pound water meter. RX 1.

Dr. Lewis opined that Dr. Watson's proposed surgeries of the bilateral carpal tunnel releases were reasonable and necessary. Dr. Lewis testified that Dr. Watson's recommended surgery for the left cubital tunnel syndrome was reasonable, though he did not think Petitioner needed any treatment for his right elbow. RX 1.

CONCLUSIONS OF LAW

The Arbitrator finds Petitioner to be credible, as he was candid and forthcoming in his testimony and demeanor at Arbitration.

In regards to disputed issues (C) and (F), given the common facts, evidence and reasoning relative to these issues, the Arbitrator addresses them jointly.

The Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent, and that his condition of ill-being is causally related to his work accident. In so concluding, the Arbitrator finds the opinions of Dr. Watson to be more informed and well-founded than those of Dr. Lewis. Dr. Watson understood 40% of Petitioner's job duties to include lifting and raising objects from a lower to higher position or moving objects horizontally from position to position, and 80% of his job duties to include gripping and grasping. PX 1. The performance of these job duties was corroborated by Petitioner's credible testimony at Arbitration. Dr. Lewis, however, believed that most of Petitioner's job duties involved traveling from one work site to another and that the actual work involved at the electrical meter, such as cutting the wire or removing the meter, was a relatively small portion of his time. Dr. Lewis further understood that Petitioner squeezed hand pliers four to six times per hour, and he was unaware of

any lifting Petition was required to do other than lifting a two-pound water meter. Dr. Lewis was also unaware of how long Petitioner had worked for Respondent. RX 1. Dr. Lewis' understanding of Petitioner's job duties is not supported by the record, as the preponderance of the credible evidence indicates Petitioner's work activities to be significantly more physically laborious, and manually intensive in frequency and force than the job duties and physical demands upon which Dr. Lewis based his opinions.

Dr. Watson had reviewed the job description of a Lineman, whereas Dr. Lewis did not. The job description is significant because Petitioner confirmed that he performed the job duties enumerated therein, which gave Dr. Watson a greater understanding of the physical demands of Petitioner's job duties so as to form a well-founded basis for his opinion.

Further, Dr. Watson's opinions are corroborated by the findings of Dr. Trudeau, who, like Dr. Watson, found that, "...this gentleman [Petitioner] has work related difficulties involving the upper extremities." PX 3.

The Arbitrator is not persuaded by the basis of Dr. Lewis' opinions that, with regard to carpal tunnel syndrome, an activity must be repeated within 30-second cycles for something to be considered repetitious, and must be accomplished with a force more than 50% of the individual's maximum force, given that "there is no legal requirement that a certain percentage of time be spent on a task in order for the duties to meet a legal definition of 'repetitive'." *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 193-194 (2005).

In light of the foregoing, the Arbitrator finds the opinions of Dr. Watson to be more informed and well-founded in the record than the opinions of Dr. Lewis. The Arbitrator also finds the reverberation of Dr. Trudeau's opinions with Dr. Watson's opinions to be compelling. Therefore, the Arbitrator places greater weight on the opinions of Dr. Watson.

Moreover, the Arbitrator echoes the Commission's finding in *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill. App. 3d 297 (2009), wherein the Commission held that "[w]hile [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.* at 308. In *City of Springfield*, the claimant was a City Water, Light, and Power employee who developed bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. *Id.* at 300-302. The Commission found that the claimant utilized various hand tools for approximately five hours per day, grasping and twisting tools to pull or cut wires, and that he "was subjected to extreme cold and heat and vibration of the extremities or whole body and working on scaffolding and high places, which he would have to climb to, and exerting up to 50 pounds of force occasionally and/or up to 20 pounds of force constantly to move objects." *Id.* at 308. As the job duties and physical demands of Petitioner's work in the present case are strikingly similar to those of the claimant in *City of Springfield*, the Arbitrator finds the Commission's holding and reasoning in that case to be instructive in the case at hand, and finds similarly.

Based upon the evidence in its entirety, the Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of his employment with Respondent, and that his current condition of ill-being is causally related to his work accident.

In regard to disputed issue (E), pursuant to Section 6(c) of the Act, an injured employee must give notice to the employer of a work accident as soon as practical, but not later than forty five days after sustaining an accidental injury arising from the employment. In repetitive trauma cases, the date of an accidental injury is the date in which the injury manifests itself, meaning the date on which both the fact of the injury and the causal relationship of the injury to the worker's employment would have become plainly apparent to a reasonable person. *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 530 (1987).

In this case, Petitioner credibly testified that he related his symptomatology in his hands and elbows to his job duties when he saw Dr. Trudeau on July 3, 2013, at which time he and Dr. Trudeau talked extensively about his work duties and tool use. Petitioner testified that he did not have a detailed discussion with Dr. Gauen concerning his job duties during his visit on June 21, 2013. Dr. Trudeau diagnosed Petitioner with bilateral carpal and cubital tunnel syndrome on July 3, 2013, and related said conditions to Petitioner's work activities. PX 3. Petitioner subsequently completed an accident report on July 30, 2013. Joint X 1.

Based upon Petitioner's credible and unrebutted testimony, the Arbitrator finds that Petitioner has properly stated a manifestation date of July 3, 2013. Given that Petitioner filed an accident report with Respondent on July 30, 2013, the Arbitrator finds that Petitioner provided timely notice of his work accident to Respondent pursuant to Section 6(c).

In regard to disputed issue (J), Respondent disputed liability for medical bills based upon the issues of accident, causation, and notice. In light of the Arbitrator's conclusions with respect to issues (C), (E), and (F), the Arbitrator finds that Respondent is liable for medical bills relative to Petitioner's bilateral upper extremity conditions contained in Petitioner's Exhibit 6, as said services were reasonable and necessary in the care and treatment of Petitioner. Respondent shall pay all reasonable and necessary medical services, as provided in Sections 8(a) and 8.2 of the Act, and subject to the fee schedule. Respondent shall further reimburse Petitioner for his out-of-pocket expenses. Respondent is entitled to a credit for all medical benefits previously paid.

In regard to disputed issue (K), Respondent disputed liability for temporary total disability benefits based upon the issues of accident, causation and notice. In light of the Arbitrator's conclusions with regard to issues (C), (E) and (F), and given that Petitioner was off of work per Dr. Watson's orders from January 23, 2014 through April 14, 2014 (PX 2), the Arbitrator finds that Respondent shall pay Petitioner temporary total disability benefits at a rate of $1,094.10 for a period of 11 5/7 weeks, commencing January 23, 2014 through April 14, 2014.

In regard to disputed issue (L), pursuant to Section 8.1b of the Act, for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1b of the Act; (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. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. *Id.*

Concerning Section 8.1b(b)(i) of the Act, no impairment rating report was introduced by either party, and therefore, the Arbitrator places no weight on this factor when making the permanency determination.

Concerning Section 8.1b(b)(ii) of the Act, at the time of his accident and presently, Petitioner is employed as a Lineman. In that capacity, Petitioner is required to lift in excess of 100 pounds occasionally and 50 pounds frequently. He is also required to push, pull, and lift on a regular basis, as well as grip and grasp heavy construction tools and perform precise, intricate work with fine manual dexterity. Petitioner's position is considered very heavy demand. PX 10. Given the heavy physical demands on his upper extremities, the Arbitrator finds that Petitioner's permanent partial disability will be greater than it would be for a worker in a lighter demand position. The Arbitrator places some weight on this factor when making the permanency determination.

Concerning Section 8.1b(b)(iii) of the Act, Petitioner was fifty one years of age at the time of his accident. Arb. X 1. The Arbitrator considers Petitioner to be a somewhat older individual in terms of future working years, and concludes that Petitioner's permanent partial disability will be less than that of a younger individual as he will have to live and work with the ill effects of his injury for less time. The Arbitrator places some weight on this factor in determining permanency.

Concerning Section 8.1b(b)(iv) of the Act, Petitioner was released to return to work without restrictions, and testified to resuming employment with Respondent following his accident. As such, Petitioner's future earning capacity appears undiminished as a result of his accident. The Arbitrator places some weight on this factor when making the permanency determination.

Concerning Section 8.1b(b)(v) of the Act, as a result of his work injury of July 3, 2013, Petitioner suffered bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, which was surgically treated. PX 2, 7. Petitioner testified that he continues to experience pain in his hands and elbows, which he described as dull and aching, and increasing with activity. Petitioner testified that removing and installing meters, as well as digging and pulling cables, causes unbearable pain. Petitioner testified to diminished grip strength in both hands, which he states affects his ability to use his work tools throughout the course of the day. Petitioner specifically testified that he is unable to break lock bands off of electrical meters due to his loss of grip strength. He has difficulty in opening objects such as jar lids, and he cannot place his arms on chairs for very long without pain.

Petitioner's occupational therapy note of March 18, 2014 indicates that Petitioner was having significant complaints of pain and decreased active range of motion in his right elbow, forearm and wrist, with complaints at night and limited activities of daily living. PX 11. On April 1, 2014, during Petitioner's last visit with Dr. Watson, Petitioner reported doing well with minimal pain and resolved neurologic symptoms. PX 1, 2. While the post-operative records of Dr. Watson lack references of diminished grip strength or difficulty in the performance of some job duties that Petitioner testified to during Arbitration, the Arbitrator notes that Dr. Watson's records pre-date Petitioner's return to work in a full duty capacity. The Arbitrator finds that some of Petitioner's complaints are reasonably corroborated by the totality of his treating records, and places some weight on this factor in determining permanency.

The Arbitrator notes that the determination of permanent partial disability benefits is not simply a calculation, but an evaluation of all the factors as stated in the Act in which consideration is not given to any single factor as the sole determinant. After applying Section 8.1b of the Act and weighing the factors enumerated in same, the Arbitrator finds that Petitioner has sustained accidental injuries that caused 10% loss of use of the left hand, 10% loss of use of the right hand, 12.5% loss of use of the left arm, and 12.5% loss of use of the right arm, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☒ 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

John J. Drane,
Petitioner,
vs.

NO: 12WC 33530

State of Illinois, DHS,
Respondent,

15IWCC0572

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 medical expenses, temporary total disability, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 2, 2014 is hereby affirmed and adopted.

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

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

DATED: JUL 23 2015
MJB/bm
o-07/20/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DRANE, JOHN J
Employee/Petitioner

Case# **12WC033530**

STATE OF ILLINOIS DHS
Employer/Respondent

15IWCC0572

On 12/2/2014, 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 0.07% 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:

2767 RAMMELKAMP BRADNEY
GARY CLINE
741 S GRAND AVE WEST
SPRINGFIELD, IL 62701

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

5002 ASSISTANT ATTORNEY GENERAL
JOSEPH P BLEWITT
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

1745 CMS-RISK MANAGEMENT
801 S SEVETH ST 6M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

DEC 2 - 2014

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF ADAMS)

☐ 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

John J. Drane
Employee/Petitioner

v.

State of Illinois, DHS
Employer/Respondent

Case # 12 WC 33530

Consolidated cases: n/a

15IWCC0572

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 William R. Gallagher, Arbitrator of the Commission, in the city of Quincy, on October 1, 2014. 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 _____

15IWCC0572

FINDINGS

On August 21, 2012, 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 $54,876.00; the average weekly wage was $1,055.31.

On the date of accident, Petitioner was 36 years of age, married with 5 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $3,359.37 for other benefits, for a total credit of $3,359.37.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibits 9 and 10 for treatment provided through August 24, 2012, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid 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 Section 8(j) of the Act.

Based upon the Arbitrator's Conclusions of Law attached hereto, all other claims for compensation are denied.

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.

William R. Gallagher, Arbitrator

November 25, 2014
Date

DEC 2 - 2014

Findings of Fact

15IWCC0572

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on August 21, 2012. According to the Application, Petitioner was picking up a bag of trash and sustained an injury to the back and legs (Arbitrator's Exhibit 2). Respondent disputed liability on the basis of accident and causal relationship.

Petitioner began working for Respondent in January, 2007, and was a Security Therapy Aide I. Petitioner testified that on August 21, 2012, he was in the process of removing trash that was contained in a plastic bag within a 55 gallon trashcan. The plastic bag was stuck in the can because of its weight and the fact that there was something sticky on the side of it which Petitioner thought was juice. When Petitioner lifted the bag upward, he stated that his back "popped."

Chad Goddard, a fellow employee of the Petitioner, testified on behalf of Petitioner at trial. Goddard was working with Petitioner on the night the accident occurred. He observed Petitioner pulling on the trash bag and stated that Petitioner informed him that he had pulled something in his back when he took it out of the trashcan. He informed Petitioner that he needed to report the accident. He stated that Petitioner was taken to the hospital but was able to return to work; however, he observed that when Petitioner returned he moved around in a manner indicating that he was in pain.

Paige Drane, Petitioner's wife and also a fellow employee, testified on behalf of the Petitioner at trial. She was present when the accident occurred and observed Petitioner lifting the trash bag out of the trashcan. After Petitioner removed the trash bag from the trashcan, he was able to lift it but instead of carrying the bag, he drug the bag down the stairs and across the floor. She was aware of the fact that Petitioner had back surgery in 2011, but stated he had made a good recovery after that surgical procedure. She stated that Petitioner's problems were considerably worse after the accident of August 21, 2012, that he had more problems performing his job and was more cautious about his movement because he feared sustaining another back injury.

Respondent's counsel tendered into evidence a video which has two parts, each of which was approximately 30 minutes long. The period of time contained in the two parts was the same; however, the areas being videoed were different. Part one of the video was through a glass window adjacent to a work area in which a couple of people were observed walking around. An individual who was purportedly the Petitioner was observed for a few seconds pulling on what appeared to be a trash bag. Part two of the video was of a hall and Petitioner was observed pulling a trash bag on the floor, opening a door, placing the trash bag behind the door and then walking down the hall (Respondent's Exhibit 3).

Petitioner stated that he previously underwent back surgery in 2010 (it was actually 2011) and that the treating physician was Dr. Timothy VanFleet. Petitioner recovered from that procedure and was able to return to work without restrictions. Dr. VanFleet performed surgery on February 17, 2011, and the procedure consisted of left L4-L5 and L5-S1 hemilaminotomy, partial medial

facetectomy, and diskectomy. Dr. VanFleet ordered physical therapy and released Petitioner to return to work on May 17, 2011 (Respondent's Exhibit 5).

One week prior to the accident, August 14, 2012, Petitioner was seen by Dr. Marshall Hale, his family physician, because of low back pain. Dr. Hale's record of that date stated: "Patient presents for back pain. Had surgery last year. States that he woke up three days ago and could not sit up. Left toes are numb. Shooting pain down the left leg. It is the same side that was effected before the surgery. Increased pain with ROM. Constant pain. Is not able to stand straight up." (Petitioner's Exhibit 5). At that time, Dr. Hale prescribed some medications and recommended a referral to Dr. VanFleet.

Subsequent to the accident, Petitioner went to the ER of Sarah D. Culbertson Hospital. The ER record contained a history of the accident and that Petitioner previously had back surgery in 2011. Petitioner complained of low back pain with radiation to the left buttock and leg. Some medications were prescribed and Petitioner was discharged (Petitioner's Exhibit 3).

Later that day, Petitioner went to Midwest Occupational Health Associates (MOHA) where he was seen by Dr. Robert Gordon. Petitioner informed Dr. Gordon that he injured his back while attempting to remove a trash bag out of a 55 gallon trashcan. Petitioner also advised Dr. Gordon that he had back surgery performed by Dr. VanFleet in 2011, and that the discomfort he presently had was not similar to the discomfort he experienced prior to the surgery. Petitioner did not tell Dr. Gordon about his recent onset of back pain on August 14, 2012. Dr. Gordon imposed some light duty work restrictions (Petitioner's Exhibit 4).

Dr. Gordon saw Petitioner again on August 24, 2012. At that time, Dr. Gordon had received and reviewed Petitioner's medical records in regard to Petitioner's prior low back treatment. The records included Dr. VanFleet's surgical report and Dr. Hale's record of August 14, 2012.

Dr. Gordon's record noted that on August 24, 2012, he asked Petitioner if he had any symptoms prior to the incident of August 21, 2012, and Petitioner informed him that "...he had not been having any symptoms at all prior to this incident within the past several weeks or months." (Petitioner's Exhibit 4). In regard to the preceding statement made by Petitioner, Dr. Gordon noted that in Dr. Hale's record of August 14, 2012, Petitioner had provided information to Dr. Hale that was inconsistent. Dr. Gordon noted in his record of that date: "This aforementioned report is in direct contradiction to what Mr. Drane reported to me today in which he reported he had not had any pain recently until 8/21/12 at the time of the reported garbage related incident." Dr. Gordon further noted "Of note, I did ask him if he had been having any pain of the back/leg several times in different manners prior to the reported incident of 8/21/12 and each time he denied such." (Petitioner's Exhibit 4).

Petitioner was subsequently treated by Dr. VanFleet from September 4, 2012, through July 2, 2013. At the time of the initial visit, Petitioner informed Dr. VanFleet of the accident of August 21, 2012; however, he did not inform him of his prior visit with Dr. Hale on August 14, 2012. Dr. VanFleet opined Petitioner had lumbar radiculopathy and he ordered physical therapy. When Petitioner saw Dr. VanFleet on October 16, 2012, his symptoms had not improved so Dr. VanFleet ordered an MRI scan (Petitioner's Exhibit 6).

An MRI was performed on November 26, 2012, and it revealed a left subarticular protrusion at L5-S1 with greater left recess narrowing. When Dr. VanFleet saw Petitioner on December 7, 2012, he recommended a redo of surgery at L5-S1. Petitioner continued to work with restrictions pending approval of the surgery (Petitioner's Exhibit 6).

Dr. VanFleet performed surgery on March 21, 2013, and the surgical procedure consisted of redo left hemilaminotomy, partial medial facetectomy and foraminotomy with diskectomy (Petitioner's Exhibit 8). Petitioner continued to be treated by Dr. VanFleet. Dr. VanFleet authorized Petitioner to return to work with restrictions on May 27, 2013, and he subsequently released Petitioner to return without restrictions on July 2, 2013 (Petitioner's Exhibit 6).

At the direction of the Respondent, Dr. David Robson, an orthopedic surgeon, reviewed Petitioner's treatment records and watched the video. He did not examine the Petitioner. In a report dated February 19, 2013, Dr. Robson opined that Petitioner had prior problems at L4-L5 and L5-S1 and a post MRI that showed a mild increase in the herniation at L5-S1. For a brief period of time, Petitioner was observed in the video and Dr. Robson noted that he did not observe Petitioner experiencing any difficulty in moving the bag. He opined that the need for surgery was not related to the accident of August 21, 2012 (Respondent's Exhibit 1).

Dr. Robson was deposed on September 25, 2014, and his deposition testimony was received into evidence at trial. Dr. Robson's testimony was consistent with his report. In regard to the video, Dr. Robson noted that he observed Petitioner moving "fluidly with apparent ease" while moving the trash bag. Dr. Robson did agree that there was an increase in the size of the disc herniation based on his review of the comparison between the most recent MRI and the one performed in 2011. He also agreed that the MRI finding could be attributable to one lifting a trash bag out of a 55 gallon trashcan (Respondent's Exhibit 2; pp 15, 18).

Petitioner testified that while he was released to return to work without restrictions, that he has self-limited his activities because he wants to avoid re-injury and further back surgeries. He continues to have complaints of back pain and weakness.

Conclusions of Law

In regard to disputed issue (C) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained an accidental injury arising out of and in the course of his employment for Respondent on August 21, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner's testimony regarding the accident of August 21, 2012, was corroborated by the testimony of Chad Goddard and Paige Drane. Further, the history of the accident of August 21, 2012, was noted in the ER records as well as in the records of the doctors that provided medical treatment to Petitioner thereafter.

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is not causally related to the accident of August 21, 2012.

In support of this conclusion the Arbitrator notes the following:

Petitioner had recently undergone back surgery in February, 2011, at both the L4-L5 and L5-S1 levels on the left side.

Just one week prior to the accident, on August 14, 2012, Petitioner sought medical treatment from Dr. Marshall Hale, his family physician, for low back pain with shooting pain down the left leg. Dr. Hale specifically noted that this was the same side where surgery had been performed the preceding year.

Petitioner did not inform the ER personnel or either Dr. Gordon or Dr. VanFleet of his recent onset of low back and left leg symptoms.

On August 24, 2012, Dr. Gordon became aware of Petitioner's evaluation by Dr. Hale on August 14, 2012, when he reviewed Petitioner's medical records and specifically noted that Petitioner denied any symptoms within the past several weeks or months. Dr. Gordon noted the obvious contradiction between what Petitioner told him and the complaints Petitioner had just one week prior to the accident.

Petitioner's primary treating physician, Dr. VanFleet, was apparently not informed of Petitioner's evaluation by Dr. Hale on August 14, 2012. Further, Dr. VanFleet did not opine as to whether there was a causal relationship between Petitioner's need for additional surgery and the accident of August 21, 2012.

While he did not personally examine Petitioner, Dr. Robson reviewed Petitioner's medical records and watched the video of Petitioner and observed that Petitioner moved about in a normal manner when he moved the trash bag.

While the Arbitrator concluded that Petitioner did sustain an accidental injury arising out of and in the course of his employment for Respondent, given the preceding inconsistencies, the Arbitrator finds Petitioner's credibility to be suspect.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred up to and including August 24, 2012, but not for any treatment thereafter.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibits 9 and 10 for treatment provided through August 24, 2012, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts

paid 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 Section 8(j) of the Act.

In regard to disputed issues (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion of law in disputed issue (F).

William R. Gallagher, Arbitrator

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Marina Gonzalez,

Petitioner,

15IWCC0565

vs.

NO: 11 WC 4080

Community Laundry/IWBF,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 28, 2014, is hereby affirmed and adopted.

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

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

15IWCC0565

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

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: JUL 22 2015
o7/14/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GONZALEZ, MARINA
Employee/Petitioner

Case# **11WC004080**

COMMUNITY LAUNDRY/IWBF
Employer/Respondent

15IWCC0565

On 10/28/2014, 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 0.05% 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:

0243 JAMES ELLIS GUMBINER & ASSOC
CHRISTOPHER A TOMCZYK
180 N MICHIGAN AVE SUITE 2100
CHICAGO, IL 60601

COMMUNITY LAUNDRY
1648 W 26TH ST
CICERO, IL 60804

5048 ASSISTANT ATTORNEY GENERAL
MEGAN MURPHY
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

15IWCC0565

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

X 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

Marina Gonzalez
Employee/Petitioner

v.

Community Laundry/IWBF
Employer/Respondent

Case # **11WC 04080**

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **September 11, 2014**. 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. X Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. X Was there an employee-employer relationship?
C. X Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. X What was the date of the accident?
E. X Was timely notice of the accident given to Respondent?
F. X Is Petitioner's current condition of ill-being causally related to the injury?
G. X What were Petitioner's earnings?
H. X What was Petitioner's age at the time of the accident?
I. X What was Petitioner's marital status at the time of the accident?
J. X 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. X What temporary benefits are in dispute?
☐ TPD ☐ Maintenance X TTD
L. X 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. X Other - **Notice to Respondent re: Trial; Liability of the Injured Workers' Benefit Fund**

FINDINGS

On **December 26, 2010**, 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 not** 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 $**13,375.91**; the average weekly wage was $**257.23**

On the date of accident, Petitioner was **67** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**. The stipulation of the Parties is that no TTD benefits are due as a result of this accident.

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

ORDER

Claim for Compensation denied. Petitioner failed to prove that she gave timely notice of the accident to Respondent in accordance with Section 6 (c) of the Act.

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 — October 28.2014 Date

OCT 28 2014

FINDINGS OF FACT

Petitioner pursued this action under the Workers' Compensation Act and sought relief from the Respondent-Employer Community Laundry and the Injured Workers' Benefit Fund (See: Amended Application for Adjustment of Claim. Filed herein on February 18, 2011) because Community Laundry did not maintain workers' compensation insurance. (Px 8). On September 11, 2014, the matter was heard by Arbitrator Jeffrey Huebsch in Chicago. Petitioner notified "Community Laundromat Corp." of the hearing by certified mail, which was delivered to the registered agent. The letter did not provide the case number and there was no proof that a Request for Hearing form had been sent. (Px 1, 2) Community Laundry was not present and did not participate in the trial. The Illinois Attorney General's office appeared on behalf of the Illinois State Treasurer, as *ex-officio* custodian of the Injured Workers' Benefit Fund. Petitioner testified via an interpreter.

Petitioner was born on October 20, 1943. In December 2010, she was married without any dependent children. She was employed by Community Laundry, and she had worked there since 2008. Her duties included cleaning, selling soap, and exchanging money. She cleaned the washing machines, floors, and toilets. Community Laundry had four employees, including Petitioner. Community Laundry also had other locations, but Petitioner only worked at 6048 W. 26th Street, Cicero, Illinois.

On December 26, 2010, Petitioner started work at 4:00 p.m. There were not many people there, so she started cleaning machines. She needed a step stool to clean the machine. She was on the step stool and she fell getting down. When she stepped down, the stool moved and she fell on her back. She felt pain in her back and left leg.

Petitioner testified that someone called the police, and they came to the laundromat. An ambulance also came, and they made a report. Ms. Gonzalez did not testify as to who made the report. She testified that "they" helped her get up, "they" took her to the ambulance, and there were cameras at Community Laundry. She did not testify as to who she was referring to as "they". When asked if she informed "Sean" about her accident, she testified that there were employees, and she does not know if they mentioned it to her. The police were called and they made a police report. According to the report, Petitioner's husband, Jose Gonzalez, witnessed the accident. (Px 10)

Petitioner was taken by ambulance to MacNeal Hospital. At the Emergency Department, she told them she fell down, and they examined her leg and back. X-Rays were taken. She was discharged home, with a diagnosis of knee strain. (Px 3)

Petitioner then had treatment at Grandview Health Partners from December 30, 2010 through January 12, 2011. She was examined, and she received therapy. (Px 4) She had an MRI of the left knee on January 2, 2011. Generalized tricompartmental osteoarthritic degenerative changes were noted. (Px 7)

Petitioner also had therapy and treatment at Advanced Physical Medicine from January 19, 2011 through March 15, 2011. (Px 5)

Thereafter, she went to Orthopaedic Associates of Riverside, and received treatment from Dr. Seymour. Petitioner told Dr. Seymour how the accident occurred, he did x-rays, and he told her that she had two options: she could have injections, but those may not help her, or she could have surgery. Petitioner chose to have left total knee replacement surgery on May 31, 2011.

Petitioner followed up with Dr. Seymour after the surgery. When her therapy was finished, she went back, and he told her to do therapy at home. Petitioner's last visit to Dr.

Seymour was July 25, 2011, and she has not seen him since then. At the last visit, it was noted that Petitioner was doing very well, with no pain. She could resume her normal activities. (Px 6)

Petitioner testified that when she worked at Community Laundry, the first month she was paid in cash. After they saw her documents, they started paying her by check every week. She cashed her checks at a currency exchange. Petitioner's Exhibit 9 is a report she was given from the currency exchange showing payroll checks that she cashed. Petitioner's Exhibit 5 (Records of Advanced Physical Medicine) contain a copy of two checks, payable to Petitioner, from "J. Wren Corporation Coin Laundry Account" with the same address as where Petitioner testified that she worked and as is set forth on the Amended Application.

Petitioner never returned to work for Community Laundry after December 26, 2010 because "she never called me." When Petitioner was asked if she ever called "her" to attempt to return to work, she stated that "I tried to call for surgery, but she ignored me." Community Laundry did not pay any of Petitioner's medical bills and did not pay any lost time benefits.

Petitioner testified that as she sat in the hearing room, she had pain in her left knee. She does therapy daily and takes over-the-counter ibuprofen. She did not specify how often she takes ibuprofen. She does exercises at home for her knee in the morning and evening, and she walks. She walks from her home to the park and back, which is four miles total. She has to stop, and "I also use my diet." Petitioner testified that on a scale of zero to ten, zero being no pain, and ten being having to go to the emergency room, her pain as she sat in the hearing room was an 8. However, the Arbitrator notes that throughout the entire hearing, Petitioner did not appear to be in any pain at all. Even when she demonstrated the leg exercises that she does at home, she appeared to do them without difficulty and did not appear to be in any pain. Therefore, the Arbitrator does not find Petitioner's testimony regarding the amount she of pain she was in at the hearing to be credible.

Petitioner testified that she tried to get in contact with Sean to get information for insurance, but she was unsuccessful. She stated that every time she called, there was no answer, and she called many times. Petitioner left messages saying "please call me". Petitioner did not leave messages saying that she had been hurt at work.

On cross-examination, Ms. Gonzalez testified that she was hired at Community Laundry in 2008. She saw a sign, went in and asked for a job. They asked where she was living and if her hours were flexible. This conversation was with Jim Papas, the "real owner." Her job title was cleaner, and she did all the cleaning. She started at $6.00, and then after one month, she was paid "the minimum." The owner paid her cash, and after one month, they paid her by check every week. Petitioner did not have paycheck stubs, only the list of checks from the currency exchange. Petitioner was on Medicare and had a supplement plan through Humana. Humana paid for her medical expenses after the accident. Petitioner testified that she received a W2, but did not bring it with her to the hearing. No tax records were introduced into evidence.

Ms. Gonzalez testified that Norma assigned her duties, but Norma was never there. Ms. Gonzalez was trained by the owner. He showed her what to do. She used cleaning supplies provided by Community Laundry. She had a set work schedule. Sometimes she would work four or five hours. She did not clock in. There was a young man who watched them, and there were cameras. One young man was named Raul, but before she left, there was another person. He said his name was Hector Vargas, but Petitioner was unsure if that was his real name. Petitioner did not wear a uniform or anything that said Community Laundry on it. They gave her an I.D., but it was very close to when she left. Petitioner testified that her daughter returned the ID and a key to the person in charge. Petitioner did not talk to anyone, as she could not walk. Petitioner did not ask to return to work then, as "she didn't want to know about me at all. She didn't return my calls." Petitioner left maybe two or three messages, but the other times she

called, she did not leave messages. In the messages, she said "please call me back." Petitioner did not say what she was calling about because "she knew it."

Petitioner testified that the "she" person she was referring to was named "Chung." She clarified that "Chung" is the person called "Shaun" on the Request for Hearing form. Petitioner said that she was originally hired by Jim Papas, but he died. Chung rented the laundry approximately one year prior to Papas' death. Chung was in charge of the business. She was not there at the time of the accident, but there were a lot of cameras. When asked if anyone saw the accident happen, Petitioner stated that Hector Vargas, the person in charge, saw it happen. However, when asked on re-direct if Mr. Vargas called the police on the date of accident, she testified that she did not know who called the police, and it may have been one of the people in the laundromat. When asked if Hector was in charge, Petitioner said that she didn't know if he was there, he was always working on the machines. When asked if Hector was there the day she fell, she testified that she did not know.

Petitioner testified on cross-examination that she did not give her employer any information about her injury. She explained that they did not ask her anything. They did not answer the phone and never called her back. Petitioner never sent a letter because Chung "was not interested, so that was it."

Petitioner testified that she never had any previous injuries to her left knee, it never bothered her before the accident, and she walked perfectly.

Petitioner testified that she is not currently working. Her testimony regarding any doctor currently restricting her from work was confusing and does not establish that she is currentlt restricted from work.

Petitioner's Exhibit 9 shows a list of checks that Petitioner cashed at a currency exchange, including checks she cashed from January 2010 through December 2010 from J. Wren

Corporation. These show that Ms. Gonzalez was paid $13,375.91 in the year preceding her injury, so her Average Weekly Wage was $257.23.

CONCLUSIONS OF LAW

The Arbitrator hereby adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

WITH RESPECT TO ISSUE (A), WAS THE RESPONDENT OPERATING UNDER AND SUBJECT TO THE ILLINOIS WORKERS' COMPENSATION OR OCCUPATIONAL DISEASES ACT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner's testimony and Petitioner's Exhibit 9 establish that Respondent was subject to the Act under §3(17)(a) of the Act because some of her job duties included selling soap to the public and her wages were in excess of $1,000.00 per year.

WITH RESPECT TO ISSUE (B), WAS THERE AN EMPLOYEE-EMPLOYER RELATIONSHIP, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner's testimony establishes an employee/employer relationship between her and Community Laundry.

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

Petitioner's testimony establishes that she sustained accidental injuries, which arose out of and in the course of her employment by Respondent on December 26, 2010.

WITH RESPECT TO ISSUE (D), WHAT WAS THE DATE OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The date of accident was December 26, 2010.

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

Petitioner failed to prove that timely notice of the accident, in accordance with §6 of the Act, was given to Respondent.

The Request For Hearing form indicates that Petitioner gave notice to "Shaun", the Manager. During the trial, Petitioner and her attorney stated that this person was "Chung". Petitioner's testimony does not establish that "Chung", or anyone else in management at Respondent was given notice of the accident. At most, Petitioner called "Chung" and left messages saying please call me back. This does not establish notice.

Under the Act, "(n)otice of the accident shall be given to the employer as soon as possible, but not later than 45 days after the accident." 820ILCS 305/6(c). "The giving of notice under the Act is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act." S&H Floor Covering, Inc. v. Workers'Compensation Comm'n, 373 Ill. App. 3d 259, 265 (2007)

Because petitioner failed to prove that she gave timely notice to Respondent, her claim for compensation is denied.

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

The Arbitrator finds that Petitioner failed to prove a causal connection between her accidental injuries of December 26, 2010 and her current condition of ill-being with respect to her left knee. The medical records show that Petitioner suffered a knee sprain/contusion as a result of the fall. According to Dr. Seymour, Petitioner underwent the elective left knee total arthroplasty of May 31, 2011 because of severe left knee osteoarthritis.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that the Average Weekly Wage was $257.23.

WITH RESPECT TO ISSUE (H), WHAT WAS THE PETITIONER'S AGE AT THE TIME OF THE ACCIDENT, AND ISSUE (I), WHAT WAS THE PETITIONER'S MARITAL STATUS AT THE TIME OF THE ACCIDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner was 67 years old and married, with no dependants on the date of injury.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, ISSUE (K), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE AND ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

As the Arbitrator finds that Petitioner has failed to prove that timely notice was given to Respondent, the Arbitrator needs not decide these issues.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

No credit was proven.

WITH RESPECT TO ISSUE (O), NOTICE TO RESPONDENT Re: TRIAL AND LIABILITY OF THE INJURED WORKERS" BENEFIT FUND, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner sent a Certified Mail letter, dated August 18, 2014 to "Community Laundry", the named Respondent at the address set forth on the Amended Application. This is the address that Petitioner testified was where she worked. The letter was unclaimed. Community Laundry did not receive notice of the trial date.

Petitioner sent a Certified Mail letter to "Community Laundromat Corp. , Sung L. Hyun (the Registered Agent) re: "Marina Gonzalez vs. Community Laundry/IWBF Date of Accident 12/26/10" advising of a hearing on September 11, 2014 at the IWCC in Chicago. No Request For Hearing was included. No mention of the case number was made. This letter was delivered, although the signed receipt was not provided. Perhaps Community Laundry Corp. received notice of the trial date, but the named respondent was Community Laundry.

The Arbitrator finds that Petitioner did not provide sufficient notice of the hearing to Respondent.

Petitioner failed to prove that Respondent-Employer failed to provide coverage for workers' compensation benefits, such that liability of the Injured Workers' Benefit Fund would attach to any unpaid portion of the award herein. Petitioner's Exhibit 8 says that NCCI did not have any "records responsive to the above referenced subpoena". The subpoena was not attached and the caption of NCCI's letter was: Marina Gonzalez v. Community Laundry/IWBF. Notice for trial was given to the registered agent for Community Laundromat Corp. Paychecks apparently came from J. Wren Corporation. There was no proof that either of these non-party entities failed to provide coverage for workers' compensation benefits.

Based upon the above, the Arbitrator finds that Petitioner has not proven that an award should be entered against the IWBF in accordance with §4(d) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

☐ 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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LESLIE BRICKER,

Petitioner,

vs.

NO: 11 WC 22465

15IWCC0574

DANA CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

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

So that the record is clear, and there is no mistake as to the intentions or actions of the Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical/legal perspective. The Commission has considered all of the testimony, exhibits, pleadings and arguments submitted by the parties.

The Commission modifies the Decision of the Arbitrator and finds Petitioner is entitled to TTD benefits from April 26, 2012 through May 2, 2012 and October 3, 2012 through November 6, 2012, in addition to TTD benefits from December 28, 2010 through July 4, 2011, October 11, 2011 through March 25, 2012, and March 27, 2013 through September 26, 2013 as awarded by the Arbitrator. The Respondent is also entitled to a credit of $18,262.47 pursuant to Section 8(j) of the Act. The Commission clarifies the Arbitrator's finding section to reflect that Respondent is entitled to a credit of $18,262.47 under Section 8(j) of the Act, instead of $0.00. All else is affirmed and adopted.

15IWCC0574

The TTD period from December 28, 2010 through July 4, 2011 and October 11, 2011 through March 25, 2012 was stipulated to by the parties and correctly awarded by the Arbitrator. The Arbitrator also awarded TTD benefits from March 27, 2013 through September 26, 2013.

The Commission, however, finds that Petitioner is entitled to additional TTD benefits from April 26, 2012 through May 2, 2012 and October 3, 2012 through November 6, 2012.

Regarding the period of April 26, 2012 through May 2, 2012, the evidence demonstrates Petitioner was off work for both her lumbar and cervical condition. According to the Bonutti Orthopedic's medical record dated April 25, 2012, Petitioner contacted the medical office complaining of a lot of pain in her back, burning in her neck and down her arms, and headaches. Dr. Gabriel took Petitioner off work effective April 25, 2012. The off work slip revealed a diagnosis of low back pain and left leg pain. Petitioner then presented to Dr. Gabriel on April 30, 2012 due to cervical pain that radiated into the low back. Dr. Gabriel continued Petitioner off work through May 2, 2012. While Petitioner was seen primarily for cervical pain that is not work-related, the off work note indicated that Dr. Gabriel recommended a discography of the lumbar spine that is work-related. Further, the work restrictions are generically to her back. The Commission finds that Petitioner was off work from April 26, 2012 through May 2, 2012 due, in part, to her work-related lumbar condition.

The Commission also awards Petitioner TTD benefits from October 3, 2012 through November 6, 2012. The Commission notes that Petitioner was seen by Dr. Gabriel on September 26, 2012 complaining of pain with sitting, standing, lying, coughing and sneezing. She then contacted Dr. Gabriel on October 3, 2012 requesting to be taken off work due to increased pain. Petitioner indicated that she had been doing sedentary work and could not take it anymore. She wanted to be off work completely. Dr. Gabriel took Petitioner off work effective October 3, 2012.

The Respondent then obtained video surveillance of the Petitioner on October 25, 2012 and October 27, 2012. The Respondent also obtained a Section 12 examination from Dr. Lange on November 6, 2012. Dr. Lange's examination revealed give-way weakness in every muscle tested in the left upper and lower extremity. Dr. Lange noted this was consistent with symptom magnification. Dr. Lange reviewed the surveillance and noted Petitioner could go back to work.

Following its review of the video surveillance, the Commission finds Dr. Lange's opinion persuasive. The surveillance contradicts Petitioner's pain complaints. Petitioner was seen walking to her car, walking down the stairs of a school building, backing out of a parking spot, carrying a few bags, bending into a car, bending over while shopping, walking and standing with children at a Halloween party, and carrying a toddler. The surveillance bolsters Dr. Lange's opinion as Petitioner was seen moving about freely and without any noticeable impairment.

The Commission also finds Respondent is entitled to a credit of $18,262.47 pursuant to Section 8(j) of the Act. This amount includes payments Respondent made for Petitioner's health insurance premiums at Petitioner's direction.

IT IS THEREFORE OREDERED BY THE COMMISSION that the Decision of the

15IWCC0574

Arbitrator filed on November 17, 2014, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $328.78 per week for a period of 83-1/7 weeks, December 28, 2010 through July 4, 2011, October 11, 2011 through March 25, 2012, April 26, 2012 through May 2, 2012, October 3, 2012 through November 6, 2012, and March 27, 2013 through September 26, 2013, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $295.90 per week for a period of 100 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused 20% loss of use of the person-as-a-whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses relating to the lumbar spine under §8(a) of the Act and subject to the medical fee schedule.

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 is entitled to a credit in the amount of $18,262.47, under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $20,800.00. 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: JUL 23 2015

Michael J. Brennan

MJB/tdm
O: 7-20-15
052

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BRICKER, LESLIE
Employee/Petitioner

Case# **11WC022465**

15IWCC0574

DANA CORPORATION
Employer/Respondent

On 11/17/2014, 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 0.06% 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:

0230 FITZ & TALLON LTD
PATRICK A TALLON
5338 MAIN ST
DOWNERS GROVE, IL 60515

0180 EVANS & DIXON LLC
JAMES M GALLEN
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

☐ 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

Leslie Bricker
Employee/Petitioner

v.

Dana Corporation
Employer/Respondent

Case # 11 WC 22465

Consolidated cases: n/a

15IWCC0574

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 William R. Gallagher, Arbitrator of the Commission, in the city of Urbana, on September 24, 2014. 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 November 30, 2010, 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 $25,644.85; the average weekly wage was $493.17.

On the date of accident, Petitioner was 30 years of age, single with 2 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $17,921.59 for TTD, $0.00 for TPD, $0.00 for maintenance, and $16,907.09 for other benefits, for a total credit of $34,828.68.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act as it pertains to medical benefits.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, limited to those bills regarding treatment of Petitioner's lumbar spine, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Respondent shall pay Petitioner temporary total disability benefits of $328.78 per week for 78 1/7 weeks commencing December 28, 2010, through July 4, 2011; October 11, 2011, through March 25, 2012; and March 27, 2013, through September 26, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $295.90 per week for 100 weeks because the injury sustained caused the 20% loss of use of the body as whole as provided in Section 8(d)2 of the Act.

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.

William R. Gallagher, Arbitrator

November 12, 2014
Date

NOV 17 2014

Findings of Fact 15IWCC0574

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on November 30, 2010. According to the Application, Petitioner was lifting gaskets, turned and heard a "pop" and sustained injuries to the "MAW-Low back, neck and arms" (Arbitrator's Exhibit 2). There was no dispute that Petitioner sustained a work-related accident on November 30, 2010; however, Respondent disputed liability on the basis of causal relationship primarily in regard to the alleged injury to Petitioner's neck and cervical spine. In addition to causal relationship, the disputed issues were medical bills, temporary total disability benefits, the nature and extent of permanent partial disability and the amount of Section 8(j) credit the Respondent was entitled to for indemnity payments made to Petitioner by Respondent's group insurer.

In regard to the dispute pertaining to the Section 8(j) credit, Respondent claim to be entitled to a credit of $18,262.47. Petitioner disputed this amount and claimed that the Respondent was entitled to a credit of $16,907.09. The amount claimed by Respondent was the gross amount of group disability benefits paid. The amount that Petitioner claimed Respondent was entitled to a credit of was the net amount which was after various deductions were taken for taxes and insurance.

Petitioner began working for Respondent in April, 2002, and was a Utility Worker. Petitioner's job consisted primarily of bundling and stripping gaskets. Petitioner testified that on November 30, 2010, she was lifting a stack of gaskets and when she turned to place them somewhere, she felt a "pop" in her low back with pain going down her left leg.

Petitioner initially sought medical treatment at Wabash Valley Occupational Health on November 30, 2010, where she was seen by Dr. Howard Feldman. Dr. Feldman noted that Petitioner had a prior history of a bulging lumbar disc that was treated with epidural steroid injections but that she had been asymptomatic until the accident of that day. Dr. Feldman diagnosed Petitioner with a lumbar strain and lumbar radiculopathy. He prescribed medications for Petitioner and authorized her to return to work on light duty. Dr. Feldman's record of that date did not state that Petitioner had any neck/cervical complaints (Petitioner's Exhibit 2).

Petitioner was again seen by Dr. Feldman on December 6, 2010, and she advised that she had become drowsy and unable to work because of the medication she was taking. She also continued to complain of low back and left leg pain. Dr. Feldman ordered an MRI scan which was performed on December 13, 2010. The scan revealed a minor disc bulge at L4-L5 and a left disc protrusion/herniation at L5-S1. Dr. Feldman saw Petitioner on December 16, 2010, and, based on the MRI scan, ordered physical therapy and indicated that epidural injections might be required in the future. Again, Dr. Feldman's record did not state that Petitioner had any neck/cervical complaints (Petitioner's Exhibit 2).

Petitioner was again seen by Dr. Feldman on December 28, 2010, and she advised Dr. Feldman that the physical therapy had made her back pain worse. She also complained that the back pain had radiated up her back to her neck. Dr. Feldman opined that Petitioner had a herniated L5-S1 disc, but also noted symptom magnification and a positive Waddell sign (Petitioner's Exhibit 2).

Dr. Feldman referred Petitioner to Bonutti Orthopedic Clinic where she was initially seen on January 31, 2011, by Dr. Josue Gabriel. Petitioner complained of low back and left leg pain as well as neck and left arm pain. Dr. Gabriel ordered an epidural steroid injection for the low back and an MRI scan of the cervical spine. The MRI of the cervical spine was performed on February 1, 2011, and it revealed a central bulge at C5-C6. Petitioner received an epidural steroid injection in the low back on February 20, March 2, and March 11, 2011 (Petitioner's Exhibit 3).

When Dr. Gabriel saw Petitioner on March 20, 2011, he opined that she had a herniated disc at C5-C6. He recommended Petitioner receive an epidural steroid injection in the cervical spine which was administered on April 13, 2011 (Petitioner's Exhibit 3).

At the direction of the Respondent, Petitioner was examined by Dr. David Lange, an orthopedic surgeon, on May 26, 2011. In connection with his examination of Petitioner, Dr. Lange reviewed the MRI scans and medical records provided to him by Respondent. Dr. Lange opined that Petitioner had mechanical low back pain with left lower extremity radiculopathy and neck and left upper extremity symptoms of unknown etiology. He opined that there was not a causal relationship between Petitioner's cervical and left upper extremity complaints and the accident of November 30, 2010, because the mechanics of injury were not typical for a cervical injury. He also noted that Petitioner's initial complaints of cervical and left arm symptoms were on December 28, 2010, about one month after the date of accident. Dr. Lange agreed that the treatment provided to date for the low back was reasonable and necessary (Respondent's Exhibit 1).

Petitioner continued to be treated by Dr. Gabriel for both neck and low back complaints. Dr. Gabriel ordered EMG/nerve conduction studies of Petitioner's left upper extremity which were performed on June 24, 2011. The studies were negative for any left cervical radiculopathy. Ultimately, on July 7, 2011, Dr. Gabriel performed surgery at C5-C6, and the procedure consisted of a discectomy and fusion with both metal plating and bone grafting (Petitioner's Exhibit 3).

Respondent paid Petitioner temporary total disability benefits from December 28, 2010, through July 4, 2011. Temporary total disability benefits were terminated at that time because Petitioner was being treated for her neck/cervical complaints, a condition for which Respondent was disputing causal relationship.

Dr. Gabriel subsequently performed surgery at L5-S1 on October 11, 2011, and the procedure consisted of a left side discectomy and recess decompression. Subsequent to the surgery, Petitioner received physical therapy and epidural steroid injections. When Petitioner was seen by Dr. Gabriel on March 15, 2012, he authorized her to return to work with restrictions (Petitioner's Exhibit 3).

Petitioner returned to work on March 26, 2012, and was provided work consistent with her restrictions. Petitioner's symptoms of both low back and neck pain increased and she returned to the Bonutti Clinic on April 25, 2012. Dr. Gabriel authorized Petitioner to remain off work through May 2, 2012 (Petitioner's Exhibit 3).

Petitioner returned to work for Respondent on May 3, 2012, and was able to continue to work through October 2, 2012. Petitioner continued to be treated at Bonutti Clinic during this period of time. On August 3, 2012, at Dr. Gabriel's direction, discograms of both the cervical and lumbar spine were performed. The lumbar spine discogram was positive at both L4-L5 and L5-S1. Dr. Gabriel authorized Petitioner to work with restrictions and ordered EMG studies (Petitioner's Exhibit 3).

On September 10, 2012, EMG studies were performed on Petitioner's lower extremities which revealed L5 radiculopathy on the left side. Dr. Gabriel saw Petitioner on September 26, 2012, and continued to opine that Petitioner could work with restrictions. He also opined that Petitioner needed further low back surgery, including, revision, discectomy and fusion with instrumentation (Petitioner's Exhibit 3).

Petitioner started losing time from work on October 3, 2012. Surveillance video of Petitioner was obtained on October 25 and October 27, 2012. On October 25, Petitioner was observed walking to a car, carrying papers, talking on a cell phone and standing with other adults and children at what appeared to be a Halloween event at school. Petitioner was also observed carrying a child for several minutes (Respondent's Exhibit 5). At trial, Petitioner testified that the child was her niece and that she weighed approximately 20 pounds.

On November 6, 2012, Petitioner was again examined by Dr. Lange. In connection with this examination, Dr. Lange reviewed diagnostic studies and medical records provided to him by Respondent. Dr. Lange's examination of both the cervical and lumbar spine was benign. He opined that Petitioner's cervical complaints could not be explained based on any known neurologic anatomy. Dr. Lange also reaffirmed his opinion that Petitioner's cervical symptoms were not work-related. In regard to the lumbar spine, Dr. Lange opined that Petitioner's lower extremity symptoms could not be explained on the basis of any known neurologic anatomy and that there was also evidence of symptom magnification and a psychological component. Dr. Lange also expressed reservations about any further lumbar surgical procedures (Respondent's Exhibit 2).

Dr. Lange subsequently reviewed the surveillance video of Petitioner and he prepared supplemental reports dated November 7, and November 21, 2012. He noted that Petitioner moved about without any particular difficulty and was able to carry a child. He further opined that Petitioner did not appear to be a viable candidate for spinal surgery (Respondent's Exhibits 3 and 4).

On February 21, 2013, Petitioner was again seen by Dr. Gabriel (who had relocated to Columbus, Ohio) and he renewed his recommendation that Petitioner undergo another low back surgery. On March 27, 2013, Dr. Gabriel performed surgery which consisted of revision of the fusion at L5-S1 with instrumentation (Petitioner's Exhibit 11).

Subsequent to the surgery, Petitioner was seen by Dr. Gabriel who prescribed a brace and ordered physical therapy. He released Petitioner to return to work without restrictions on September 29, 2013. Petitioner actually returned to work for Respondent two days prior, on September 27, 2013.

At the direction of her attorney, Petitioner was examined by Dr. Jeffrey Coe, an occupational medicine specialist, on April 29, 2014. In connection with his examination of Petitioner, Dr. Coe reviewed medical records provided to him by Petitioner's counsel. Dr. Coe opined that the accident of November 30, 2010, aggravated degenerative disc disease and caused a herniated disc at L5-S1. He also opined that the accident aggravated degenerative disc disease and degenerative arthritis of the cervical spine which caused a herniation at C5-C6 and development of the left cervical radiculopathy. He opined there was a causal relationship between the accident and the conditions in both the lumbar and cervical spine (Petitioner's Exhibit 15).

At trial, Respondent's counsel introduced into evidence several photographs of Petitioner. One photo showed Petitioner on one knee next to a group of children who Petitioner testified were members of a T-Ball team that she coached. Petitioner stated that the photo was taken in Spring, 2013 (Respondent's Exhibit 6). Another photo shows Petitioner standing next to a child and the child is wearing what appears to be a batting helmet. Petitioner stated that she was working as the first base coach (Respondent's Exhibit 11).

There were two photos in which Petitioner was wearing a police uniform costume which Petitioner testified were taken at a Halloween party. Petitioner was not certain when these photos were taken, but they were probably taken sometime within the last four years. She did agree that her neck and back were not bothering her at the time these photos were taken (Respondent's Exhibits 8 and 9).

There was another photo of Petitioner and five other individuals who formed a human pyramid. Petitioner is the middle person in the bottom row. Petitioner testified that this photo was taken sometime in 2008 (Respondent's Exhibit 10).

There was another photo of Petitioner on the back of a motorcycle. Petitioner stated that this photo was taken sometime after her last surgery and was probably taken when she was off work. She stated that her neck and back were not bothering her at the time she rode the motorcycle (Respondent's Exhibit 7).

At trial, Petitioner testified that she still has symptoms in the cervical and lumbar spine which cause difficulties in sleeping, stiffness and pain. Petitioner limits her housecleaning activities due to her symptoms; however, she did agree that she was able to return to work without restrictions in September, 2013, and has continued to work without restrictions since that time. Petitioner admitted to low back problems that required treatment before the accident; however, no surgical procedures had ever been recommended or performed.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is, in part, causally related to the accident of November 30, 2010.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator finds that Petitioner's condition of ill-being in regard to the lumbar spine is causally related to the accident of November 30, 2010, but that Petitioner's condition of ill-being in regard to the cervical spine is not related to the accident of November 30, 2010.

Petitioner experienced an immediate onset of pain in the low back and left leg at the time of the accident and sought medical treatment shortly thereafter.

Petitioner's Section 12 examiner, Dr. Jeffrey Coe, and Respondent's Section 12 examiner, Dr. David Lange, both opined that there was a causal relationship between Petitioner's lumbar spine condition and the accident of November 30, 2010.

In regard to the cervical spine, Petitioner did not experience an immediate onset of pain at the time of the accident and did not seek any medical treatment for cervical spine complaints until December 28, 2010, approximately one month post-accident.

Dr. Lange opined that there was not a causal relationship between the accident of November 30, 2010, and Petitioner's cervical spine condition noting that the mechanics of the injury was not typical for cervical injury and that Petitioner's initial complaints of neck pain were approximately one month after the date of accident.

Dr. Coe opined that there was a causal relationship between Petitioner's cervical spine condition and stated that the accident aggravated degenerative disc and degenerative arthritic conditions which caused the herniated disc, but provided no explanation as to the mechanics of how this occurred.

The Arbitrator finds the opinion of Dr. Lange in respect to the etiology of the cervical spine condition to be more persuasive.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all the medical treatment provided to Petitioner for her lumbar spine condition was reasonable and necessary and that Respondent is liable for payment of the bills incurred therewith.

Based upon the Arbitrator's conclusion of law in disputed issue (F) all medical bills incurred for treatment of Petitioner's cervical spine condition are denied.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, limited to those bills regarding treatment of Petitioner's lumbar spine, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator concluded in disputed issue (F) that Petitioner's lumbar spine condition was related to the accident of November 30, 2010.

Petitioner had extensive treatment provided to her for her lumbar spine injury including two back surgeries performed by Dr. Gabriel. Petitioner made a good recovery following the last surgery and was able to return to work without restrictions.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to 78 1/7 weeks of temporary total disability benefits commencing December 28, 2010, through July 4, 2011; October 11, 2011, through March 25, 2012; and March 27, 2013, through September 26, 2013.

In support of this conclusion the Arbitrator notes the following:

During all of the aforestated periods of time, Petitioner was being treated for her low back injury and was authorized to be off work.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained permanent partial disability to the extent of 20% loss of use of the body as a whole.

In support of this conclusion the Arbitrator notes the following:

Petitioner sustained an injury to the lumbar spine which required extensive medical treatment including two surgical procedures; however, Petitioner was released to return to work without restrictions following the last surgery.

While the Petitioner still has complaints of low back symptoms, the Arbitrator finds Petitioner's credibility to be questionable.

Surveillance video of the Petitioner was obtained in October, 2012, wherein the Petitioner was observed walking about without any particular difficulty and carrying a child for several minutes.

Subsequent to the last surgery, Petitioner was photographed on the back of a motorcycle and she testified that while riding the motorcycle her back was not bothering her.

Dr. Lange opined that Petitioner's complaints in regard to the lumbar spine could not be explained and that there was evidence of symptom magnification.

In regard to disputed issue (N) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Respondent is entitled to a credit under Section 8(j) of the Act for payment of group disability benefits of $16,907.09, the net amount paid to Petitioner.

In support of this conclusion the Arbitrator notes following:

A credit for the net amount paid to Petitioner is proper pursuant to the case of Navistar International Transportation Corp. v. Industrial Commission, 734 N.E.2d 900 (Ill. App. 1st Dist. 2000). Therefore, Respondent is entitled to a credit of the net amount paid to Petitioner.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carl Crider,
Petitioner,

vs. NO: 13WC 12625

Continental Tire North America, Inc.,,
Respondent,

15IWCC0571

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner, herein and notice given to all parties, the Commission, after considering the issues of accident, medical, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 12, 2014, is hereby affirmed and adopted.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $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: JUL 23 2015
MJB/bm
o-07/21/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

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

CRIDER, CARL
Employee/Petitioner

Case# 13WC012625

CONTINENTAL TIRE NORTH AMERICA INC
Employer/Respondent

15IWCC0571

On 12/12/2014, 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:

1312 BEMENT & STUBBLEFIELD
GARY BEMENT
4021 N ILLINOIS ST BOX 23926
BELLEVILLE, IL 62223

0299 KEEFE & DePAULI PC
ANDREW J KEEFE
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

ILLINOIS WORKERS' COMPENSATION COMMISSION

19(b) ARBITRATION DECISION

CARL CRIDER
Employee/Petitioner

Case #13 WC 12625

15IWCC0571

v.

CONTINENTAL TIRE NORTH AMERICA, INC.,
Employer/Respondent

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 Brandon Zanotti, arbitrator of the Workers' Compensation Commission, in the city of Mount Vernon, on June 12, 2014. The claim was re-assigned to the Honorable Robert Williams, an arbitrator of the Workers' Compensation Commission in November 2014. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues and attaches those findings to this document.

ISSUES:

A. ☐ Was the 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 the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☒ Was timely notice of the accident given to the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☐ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☐ What temporary benefits are due: ☐ TPD ☐ Maintenance ☐ TTD?

L. ☐ Should penalties or fees be imposed upon the respondent?

M. ☐ Is the respondent due any credit?

N. ☐ Prospective medical care?

FINDINGS

- On November 26, 2011, the respondent was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship existed between the petitioner and respondent.
- In the year preceding the injury, the petitioner earned $72,895.16; the average weekly wage was $1,401.83.
- At the time of injury, the petitioner was 53 years of age, married with one child under 18.

ORDER:

- The petitioner's request for benefits is denied and the claim is dismissed.

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.

Robert E. Williams

Signature of Arbitrator

December 12, 2014

Date

DEC 12 2014

FINDINGS OF FACTS:

On November 23, 2011, the petitioner, a seventeen-year superintendent, reported injuries to his hands to his supervisor. On November 26th, the petitioner completed and executed a "Statement of Events" for injuries to his hands, which he attributed to repetitive motion while building tires for thirteen years and typing for twenty plus years. The petitioner also reported bilateral wrist pain to the respondent's health services on November 26, 2010, and a twenty-year history of bilateral hand symptoms and aching wrists on December 5, 2011. He also reported that his symptoms gradually worsened through the years and that he has been reluctant to have surgery. He reported no improvement on January 16, 2012.

At the request of the respondent, the petitioner was evaluated by Dr. David Brown on January 30, 2012. He reported the onset of bilateral numbness and tingling twenty years earlier and indicated on the patient's questionnaire symptoms with driving and talking on the phone. Dr. Brown opined on February 1, 2012, that an NCV study revealed electrodiagnostic evidence of severe bilateral carpal tunnel syndrome, greater on the right. The petitioner elected to be evaluated by Dr. Michael Beatty on March 18, 2013.

FINDING REGARDING THE DATE OF ACCIDENT AND WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that he sustained an accident or repetitive injury to his hands on November 26, 2011, arising out of and in the course of his employment with the respondent. When the petitioner initially sought medical care, he reported his hands symptoms began twenty years earlier, which he attributed to his duties of tire building. He reiterated the same

thing when he was evaluated by Dr. Brown. He also informed Dr. Brown that his current job was not hand intensive. In contradiction to Dr. Beatty's supposition, the fact that the petitioner did not attribute his hand symptoms to riding his tricycle logically leads to the deduction that he had minor, if any, hand symptoms while riding his tricycle and therefore, did not compress or stress his bilateral median nerves while riding the tricycle. It is also inconceivable that Dr. Beatty compared the petitioner to a bicyclist in rendering his opinion. Dr. Beatty's opinions are not reliable or credible. The petitioner's request for benefits is denied and the claim is dismissed.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☐ 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

Carol Stults,

Petitioner,

vs. No. 11 WC 28499

Villa Health Care West,

15IWCC0569

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission modifies the Arbitrator's Decision with respect to the average weekly wage and benefit rates. Petitioner, a licensed practical nurse, testified that she worked for Respondent from 2001 through 2011. Beginning in December of 2010, Petitioner worked full-time hours. Before December of 2010, she worked part-time. Her regular hourly wage was $18.26, whether she worked full or part-time. As a full-time employee, Petitioner worked 40 hours a week, plus mandatory overtime. The wage records in evidence show Petitioner worked 40 weeks during the year preceding the accident on June 3, 2011, earning $21,826.45.

The Arbitrator calculated the average weekly wage based only on Petitioner's full-time earnings from January of 2011 through May of 2011. The Commission finds this method of calculation does not comport with section 10 of the Workers' Compensation Act (the Act). The Commission finds the average weekly wage should be computed by dividing Petitioner's

15IWCC0569

earnings during the year preceding the injury by the 40 weeks she worked during that time period, yielding an average weekly wage of $545.66. The Commission modifies the benefit rates accordingly.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 5, 2014, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $363.77 per week for a period of 12 weeks, from July 12, 2011, through October 4, 2011, 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 maintenance benefits in the sum of $363.77 per week for a period of 22 2/7 weeks, from October 5, 2011, through March 9, 2012.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay related medical bills in evidence pursuant to §§8(a) and 8.2 of the Act. Respondent shall be given a credit of $1,434.15 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 Section 8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $327.40 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent disability to the extent of 25 percent 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.

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

DATED: JUL 23 2015
o-05/28/2015
SM/sk
44

Stephen J. Mathis

Mario Basurto

CONCUR IN PART DISSENT IN PART

I am in concurrence with the majority opinion with respect to its findings on accident, notice, causal connection, medical expenses, prospective medical care, temporary disability and permanent disability; however, I respectfully dissent from the majority opinion with respect to its findings on average weekly wage and would affirm the well reasoned decision of the arbitrator.

Petitioner, a licensed practical nurse, worked for Respondent on a part-time basis from 2001 until December 2010 when she began working full-time (40 hours per week). The Arbitrator calculated Petitioner's average weekly wage based only upon Petitioner's full-time earnings from January 2011 through May 2011. The Arbitrator based his findings on Section 10 of the Act which provides that the average weekly wage be based upon the earnings of ". . . the employee in the employment in which he was working at the time of the injury . . ." At the time of accident, Petitioner was working as a full-time licensed practical nurse. In Hasler v. Industrial Commission, the Illinois Supreme Court held that the average weekly wage should not be calculated in a manner that gives the employer a windfall. 97 Ill. 2d 46, 454 N.E. 2d 307 (1983). Conversely, the average weekly wage should not be calculated in a manner that gives the employer a windfall. The majority calculates Petitioner's average weekly wage in a manner which includes a significant number of weeks (approximately 30) in which Petitioner was working part-time. The majority's method of calculating average weekly wage clearly gives the employer a windfall contrary to the intent of the Court as expressed in Hasler. *Id.* Accordingly, the Arbitrator's findings with respect to average weekly wage should be affirmed.

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

STULTS, CAROL
Employee/Petitioner

Case# **11WC028499**
14WC008868

VILLAGE HEALTH CARE WEST
Employer/Respondent

15IWCC0569

On 6/5/2014, 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 0.05% 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:

0332 LIVINGSTONE MUELLER ET AL
MARTIN HAXEL
PO BOX 335
SPRINGFIELD, IL 62705

1337 KNELL & KELLY LLC
MATT BREWER
504 FAYETTE ST
PEORIA, IL 61603

15IWCC0569

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ 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

Carol Stults
Employee/Petitioner

v.

Villa Health Care West
Employer/Respondent

Case # 11 WC 28499

Consolidated cases: 14 WC 08868

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on April 10, 2014. 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 June 3, 2011, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $n/a; the average weekly wage was $656.08.

On the date of accident, Petitioner was 60 years of age, single with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of $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 $1,434.15 under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, as identified in Petitioner's Exhibit 4, limited to those medical bills incurred as a result of Petitioner's right knee injury, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit for $1,434.15 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 Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total partial disability benefits of $437.38 per week for 12 weeks commencing July 12, 2011, through October 4, 2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $437.38 per week for 22 2/7 weeks commencing October 5, 2011, through March 9, 2012, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $393.65 per week for 125 weeks because the injury sustained caused the 25% loss of use of the body as a whole as provided in Section 8(d)2 of the Act.

Petitioner's Petition for Penalties and Attorneys' Fees are denied.

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.

William R. Gallagher, Arbitrator

June 2 2014
Date

JUN 5 - 2014

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim which alleged she sustained accidental injuries arising out of and in the course of her employment for Respondent. In 14 WC 8868, the Application alleged that Petitioner sustained an injury to her right knee while pushing a cart on March 18, 2011 (Arbitrator's Exhibit 2). In 11 WC 28499, the Application alleged that Petitioner sustained an injury to her right knee while pushing a cart on June 3, 2011 (Arbitrator's Exhibit 3). Respondent disputed liability in both cases on the basis of accident, notice and causal relationship. There was also a dispute in regard to the computation of the average weekly wage.

Petitioner worked for Respondent as an LPN and her duties consisted primarily of providing care for the residents of Respondent's facility, a nursing home. Petitioner had to administer medications, do insulin checks, deal with the residents, their families and physicians, etc. One of the duties Petitioner was required to perform was pushing a cart on wheels that contained the various medications she administered to the residents. Petitioner testified that the cart was approximately three feet wide, two and one-half feet deep and four and one-half feet tall. Petitioner estimated that when the cart was empty it weighed approximately 50 pounds and when it was loaded with the medications, the total weight was approximately 75 pounds. Petitioner is five foot tall and stated that, because the cart was on wheels, it was reasonably easy to move around the facility. Petitioner stated that she could push the cart using just two fingers.

Sometime in either late February or early March, 2011, carpeting was replaced throughout the entire facility. The alleged circumstances of both accidents are virtually identical, namely, that while Petitioner was pushing the medication cart she had to use an extreme amount of force to get the cart to move because of the increased resistance caused by the new carpeting and, in so doing, she injured her right knee.

In regard to the accident of March 18, 2011, Petitioner testified that while she was in the process of pushing the cart to the dining room, she braced herself against a wall to get additional leverage and that she felt a pain in her right knee. Petitioner stated that this happened at approximately 12:45 PM to 1:00 PM and that she continued to work until she got off at either 2:00 PM or 2:30 PM. As Petitioner was in the process of getting into her car, she experienced further pain to her right knee. Petitioner did not report the accident to Respondent at that time but, later on that evening, Petitioner experienced increased pain and swelling in her right knee.

Because of the symptoms Petitioner was experiencing in the right knee, Petitioner called her immediate supervisor, Pam Smith, and reported the accident to her. Petitioner testified that, in addition to calling Pam Smith, she exchanged text messages with both Pam Smith and Donna Heneghan, the Facility Administrator. Petitioner stated that Heneghan told her that if she turned in a workers' compensation claim that Tutura (the management company that handled Respondent's workers' compensation claims) would "starve her out." Petitioner did not seek any medical treatment following this accident because she had no medical insurance nor did she lose any time from work. Petitioner continued to experience some pain in her right knee when she was pushing the medication cart but stated that it was not constant.

In regard to the accident of June 3, 2011, Petitioner testified that she was pushing the medication cart in the dining room and experienced another onset of pain in her right knee. Petitioner stated that her knee began to swell and she again reported the accident to Pam Smith. That same day Respondent sent Petitioner to Midwest Occupational Health Associates (MOHA). A First Report of Injury was prepared on that same day and this was received into evidence at trial (Respondent's Exhibit 14).

The MOHA record of June 3, 2011, contained the following history: "Carol tells me that she began work this morning and has been pushing a heavy medication cart. This cart is heavy and tall and the floor is carpeted and it requires quite a bit of effort to push it. She was feeling some pain in her right knee all morning, and then while pushing the cart had a sudden increase in pain as well as an onset of swelling. This is to her right knee. Carol tells me that she had a similar episode in March of 2011 where she was pushing this cart and had pain and swelling in her right knee." (Petitioner's Exhibit 3). The MOHA record of that same date also contained a hand written history prepared by a nurse that was consistent with the preceding.

Petitioner was examined at MOHA by Dr. Gregory Clem on June 3, 2011, and he noted that Petitioner had swelling of the knee. The diagnosis was a right knee strain with possible bursitis. Petitioner was authorized to return to work with a pushing/pulling restriction and no kneeling/squatting. Petitioner was prescribed an Ace bandage (Petitioner's Exhibit 3).

In June, 2011, Petitioner was seen on several occasions by Dr. Clem and received physical therapy at Memorial Medical Center. Petitioner's right knee symptoms did not improve and Dr. Clem ordered an MRI scan which was performed on June 27, 2011. The MRI scan was negative for any internal derangement but did reveal some degenerative changes of the horns of the medial meniscus as well as chondromalacia and osteoarthritis of the patellofemoral compartment. Dr. Clem's record of June 30, 2011, noted that he had reviewed the MRI report and that Petitioner had chronic degenerative changes in the right knee for which she would need to obtain treatment through the group insurance carrier. He noted that Petitioner was returned to work to her regular duties as well is the fact that Petitioner had been recently seen by Dr. Dan Adair, an orthopedic surgeon (Petitioner's Exhibit 3).

Petitioner was seen by Dr. Adair on June 16, 2011, and his record of that date included the history of both the March and June, 2011, accidents. Dr. Adair agreed that an MRI scan of the right knee was appropriate. He also noted that Petitioner could not undergo conservative measures such as anti-inflammatory medications or cortisone injections because she was allergic to them.

Dr. Adair saw the Petitioner on July 5, 2011, and she informed him that while she was pushing the medicine cart on July 1, 2011, that she re-aggravated her right knee condition. Petitioner complained of sharp pain and swelling primarily in the medial compartment of the knee. On clinical examination, Dr. Adair found mild effusion and edema throughout the medial aspect of the knee. The range of motion was full but with some crepitation. He reviewed the MRI scan and opined that it revealed degenerative changes of both menisci and chondromalacia. In regard to causality, Dr. Adair's record of that date noted that Petitioner aggravated her right knee conditions while pushing the cart (Petitioner's Exhibit 2).

Dr. Adair saw Petitioner on July 12, 2011, and recommended that she have arthroscopic surgery performed on the right knee. On August 1, 2011, Dr. Adair performed arthroscopic surgery on Petitioner's right knee which consisted of debridement of the medial meniscus, a partial medial meniscectomy and debridement of the medial femoral condyle and patellofemoral joint. Subsequent to the surgery, Petitioner continued treatment with Dr. Adair, who ordered physical therapy. Petitioner's right knee condition did not improve to any significant degree. When Dr. Adair saw Petitioner on October 4, 2011, he recommended that Petitioner perform only light duty work with sitting (Petitioner's Exhibit 2).

Petitioner testified that she applied for unemployment compensation benefits and attempted to find employment within the restrictions imposed by Dr. Adair. Petitioner stated that she attempted to find work in the medical field and applied for jobs at St. John's Hospital, Orthopedic Center of Springfield and SIU Medical School. Virtually all of Petitioner's job search and applications were conducted on-line and she estimated that she applied to at least three employers per week. Petitioner was seen by Dr. Adair on March 9, 2012, and he released her to return to work without restrictions at that time (Petitioner's Exhibit 2). According to the Petitioner, Dr. Adair removed these restrictions at her request. Petitioner continued her job search but without success until she was awarded SSD benefits effective August 1, 2012.

At the direction of the Respondent, Petitioner was examined by Dr. Michael Watson, an orthopedic surgeon, on March 26, 2012. Dr. Watson examined Petitioner and reviewed medical records provided to him by Respondent. In his report of March 26, 2012, Dr. Watson opined that Petitioner had osteoarthritis that pre-existed the accidents of March and June, 2011, but that the accidents caused the condition to become symptomatic and accelerated the need for treatment. He opined that Petitioner was at MMI and had permanent work restrictions of no climbing, no squatting and no kneeling and that she could not push the medicine cart (Petitioner's Exhibit 1; Deposition Exhibit 2). Dr. Watson was deposed on May 28, 2013, by Petitioner's counsel and his deposition testimony was consistent with his narrative medical report (Petitioner's Exhibit 1).

At the direction of Respondent, Petitioner was examined by Dr. Richard Lehman, an orthopedic surgeon, on May 24, 2012. Dr. Lehman examined Petitioner and reviewed medical records provided to him by Respondent. Dr. Lehman opined that Petitioner had pre-existing degenerative arthritis of the right knee which was not caused or aggravated by her work. He also opined that Petitioner was at MMI and could work without restrictions (Respondent's Exhibit 8).

Petitioner denied having any right leg/knee symptoms prior to the March and June, 2011, accidents. Before these accidents, Petitioner was treated by Dr. Gerald Suchomski, for a variety of medical problems. Dr. Suchomski's treatment records for care provided by him to Petitioner from January 12, 2010, through August 5, 2013, were received into evidence at trial. In the record of June 17, 2011, Dr. Suchomski's record noted that Petitioner had right knee pain and sustained an injury in March while pushing something. It was also noted that Petitioner had re-injured it recently. There was no prior reference to Petitioner having right knee pain in those records (Petitioner's Exhibit 5).

On May 11, 1999, Petitioner was seen at Springfield Clinic for right hip pain and the impression was a lumbosacral strain with sciatica. On September 10, 2008, Petitioner was seen at

Springfield clinic for low back pain and was diagnosed with piriformis syndrome. There was no reference to any right knee symptoms (Respondent's Exhibit 2).

At trial, Petitioner testified that she still has significant pain/discomfort in the right knee. She regularly wears a knee brace and applies ice to the knee as needed. Walking is difficult for Petitioner especially on uneven surfaces and she avoids some activities, including golf and gardening.

Pam Smith testified on behalf of the Petitioner. Smith was Respondent's Director of Nursing at the time of both accidents. She stated that in March, 2011, Petitioner called and informed her that she had hurt her knee while pushing a cart; however, she also said that Petitioner told her that her knee "popped" while getting into her car in the parking lot. Smith notified Donna Heneghan of the March, 2011, accident. She agreed that when the new carpeting was installed that it did make pushing the medicine cart across the floor more difficult.

Pam Smith also testified that she was aware of the accident of June 3, 2011, and that Petitioner had injured her right knee while pushing a cart and was sent to MOHA for medical treatment. On May 7, 2012, Smith prepared a report which stated that Petitioner had sent her a text informing her that Petitioner felt her knee pop getting into her car and wanted to know if it would be "workmen's comp." It also stated that this was before the alleged injury occurred while pushing the medication cart (Respondent's Exhibit 15). Smith had no explanation as to why this report was prepared almost one year after the accident of June 3, 2011. Smith has not worked for Respondent since August, 2013, when she walked off the job for some unknown reason.

Roberta Klokkenga testified on behalf of the Petitioner and she previously worked for Respondent as an LPN. She confirmed that Petitioner had difficulties pushing the medicine cart after the new carpeting was installed; however, she agreed that she did witness either accident. Klokkenga is no longer employed by Respondent because she is presently retired.

Donna Heneghan testified on behalf of the Respondent and she is presently the Administrator and Director of Nursing. In 2011, Heneghan was the Administrator. Heneghan testified that it was her understanding that Petitioner injured her knee while getting into her car after work. She stated that when Petitioner reported this to her Petitioner stated she needed it to be covered by workers' compensation because she did not have health insurance. In regard to Smith's departure from Respondent's employment, she stated that Smith left because she did not like the job and had been disciplined for "bad attitude." She also stated that Klokkenga's employment was suspended because she was at work under the influence of alcohol. She did agree that the medicine cart was more difficult to move once the new carpeting was installed.

Jacqui Murphy testified on behalf of the Respondent and stated that she was the Respondent's Business Manager/HR Director. Murphy was responsible for the filing/maintaining of the paperwork regarding workers' compensation cases. She stated that she never changed or altered any of the information contained therein.

Petitioner was recalled to testify in rebuttal and confirmed that her knee did "pop" when she got into her car; however, she stated that this was after she sustained the March, 2011, accident.

There was also a dispute regarding the computation of the average weekly wage. Petitioner testified she worked for Respondent from March, 2010, through December, 2010, as a part-time employee. She then went through a divorce and began working full-time for Respondent in January, 2011. Petitioner was paid $18.26 per hour. Respondent tendered into evidence wage records for Petitioner's earnings from December, 2009, through July, 2011. Petitioner's number of hours worked and earnings increased substantially when she commenced working on a full-time basis in January, 2011.

Petitioner's position is that the average weekly wage should be based solely on the Petitioner's earnings as a full-time employee. From January, 2011, through May, 2011, Petitioner worked a total of 785.3 hours. January 1, 2011, through June 2, 2011, is a period of 21 6/7 weeks, an average of 35.93 hours worked per week. Using an hourly rate of $18.26 per hour, this computes to an average weekly wage of $656.08. Respondent's position is that Petitioner's average weekly wage should also include earnings as a part-time employee and Respondent's position is that this computes to an average weekly wage of $494.57.

Conclusions of Law

In regard to disputed issues (C) and (E) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained an accidental injury arising out of and in the course of her employment for Respondent on June 3, 2011, and that Petitioner gave notice to Respondent within the time required by the Act.

In support of this conclusion the Arbitrator notes the following:

It was undisputed that Respondent's facility had new carpeting installed in either late February or early March, 2011, and that this caused the task of pushing the medication cart to be much more difficult.

Petitioner's testimony that she reported the accident to her immediate supervisor, Pam Smith, was corroborated by Smith's testimony. Further, a First Report of Injury was completed on June 3, 2011.

The medical records of the providers who treated Petitioner, MOHA and Dr. Adair have consistent histories of Petitioner having injured (or reinjured) her right knee in June, 2011, while she was pushing a medication cart.

While Pam Smith agreed that she prepared a written statement in May, 2012, which stated that Petitioner injured her right knee while getting in her car and that this incident occurred before the accident of pushing the cart, she had no explanation whatsoever as to why it was prepared at that point in time, almost one year after the accident of June 3, 2011.

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of June 3, 2011.

In support of this conclusion the Arbitrator notes the following:

With the exception of the work-related injury sustained by Petitioner to her right knee on March 18, 2011, there was no evidence that Petitioner had any prior right knee symptoms. Petitioner did have some prior right leg symptoms; however, this was primarily in the right hip, not the right knee. Petitioner's treating physician, Dr. Adair, and Respondent's initial Section 12 examiner, Dr. Watson, both opined that there was a causal relationship between the accidents of March 18, 2011, and June 3, 2011, and the Petitioner's right knee condition. The only medical opinion to the contrary was Respondent's second Section 12 examiner, Dr. Lehman. The Arbitrator finds the opinions of Dr. Adair and Dr. Watson to be more persuasive and credible than that of Dr. Lehman.

In regard to disputed issue (G) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner had an average weekly wage of $656.08.

In support of this conclusion the Arbitrator notes the following:

As noted herein, Petitioner worked for Respondent from December, 2009, through December, 2010, as a part-time employee. She began working full-time for Respondent in January, 2011. From January, 2011, through May, 2011, Petitioner worked a total of 785.3 hours. January 1, 2011, through June 2, 2011, is a period of 21 6/7 weeks, an average of 35.93 hours per week. Using an hourly rate of $18.26 per hour, this computes to an average weekly wage of $656.08.

Section 10 of the Act provides that the average weekly wage shall be based upon the earnings of "...the employee in the employment in which he was working at the time of the injury..." Accordingly, Petitioner's average weekly wage should be based upon her earnings as a full-time employee.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith. This is limited to the medical bills incurred as result of Petitioner's right knee injury.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 4 limited to those medical bills incurred as result of Petitioner's right knee injury, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $1,434.15 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 Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusions of law:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits for 12 weeks commencing July 12, 2011, through October 4, 2011.

The Arbitrator concludes that Petitioner is entitled to payment of maintenance benefits of 22 2/7 weeks commencing October 5, 2011, through March 9, 2012.

In support of these conclusions the Arbitrator notes the following:

Petitioner was authorized to be off work by Dr. Adair on July 12, 2011, and remained off work until he released her to return to light duty effective October 4, 2011.

Petitioner filed for unemployment benefits and conducted a self-directed job search, primarily in the medical field. She was unable to secure employment in spite of her contacting approximately three potential employers per week.

Petitioner testified that the full duty release given her by Dr. Adair on March 9, 2012, was at her request. She was still unable to find employment even though she continued her job search.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 25% loss of use of the body as a whole.

In support of this conclusion the Arbitrator notes the following:

When Dr. Adair initially released Petitioner to return to work on October 4, 2011, he recommended Petitioner perform light duty work with sitting. Respondent's first Section 12 examiner, Dr. Watson, imposed more specific permanent restrictions on Petitioner, in particular, no climbing, no squatting and no kneeling and that Petitioner was no longer able to push the medicine cart.

In view of the significant work restrictions imposed by both Dr. Adair and Dr. Watson, the Arbitrator finds that disability should not be limited to a loss of use of the leg but it is appropriate to award a percentage of the body as a whole.

In regard to disputed issue (M) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is not entitled to Section 19(k) and Section 19(l) penalties or Section 16 attorneys' fees.

In support of this conclusion the Arbitrator notes the following:

The Arbitrator does note that subsequent to obtaining an unfavorable opinion from its first Section 12 examiner, Dr. Watson, that the Respondent then sought another Section 12 examination from Dr. Lehman who provided a favorable opinion. While this does, in fact,

amount to nothing more than "doctor shopping" the Arbitrator does note that Respondent disputed liability for both accidents and tendered the testimony of Donna Heneghan who said that Petitioner did not report having sustained work-related injuries.

The Arbitrator finds that Respondent's denial of liability was neither vexatious nor in bad faith.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

☒ 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

Jodi A. Schipper,
Petitioner,
vs.

NO: 12WC 33794

State of IL, Dixon Correctional Center,
Respondent,

15IWCC0573

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 23, 2014 is hereby affirmed and adopted.

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

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

DATED: JUL 23 2015
MJB/bm
o-7/20/15
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SCHIPPER, JODI A
Employee/Petitioner

Case# **12WC033794**

SOI DIXON CORRECTIONAL CENTER
Employer/Respondent

15IWCC0573

On 6/23/2014, 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 0.07% 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:

0139 CORNFIELD & FELDMAN LLP
MICHAEL S YOUNG
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0498 STATE OF ILLINOIS
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1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JUN 23 2014

RONALD A. RIOPELLE, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Rock Island)

☐ 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

Jodi A. Schipper
Employee/Petitioner

v.

State of Illinois, Dixon Correctional Center
Employer/Respondent

Case # **12** WC **33794**

Consolidated cases: _____

15IWCC0573

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Rock Island**, on **5/12/14**. 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 **7/31/2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**52,956.00**; the average weekly wage was $**1,018.38**.

On the date of accident, Petitioner was **36** years of age, ***married*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**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 $**678.92**/week for **2 3/7** weeks, from July 31, 2012 through August 16 2012, which is the period of temporary total disability for which compensation is payable.

Respondent shall pay Petitioner permanent partial disability benefits of $**611.03**/week for **7** weeks for **disfigurement** as provided in Section **8(c)** of the Act.

Respondent shall pay the further sum of $**3,379.21**, for all reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act.

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.

D. D. McCarthy
Signature of Arbitrator

June 19, 2014
Date

JUN 23 2014

FINDINGS OF FACT

Petitioner, Jodi Schipper, served as a Correctional Officer for the Respondent, State of Illinois, Department of Corrections since 2006. For the last four years Petitioner has worked at the Dixon Correctional Center as a control room operator. In that capacity, Petitioner was responsible for overseeing the movement of inmates in and out of her assigned unit/wing of the facility.

A control room operator is situated at a desk within a secured booth with a chuckhole pass-through, a computer, a corded telephone, and various paper work. Additionally, many control rooms contain microwaves and hot pots or coffee makers for the officers' personal use, and cups and tea bags and ready-made hot beverages are also sold in the facility's commissary.

As a control room operator, Petitioner's job duties include signing inmates in and out from the unit for various activities including visitation, healthcare appointments, or work assignments. She provides and receives a written pass for each inmate passing through the unit and logs their movement in a report sheet. She uses the telephone to locate inmates and confirm inmate authorization. Depending on size of the unit where she is working, she issues approximately 20-85 passes per shift and then recollects them upon an inmate's return. On July 31, 2012, Petitioner was working in Housing Unit 60 which housed approximately 170 inmates. She estimated that 70 inmates would go through both the exit and entrance procedure at this particular control room.

On that day, Petitioner had made hot tea using a tea bag sold in the facility's commissary and a hot pot left in the control room. She poured it in a cup also bought in the facility's commissary. Petitioner indicated that the hot pot may have been confiscated from an inmate, but she was not aware of any alterations to it. After pouring the tea she placed the cup on her desk as it was too warm to immediately consume.

Later in her shift Petitioner was using the control room's corded telephone for a work-related call when an inmate approached to retrieve a pass. As she reached to produce a pass through the chuckhole the telephone cord knocked the tea cup over spilling the hot liquid onto her left leg and foot.

Petitioner was initially treated at the healthcare unit at the facility where the nurse noted a burn with redness of almost her entire left leg and an open blister on her left foot. She was advised to seek further medical care from a physician. Pet.'s Ex. 1 That same day she presented to the emergency room at KSB Hospital where she received burn cream and dressing. The medical chart indicates the ankle had blistered and that she had tiny blisters erupting on her calf and diagnosed probable second degree burn to 4% of her body surface area. She was kept off work with an estimated return date of August 3. Pet.'s Ex. 2 On August 6, Petitioner sought follow up care from her personal physician, Dr. Guthrie at CGH Medical Center. Dr. Guthrie indicated left leg second versus third degree burn extending from her groin down to her ankle, continued her off work status, and referred her to Dr. Zaioor at the wound care clinic. Pet.'s Ex. 3 Of particular note on August 7, Dr. Zaioor noted that the medial calf burn measured 20 x 13.9 x .1 cm and that the dorsal ankle burn measured 1.4 x 4.2 x .1 cm. Dr. Zaioor debrided the ulcered wounds, continued her burn cream prescription, advised her to follow up in the next week. On August 17, Dr. Zaioor discontinued her care and returned her to work without restriction. Pet.'s Ex. 3

CONCLUSIONS OF LAW

(C.) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The Arbitrator finds that Petitioner's July 31, 2012 accident arose out of and in the course of her employment. While the accident facts potentially present an issue of first impression in Illinois, the Arbitrator finds

comparable workers' compensation cases from other jurisdictions as persuasive authority. *See e.g.*, *Yeldell v. Holiday Hills Retirement and Nursing Center, Inc.*, 701 S.W.2d 243 (Texas Sup. Ct. 1985) (finding that a nurse's burns resulting her workstation's telephone cord becoming entangled with a hot coffee urn arose out of her employment even despite the personal nature of her call preceding the accident); *Cobb v. St. Bernard's Regional Med. Center*, Claim No. G003339 (Arkansas Workers' Compensation Comm'n, March 3, 2011) (holding that an employee's spilling of a hot water cup that she was intending to use to make oatmeal while walking back to her office as having arisen out of and in the course of her employment); and *Miller v. Griffin Pipe*, File No. 1262033 (Iowa Workers' Compensation Comm'n, Nov. 27, 2002) (finding compensable a mechanic's burn injury sustained while carrying coffee cups for himself and two coworkers walking downstairs from the lunchroom to return back to work).

An injury arises out of a claimant's employment when it originates from some risk connected with, or incidental to his or her employment so as to create a causal connection between the job and the accident. *Homerding v. Ill. Indus. Comm'n*, 327 Ill. App. 3d 1050, 1055 (1st Dist. 2002). "Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he or she was instructed to perform by the employer, acts which he or she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his or her assigned duties. *Id.* In *Cobb* and *Miller*, *supra*, the "arising out of" element presented a more difficult question as the claimants were on break when their work accidents occurred. Additionally, in *Yeldell*, the claimant was hanging up the telephone from a personal call when the cord knocked over the coffee. Yet, in each of these cases the accidents were still determined to have arisen out of the claimants' employment.

The Arbitrator believes the risk in this case should be characterized as a neutral risk. In such a case, the Petitioner must show that her risk was greater than that to which the general public might be exposed. The evidence clearly shows the Petitioner's risk of injury was increased. The risk was increased by the busy and repetitious nature of her work activities in exchanging passes with inmates through a chuckhole and logging their transfer information while simultaneously using a corded telephone line in a confined desk space. Respondent's witness, Kurt Uebanks, Unit Superintendent at Dixon Correctional Center, corroborated Petitioner's job description by characterizing the control room as being a "busy area" with "increased activity". As such, the Petitioner established that her accident arose out of her employment.

A different analysis is required to determine if the accident occurred while the Petitioner was in the course of her employment. While she was at work, the Petitioner was injured because she was drinking hot tea at her desk. The personal comfort doctrine would apply to such an activity. Under the doctrine, explained by the Illinois Appellate Court in the *Circuit City Stores v. The Illinois Workers Compensation Commission,* employees are allowed to engage in personal acts necessary to their health and personal comfort. If they are injured while performing those acts, their accident is deemed not to be outside the course of their employment. See 391 Ill. App. 3d 913 (2009)

Respondent argues that the Petitioner violated a work rule by using a hot pot confiscated from an inmate in the control room. While violation of a work rule might take the Petitioner outside the course of her employment, it was not the use of the hot pot that caused the injury. The reason she was injured was because she spilled a hot drink onto her leg. Mr. Uebanks clearly testified that employees such as the Petitioner working in the control room could drink hot beverages while they were working. Also, no evidence was presented to show that the hot pot in question produced water that would have been any warmer than that otherwise obtainable by employees. In fact, Petitioner noted that the water did not reach a boil, and that she considered the temperature to be no different than other times in which she has made hot tea for herself. The Arbitrator finds the Petitioner was within the course of her employment when she was injured.

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

The Arbitrator finds that Petitioner's current condition is causally related to her workplace injury dated July 31, 2012. All treating physicians diagnosed Petitioner with left leg burns and corroborated her history of spilling hot tea while at work. No evidence indicated that Petitioner had any prior or subsequent accident to her left leg or foot. The medical records from the emergency room, Dr. Guthrie and the wound clinic show that she had burns over the medial aspect of the left calf and the dorsal aspect or top of her left foot. When viewed at the hearing, the Arbitrator noted some residual discoloration over the medial calf and dorsal aspect of the foot..

(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?

The Arbitrator finds that the medical treatment received by Petitioner was reasonable and necessary in light of the concurrence of the medical opinions in evidence. Petitioner's medical care and out of pocket medical expenses totaled $3,379.21 which was not paid by Respondent.

(K.) What amount of total temporary disability pay is Petitioner due?

Having found causal connection and reasonable and necessary medical treatment above, the Arbitrator finds that Petitioner is entitled to total temporary disability benefits for 2 3/7 weeks at a rate of $678.92 covering from the date of accident on July 31, 2012 until she was released to return to work on August 17, 2012.

(L.) What is the nature and extent of the injury?

The Arbitrator finds that Petitioner presented at the hearing with residual burn discoloration and spotting of her left calf and ankle. Consequently, the Arbitrator finds the Petitioner is entitled to 7 weeks of disfigurement for the visible effects remaining below her knee after more than six months from the date of the accident.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Behdad Hossein-Khorrami,

Petitioner,

vs. NO: 11 WC 17893

U of I Chicago Medical Center,

15IWCC0575

Respondent.

DECISION AND OPINION ON REVIEW

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

So that the record is clear, and there is no mistake as to the intentions or actions of this Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical / legal perspective. We have considered all of the testimony, exhibits, pleadings and arguments submitted by the Petitioner and the Respondent, and based on our complete review of the record we find the following:

On the issue of temporary total disability, the Commission notes that following the February 14, 2012 incident, Petitioner did not return to work. (T.41-45) However, as noted by Respondent in its Statement of Exceptions and Supporting Brief, Petitioner was not taken off work until Dr. Johnson did so on March 16, 2012. (PX2) Prior to that, Petitioner remained released to return to work light duty, a restriction accommodated by Respondent. The Commission finds that there is nothing in the record to support the award of temporary total disability benefits from February 23, 2012 through March 15, 2012. The Commission further notes that on July 3, 2012, Dr. Salehi released Petitioner to return to work with light duty restrictions. (PX3) According to the Request for Hearing form, the parties agree that Petitioner

was unable to work from July 10, 2012 to July 20, 2013. (AX1) As such, Petitioner could work light duty, which Respondent was accommodating from July 4, 2012 through July 9, 2012. Therefore, based on the record, the Commission finds that Petitioner has established entitlement to temporary total disability benefits from May 1, 2011 through February 18, 2012 (undisputed by the parties), from March 16, 2012 through July 3, 2012 and from July 10, 2012 through July 20, 2013, for a total of 112-2/7 weeks.

Regarding the issue of medical expenses, The Commission notes that Respondent admits that it still owes Illinois Orthopedic $4,358.40 for medical treatment provided to Petitioner. As to the rest of the medical expenses incurred, the Commission notes that RX8, a print-out of the medical bills paid by Respondent, clearly shows that Respondent has issued payment for the rest of the medical expenses awarded by the Arbitrator. As noted by Respondent in its Statement of Exceptions and Supporting Brief, Petitioner's counsel's claim that the medical providers told him that Petitioner's medical bills had not been paid is not evidence. Respondent provided printed proof of its issuance of payment. The Commission further notes that the production of a printout showing what medical expenses it has paid is a method used often and consistently by respondents to prove payment of expenses. Therefore, based on the proof of payment provided by Respondent, the Commission hereby modifies the award of medical expenses to $4,358.40, the outstanding amount Respondent has admitted is due and owing.

Finally, Respondent argues that the Arbitrator's award of 45% loss of use of the person as a whole is excessive and requests that it be reduced to 20% loss of use of the person as a whole. In his decision, the Arbitrator noted that Petitioner had "lost his profession as a radiology technician." According to the job description of an x-ray technician, RX10, an x-ray technician is required to be in "good physical health with the ability to assist in transferring patients, exhibiting manual dexterity with good vision and ability to stand for long periods of time." By Dr. Ghanayem's restrictions, which the Commission notes took into consideration the surveillance video taken of Petitioner on January 3, 2013 through January 5, 2013 and on January 11, 2013, Petitioner can work an 8 hour day at the medium demand level. (RX5) Dr. Salehi's permanent restrictions on Petitioner require that Petitioner have the ability to alternate sitting and standing "as needed." (PX3) Health Services released Petitioner to return to work with the restriction of sitting 2 hours continuously, 7-8 total; standing 4 hours continuously, 7-8 total; and walking 4 hours continuously, 7-8 total. Tara Tincknell, Respondent's Assistant Director of Radiology, testified that Respondent would accommodate the restrictions issued by Health Services by having someone work with Petitioner so that he would not have to lift more than 25 pound at work. (T.127)

The Commission notes that while Respondent would have accommodated the restrictions issued by Health Services, it would not accommodate the restrictions issued by Petitioner's treating physician Dr. Salehi. The Commission further notes that the surveillance video reveals Petitioner's selective use of a cane, show him using a cane when visiting doctors and when at work, but nowhere else. Taking into account the conflicting restrictions issued by different medical providers, the restrictions Respondent was prepared to accommodate, the surveillance videos, the fact that Petitioner underwent an L4-5 decompression and fusion, and his ongoing subjective low back pain with radiation, the Commission finds that Petitioner has suffered a 25% loss of use of the person as a whole as a result of the April 27, 2011 work accident.

15IWCC0575

One should not and cannot presume that we have failed to review any of the record made below. Though our view of the record may or may not be different than the arbitrator's, it should not be presumed that we have failed to consider any evidence taken below. Our review of this material is statutorily mandated and we assert that this has been completed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $676.93 per week for a period of 112-2/7 weeks, 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 pay to Petitioner the sum of $609.24 per week for a period of 125 weeks, as provided in Section 8(d)2 of the Act, for the reason that the injuries sustained caused the 25% loss of use of the person as a whole

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $4,358.40 for medical expenses under Sections 8(a) and 8.2 of the Act.

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

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

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

DATED: JUL 23 2015
MJB/ell
o-06/16/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOSSEIN KHORRAMI, BEHDAD
Employee/Petitioner

Case# 11WC017893

U OF I CHICAGO MEDICAL CENTER
Employer/Respondent

15IWCC0575

On 11/10/2014, 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 0.06% 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:

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CHAMPAIGN, IL 61825

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

NOV 10 2014

RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BEHDAD HOSSEIN KHORRAMI
Employee/Petitioner

v.

U OF I CHICAGO MEDICAL CENTER
Employer/Respondent

Case # **11** WC **17893**

15IWCC0575

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 **MILTON BLACK**, Arbitrator of the Commission, in the city of **CHICAGO**, on **July 28, 2014**. 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

15IWCC0575

On **April 27, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**52,800.80**; the average weekly wage was $**1,015.40**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **no** dependent children.

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

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

Respondent shall be given a credit of $**64,791.88** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**64,791.88**.

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 $**676.93**/week for **0115 1/7**th weeks, commencing **May 1, 2011** through **February 18, 2012**, and commencing **February 23, 2012** through **July 20, 2013**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **May 1, 2011** through **July 20, 2013**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $**64,791.88** for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $**4,358.40** to **Illinois Orthopedic**, $**4,999.39** to **IWP**, and $**7,371.70** to **Dearborn Medical Consultants**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given credit for all medical benefits paid under Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**609.24**/week for **225** weeks, because the injuries sustained caused the **45**% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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.

Milton Black

Signature of Arbitrator

November 7, 2014

Date

NOV 10 2014

FACTS

Petitioner has been employed by Respondent as a radiology technician. On April 27, 2011, he was maneuvering a patient for an X-ray when he felt a pop in his lower back. He felt immediate pain in his lower back and reported the incident to his supervisor. He was sent to Union Health Service for medical treatment, where was told to go home, rest, and follow up in a couple of days.

Petitioner testified that the pain was so severe the following day that he went to the emergency room at Swedish Covenant Hospital. At Swedish Covenant Hospital Petitioner complained of lower back pain that radiated down to his left leg. Due to his complaints, X-rays were ordered and performed, and he was told to follow up with a physician (PX1).

Petitioner testified that he had continued pain following the emergency room visit, and decided to seek treatment with a doctor of his own choosing. On April 29, 2011, Petitioner sought treatment at Integrity Medical Group with Dr. Claudia Johnson. He complained of pain in his lower back radiating down to his left leg due to an incident at work. Dr. Johnson ordered an MRI study of his lumbar spine, initiated a course of physical therapy, and kept him off work. On May 6, 2011, Dr. Johnson reviewed the MRI results with Petitioner. The MRI showed an L4-L5 broad based disc bulge, an L3-L4 broad based disc bulge, and disc bulge at L5-S1. He was ordered to undergo physical therapy and to remain off work (PX2)

Petitioner's symptoms persisted, and Dr. Johnson recommended that he see Dr. Axel Vargas, a pain management physician. Petitioner underwent an EMG which revealed S1 radiculopathy on the right side. Petitioner was evaluated by Dr. Vargas, who recommended a series of epidural steroid injections of the lumbar spine. Petitioner underwent three epidural injections through October 4, 2011 with mixed results. Dr. Vargas referred Petitioner to Dr. Sean Salehi, a neurosurgeon (PX2).

Petitioner testified that he had been receiving temporary total disability benefits during this time.

Petitioner was examined by Dr. Salehi on November 22, 2011. Petitioner complained of low back pain which radiated to his right leg. Dr. Salehi reviewed the MRI and EMG studies and diagnosed an annual tear and disc disease at L4-L5 as a result of the work incident of April 27, 2011. Dr. Salehi recommended a lumbar discogram to determine surgical necessity. Dr. Salehi stated that if the discogram revealed pain at L4-L5, then he would recommend a single lumbar fusion (PX3).

Respondent sent Petitioner to Dr. Alexander Ghanayem for a medical examination. Dr. Ghanayem opined that Petitioner aggravated his lumbar disc disease emanating from L4-L5 due to the work injury. Additionally, Dr. Ghanayem agreed with the recommendation of the lumbar discogram and that if it was positive, he would be a potential candidate for a lumbar decompressive and fusion procedure. Dr. Ghanayem thought that Petitioner was not at MMI and could not return to his regular job, but could do light duty with no lifting greater than 10 pounds (RX1).

Petitioner returned to Dr. Johnson. After receiving Dr. Ghanayem's report, Dr. Johnson agreed with the light duty restrictions imposed by Dr. Ghanayem and told Petitioner to return back to work (PX2).

Petitioner testified that due to the recommended restrictions he returned back to work at a light duty position. Petitioner testified that he was working at a computer and retrieving files. Petitioner testified that getting up and sitting down was causing him pain. Petitioner testified that while working light duty his foot got caught in the wheel of his chair causing similar pain to his low back. Petitioner testified that while he was on light duty work, his pain level remained consistent as it was prior to starting the light duty work. Petitioner testified that he was in severe pain at night due to the constant moving of his low back at work, and felt he was unable to perform his tasks and thus, did not return to the position.

On February 23, 2012, Petitioner underwent a discogram performed by Dr. Krishna Chunduri. The discogram revealed concordant discogenic pain at L4-L5 and L5-S1 (PX2).

On May 8 2012, Dr. Ghanayem reviewed the discogram, and he agreed with the surgical recommendation (RX2). Petitioner testified that although medical treatment was approved, he was not receiving temporary total benefits, even though his doctor had him off work.

Petitioner received approval to follow up with Dr. Salehi and did so on July 3, 2012. Dr. Salehi reviewed the discogram and recommended a right L4-L5 lumbar fusion. Dr. Salehi did not feel the fusion should extend to L5-S1 as there was no significant finding on Petitioner's MRI results (PX3).

Petitioner testified that between July 12, 2012 and July 9, 2012, he did not receive any temporary total disability benefits.

On July 30, 2012, Petitioner underwent an L4-L5 lumbar fusion surgery (PX4). Petitioner made slow progress. His symptoms have persisted. He takes prescribed medications. He is fearful of and has declined any further recommended invasive procedures. He is on a permanent light duty restriction from Dr Salehi.

Dr. Ghanayem, after viewing surveillance video, feels Petitioner's restrictions should be upgraded. Respondent will accept Dr. Ghanayem's opinions only. Petitioner testified that, he reported to Union Health Service and was told that based on Dr. Ghanayem's report he was to return back to his current medium level position. Petitioner testified that on July 26, 2013 he returned to work and that within 3 days he was positioning a patient during an X-ray, pushed himself too hard, and was in severe pain. Petitioner testified that he reported to Union Health Service and was told to see his physician. Dr. Salehi changed the permanent restrictions to no lifting over 10 pounds, no push or pull over 35 pounds, and ability to stand or sit as needed. Dr. Salehi placed Petitioner at MMI. Petitioner testified that he is having difficulty finding other employment, and he has a documented job log (PX8).

CAUSATION, MEDICAL, AND TEMPORARY TOTAL DISABILITY

Petitioner was a credible witness. His testimony was straightforward, responsive, and consistent with the corroborative medical records. Dr. Salehi's opinions are persuasive. The surveillance video and Dr. Ghanayem's opinions are not persuasive on this issue. Therefore, the Arbitrator finds that Petitioner's current condition of ill-being causally related to the injury.

Respondent's disputes regarding medical and temporary total disability are premised on liability for causation. Therefore, the Arbitrator finds that those claimed benefits shall be awarded.

NATURE AND EXTENT

Petitioner has lost his profession as a radiology technician. Based on the evidence in this case, the Arbitrator finds that Petitioner has sustained a 45% loss of the person as a whole.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ 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

Mark Danuser,

Petitioner,

vs. NO: 11 WC 31420

15IWCC0562

The Schwan Food Company,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, prospective medical expenses, penalties and fees, vocational rehabilitation, maintenance, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 19, 2014 is hereby affirmed and adopted.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $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: JUL 22 2015

David L. Gore

DLG/gaf
O: 7/16/15
45

Stephen Mathis

Mario Basurto

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

MARK DANUSER
Employee/Petitioner

Case# **11WC031420**

THE SCHWAN FOOD COMPANY
Employer/Respondent

15IWCC0562

On 12/19/2014, 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 0.11% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
RICHARD K JOHNSON
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

2904 HENNESSY & ROACH PC
STEPHEN J KLYCZEK
2501 CHATHAM RD SUITE 220
SPRINGFIELD, IL 62704

15IWCC0562

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

- ☐ 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
19(b)

MARK DANUSER
Employee/Petitioner

v.

THE SCHWAN FOOD COMPANY
Employer/Respondent

Case # **11** WC **31420**

Consolidated cases: **N/A**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Herrin**, on **June 3, 2014** and in Collinsville on **October 20, 2014**. 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 **Vocational Rehabilitation**

15IWCC0562

FINDINGS

On the date of accident, July 30, 2010, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**976.98**; the average weekly wage was $**50,802.96**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **2** children under 18.

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

Respondent shall be given a credit of $**79,461.04** for TTD, $**0** for TPD, $**0** for maintenance, and $**42,270.73** for other benefits, for a total credit of $**121,731.77**.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**651.26/week** for **81 1/7** weeks, commencing **October 27, 2010** through **May 16, 2012**, as provided in Section 8(b) of the Act.

Petitioner's claim for prospective medical care is denied.

Petitioner's claim for vocational rehabilitation is denied.

Petitioner's claim for penalties and attorney's fee is denied.

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

December 16, 2014
Date

DEC 19 2014

ICArbDec19(b)

Mark Danuser vs. Schwan Food Company
11 WC 31420 (19(b))

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This case was originally arbitrated on June 3, 2014, at which time proofs were closed. Unfortunately, prior to the submission of proposed decisions Petitioner's attorney, David Harrison, passed away. Thereafter, Petitioner retained new counsel who requested that proofs be re-opened to allow them an opportunity to obtain a copy of the transcript, review it, and take any action that might be necessary. Proofs were re-opened on July 29, 2014 and then closed again on October 20, 2014 in Collinsville, Illinois.

This case involves claims for temporary total disability benefits (TTD), prospective medical care, vocational rehabilitation, and penalties and attorney's fees. The parties stipulated that Petitioner had an accident on July 30, 2010. Petitioner was the sole witness at the arbitration hearing. Mr. Peter Young was present on behalf of Respondent.

The Arbitrator Finds:

At the arbitration hearing Petitioner testified that he had been employed by Respondent a little over nine years at the time of his accident.

Petitioner acknowledged a brief problem with his low back in 2001 arising out of the way in which his truck seat was situated. According to Petitioner, once his seat was readjusted, his back complaints went away.

Petitioner testified that he was a sales representative for Respondent who operated 26 grocery stores over a nine county area about nine counties. Petitioner testified that his day began around 4:30 in the morning and involved driving a truck to various locations and unloading product from the truck. In the morning Petitioner had a "merchandiser" who would assist with product delivery in the store. However, he was without such assistance during his afternoon runs and he would have to unload the truck, put the product on the shelves, build displays and do everything himself. It usually took until 4:00 or 5:00 in the evening to finish his jobs for the day. According to Petitioner a typical day included deliveries to between eight and ten stores. Petitioner estimated that he probably had to lift around 50 pounds, recalling that "bruschetta" was the heaviest product Respondent had. Petitioner further explained that when using a cart he would place between 25 and 30 pizzas on it which meant a loaded cart could weigh between 300 and 400 pounds.

Petitioner further testified that Respondent had two divisions, a "pizza" side and "ice cream" side. The "ice cream" side involved trucks going door to door making deliveries.. Petitioner was familiar with both sides of the operation although, at the time of the accident, he worked on the "pizza" side delivering pizza and other frozen foods to retail locations.

Petitioner testified that the "pizza job" had lifting requirements of up to 50 pounds. Petitioner testified that the "ice cream" side made deliveries to households driving smaller trucks and the lifting was mostly between 10-15 pounds. Petitioner testified that the driving on the "ice cream" side involved longer hours because you worked later into the evening making deliveries door to door in rural America and one could make four times as many stops.

On July 30, 2010, a Friday, Petitioner was engaged in his sales representative duties when he injured himself. Petitioner was cleaning up in the back of his truck near the end of the day when he picked up a pallet to swing it up and he fell backwards onto the floor landing on his buttocks. Petitioner testified that he notified Terrell Owens, his boss, about the accident but finished up his day, including paperwork, and went home.

Petitioner testified that he was hurting "pretty bad" when he got home. Petitioner worked the next day taking care of five or six stores. The deliveries did not require him to use his truck; rather, he used his personal car. He stocked and checked shelves and was home by 12:00 p.m. at which point he still felt pretty bad. He was then off work on Sunday.

Petitioner testified that he went to work on Monday, August 2nd, but noticed his lower back still hurt and he had been experiencing some leg pain. After finishing his shift he went to the emergency room at St. Anthony's.

According to the records of St. Anthony's, plain x-rays taken at the time were negative for fractures; however, they did reveal non-specific mild degenerative changes in the lumbosacral spine and marked narrowing of the L5-S1 disc space with sclerosis of the endplates at the L5-S1 facet joints. (PX. 1) Petitioner testified he was told to follow up with his family doctor, Dr. Kowalski.

As instructed, Petitioner followed-up with Dr. Kowalski on August 11, 2010. On that day, Petitioner was complaining of low back pain radiating into both legs. Dr. Kowalski provided Petitioner with medication and ordered an MRI of his lumbosacral spine. The MRI was performed on August 12, 2010, and revealed a right lateral disc herniation with foraminal stenosis and intraforaminal neural contact at L4-5, a concentric disc herniation and spurring with bilateral S1 contact in the lateral recesses, left S1 posterior displacement, foraminal stenosis with intraforaminal neural contact and possible compression at L5-S1, and multi-level anterior disc herniations with annular tears. Petitioner was released to return as necessary. (PX. 2)[1]

Petitioner testified that Dr. Kowalski referred him to Dr. Gabriel, a neurosurgeon.

Petitioner was seen by Dr. Gabriel on August 25, 2010. Petitioner reported complaints of low back pain, bilateral buttock pain, and occasional aching to the neck and intrascapular areas. It was noted that Petitioner was working regular duty, but his pain was made worse by riding in a truck and improved by sitting in a chair. Dr. Gabriel provided Petitioner with a prescription for physical therapy and a Medrol Dose Pak, as

[1] Yellow highlights in PX 2 were not done by the Arbitrator.

well as, an order for a lumbosacral corset and a prescription for a transforaminal epidural steroid injection at L5-S1. (PX 3) When Petitioner returned to see Dr. Gabriel on September 29, 2010, Dr. Gabriel noted that Petitioner had undergone the epidural steroid injection. Also on that day, Petitioner reported he was unable to do regular duty as he was unable to get in and out of a truck. Dr. Gabriel placed Petitioner on light duty and wanted another epidural steroid injection performed on the right side at L5-S1. Dr. Gabriel also reported he wanted Petitioner to undergo discography of the L3-S1 levels. (PX 3)

Petitioner returned to see Dr. Gabriel on October 27, 2010. Petitioner reported he was continuing to work light duty and needed to ride in a car with the seat all the way back. Dr. Gabriel noted that Petitioner had undergone two additional epidural steroid injections by Dr. Prince (PX 5) which did not help. On that day, Dr. Gabriel prescribed Skelaxin for muscle spasms and took Petitioner off of work completely. (PX. 3)

On November 5, 2010, Petitioner underwent a L3-4, L4-5, and L5-S1 lumbar discogram by Dr. Ghalambor, as well as, a CT scan of the lumbar spine without contrast. The discogram noted a Grade V annular tear at L4-5 and a Grade V annular tear at L5-S1. The CT scan revealed significant disc degeneration with narrowing of disc height at L5-S1, bilateral L5-S1 foraminal stenosis with impingement of the bilateral L5 nerve root, a central broad-based focal disc bulge at L5-S1 with Type III tear, a diffused disc bulge at L4-5 with mild narrowing of the spinal canal and lateral recess, a Grade V tear on the left foraminal aspect of L4-5, and a Type IV tear on the right lateral aspect of L4-5. (PX. 9)

Respondent's nurse case manager arranged for Petitioner to see Dr. Lange on November 30, 2010. Dr. Lange reached a diagnosis of mechanical low back pain presumably from internal disc disruption at L4-5 and L5-S1. Dr. Lange believed it was reasonable for Petitioner to go ahead and have a two-level interbody fusion surgery. (RX. 1) (Lange Deposition Ex. 2)

Petitioner returned to see Dr. Gabriel on December 1, 2010. Dr. Gabriel gave Petitioner the option of continuing to live with this condition with conservative treatment or undergoing a decompression, laminectomy, discectomy, fusion, and instrumentation at L4-5 and L5-S1. Dr. Gabriel was proposing a surgical procedure for the discectomy and a second surgical procedure for the fusion. (PX. 3)

Petitioner testified that he chose to have surgery with Dr. Lange, as opposed to, Dr. Gabriel, because Dr. Gabriel wanted to do two separate surgeries and Dr. Lange was planning to perform only one surgery. (PX. 6)

Petitioner returned to Dr. Lange on December 16, 2010. On that day, the surgery was discussed. (PX. 6) The surgery was performed on January 3, 2011, which involved a posterior lumbar interbody fusion at L4-5, and posterior lateral fusion at L4-5 and L5-S1, placement of Zimmer pedicle instrumentation on the left at L4-5 and L5-S1, placement of Synthes facet instrumentation on the right side of L4-5 and L5-S1, placement of interbody end plant at L4-5, and a bone graft harvested through a separate incision in the right iliac crest. (PX. 10)

Petitioner followed up with Dr. Lange post-surgically on January 24, 2011. Dr. Lange reported that Petitioner stated his pre-operative leg pain was negligible, but he did have the expected discomfort in the low back. Dr. Lange also reported that Petitioner was having mild parethesia particularly with prolonged sitting. Dr. Lange also reported that Petitioner continued to smoke cigarettes. Dr. Lange reminded Petitioner that if Petitioner continued to have nicotine exposure, this would significantly increase Petitioner's chance of a poor result in non-union of the fusion. Dr. Lange kept Petitioner off of work. (PX.6)

Petitioner was next seen by Dr. Lange on March 7, 2011. Dr. Lange noted that Petitioner continued to smoke cigarettes. Dr. Lange advised Petitioner that if the fusions didn't heal another surgery might be necessary, a proposition "Petitioner couldn't fathom." Dr. Lange continued to take Petitioner off of work. Petitioner was seen next by Dr. Lange on May 2, 2011. Dr. Lange reported that Petitioner had only minimal low back discomfort. Dr. Lange prescribed physical therapy. Dr. Lange continued to keep Petitioner off of work. (PX. 6)

Petitioner returned to see Dr. Lange on June 13, 2011. Dr. Lange reported that Petitioner had less discomfort and was now able to increase his activities without much discomfort. However, Petitioner noted two strengthening exercises consistently brought on back pain. Dr. Lange reviewed Petitioner's physical therapy records noting they possibly suggested some symptom magnification. Dr. Lange suggested beginning work simulation and physical therapy. Dr. Lange continued to keep Petitioner off of work.

Petitioner was next seen by Dr. Lange on July 5, 2011. Petitioner reported to Dr. Lange that he was doing relatively well with the exception of significant low back pain with certain bending/lifting activities performed in physical therapy. X-rays showed only spotty interbody bony healing but significant healing of the posterior elements. No hardware difficulties were noted. Dr. Lange reported that he told the physical therapist to begin daily work conditioning/hardening progressively. (PX. 6)

Petitioner was next seen by Dr. Lange on August 1, 2011. Dr. Lange reported that Petitioner seemed to be doing relatively well. Dr. Lange did report that Petitioner stated he had some low back discomfort particularly on the left side when he performed quadriceps strengthening in a quad-sled during physical therapy. Dr. Lange reported that a CT scan obtained earlier that day showed excellent position of all hardware. Dr. Lange also reported that the CT scan showed posterior fusions at both L4-5 and L5-S1 having healed with bridging bone extending across the joints and also laminae. Dr. Lange also reported that Petitioner had a fair amount of anterior bone in the L4-5 disc space, but only a few strands of bone within the interbody device itself. Dr. Lange noted that, on the other hand, there has been no subsidence of the device. Dr. Lange reported that with a solid posterior fusion, no further interventions were indicated. Dr. Lange also noted that Petitioner was close to the medium physical demand level necessary for his occupation and, in fact, it appeared that his primary deficit was related to lifting from the floor, something he likely did not do on a regular basis. Dr. Lange stated the work hardening would be completed over the next 3-4 weeks, and then a final functional capacity evaluation would be obtained. (PX. 6)

During this time Petitioner had been undergoing work hardening at Apex Physical Therapy. According to the Progress Note dated August 12, 2011 Petitioner was continuing to wear his back brace during treatment; otherwise, he experienced increased back pain. Subjectively, Petitioner reported good days and bad days and that on that date his pain was "4/10" when starting and "5/10" at the completion of his therapy. Petitioner also reported increased right hip pain when attempting to ambulate with his right foot facing directly forward. Petitioner's hydrocodone was being weaned down that week. Petitioner reported feeling stronger and more capable although concerned about returning to a ten hour work day. Petitioner also reviewed Respondent's job analysis which had been provided to Apex noting that he felt that frequency listed with tasks was higher than stated. Petitioner was noted to be tolerating approximately four hours of work hardening each session, five times per week. The therapist summarized Petitioner's progress has "significant" in his overall ability to perform work-related material handling and non-material requirements and was reaching a plateau in material handling due to subjective complaints of pain and discomfort. It was believed Petitioner could meet the job requirements during testing but whether he could sustain the requirements over the course of his shift was "questionable." (PX 7)

Petitioner underwent a functional capacities evaluation (FCE) on August 17, 2011. Petitioner gave acceptable effort. The evaluator noted that Petitioner's job description from Respondent suggested a medium work demand level; however. Petitioner's description suggested a heavy demand work level. Pursuant to the FCE, Petitioner was observed lifting 40 pounds occasionally, 23-28 pounds frequently, and 20 pounds constantly placing him in the heavy work demand level. The functional capacity evaluator reported that Petitioner should be able to perform this lifting over a full-time basis. It was also reported that Petitioner had no limitations on pushing/pulling, sitting/standing/walking, climbing, reaching/gripping/fine motor, or lower level positions/movements. Petitioner expressed concern about returning to a ten hour day. (PX. 11)

Petitioner underwent a work hardening re-evaluation on Augusts 18, 2011. (RX 2, pp. 20-21)

Petitioner next returned to Dr. Lange on August 22, 2011. Dr. Lange reported that Petitioner had more low back pain and lower extremity symptoms than Petitioner would prefer. Dr. Lange noted that most of his low back discomfort was above the fusion area. Dr. Lange reported that Petitioner reached maximum medical improvement. Dr. Lange also reported that, although the interbody component of Petitioner's fusion was not healed, with a solid posterior fusion, there is simply nothing further to offer from a surgical point of view. Dr. Lange noted that, given enough time, the interbody component should solidify simply because of the solid posterior construction. Dr. Lange reviewed the functional capacity evaluation. Dr. Lange found Petitioner to be functioning very close to the medium physical demand level, namely, lifting up to 50 pounds on an occasional basis with lesser amounts more frequently, and, as a result of this, he released Petitioner with a 50 pound maximum lifting

restriction on an occasional basis. Dr. Lange also reported that, with a solid posterior fusion, aches and pains in the low back were to be expected. (PX. 6)

Petitioner then returned to see Dr. Kowalski on August 31, 2011. Dr. Kowalski noted that Petitioner had undergone surgery and had a fifty pound lifting restriction. Petitioner still complained of right leg pain and numbness, and that if felt like he was "sitting on coal." Dr. Kowalski reported that Petitioner also stated that he was having trouble walking which started after his epidural steroid injections. Dr. Kowalski referred Petitioner to Dr. Gapsis for a nerve conduction study. (PX. 2)

Petitioner underwent an EMG/NCV by Dr. Gapsis on September 6, 2011. Dr. Gapsis reported there was no evidence of lumbosacral radiculopathy. Dr. Gapsis reported that the cooler temperature recording in both feet was felt to be the primary factor in the prolonged sensory distal latencies in both lower limbs rather than an outright peripheral neuropathy affecting the lower extremities. (PX. 4)[2]

Dr. Lange reviewed the results of the EMG/NCV. In a letter written to the insurance adjuster dated September 15, 2011, Dr. Lange reported that, although, certainly one could certainly take a "devil's advocate position" and suggest the anterior interbody fusion was not rock solid, the treatment of such delayed healing is a posterior fusion, and "obviously, logic would dictate, therefore, with a solid posterior fusion already, Petitioner truly had reached maximum medical improvement." While uncertain as to why an EMG was ordered in the first place, Dr. Lange also reported that a negative EMG supported that Petitioner had reached maximum medical improvement. (PX. 6)

Thereafter Petitioner returned to see Dr. Kowalski on October 27, 2011 complaining of "right hip pain." Petitioner reported that this had slowed his walking down. (PX. 2) Dr. Kowalski referred Petitioner to Dr. Leventhal. An x-ray of Petitioner's right hip was negative. (PX. 2)

Petitioner was seen by Dr. Leventhal on December 7, 2011, for complaints of low back pain, right lower extremity pain and right posterior hip pain. Petitioner reported that after his FCE Dr. Lange had released him to return to work with permanent restrictions of fifty pounds but Petitioner stated he was unable to lift over 45 pounds during the FCE. Petitioner was questioning whether his pain complaints were due to his surgery or stemming from problems at his L3-4 level. Dr. Leventhal reviewed Petitioner's November 5, 2011 discograms and felt they showed no problems at L3-4. Petitioner's right hip x-rays showed a sclerotic lesion in the right femoral head unchanged from an August 2, 2010 x.-ray and "quite benign." Dr. Leventhal diagnosed lumbago and "other bursitis" and provided Petitioner with a Cortisone injection into the right hip. Dr. Leventhal took Petitioner off work for that day and released him to return to work on December 8th with a 35 pound lifting restriction and instructions to avoid repetitive bending or lifting. There is no reference to these restrictions being permanent. (PX 12)

[2] Yellow highlights contained in PX 4 were not done by the Arbitrator.

Petitioner returned to see Dr. Leventhal on January 9, 2012 complaining of hip bursitis and stiffness and weakness. Petitioner stated that his pain was 50% better, but Petitioner still felt some pulling in the right groin area and in the right posterior hip area. Dr. Leventhal noted that Petitioner was attending physical therapy and Petitioner had not taken any Tramadol in "a couple of weeks." Dr. Leventhal reported that Petitioner should continue physical therapy and would probably require an FCE thereafter. Dr. Leventhal took Petitioner off of work. (PX 12)

Petitioner attended a physical therapy evaluation that same day. According to the therapist's notes Petitioner had injured both his right hip and low back at the time of his accident. Petitioner described his job as that of a delivery man but reported he had been "released." (PX 12) As of February 3, 2012 Petitioner had met all short term and long term therapeutic goals. (PX. 12)

Petitioner returned to see Dr. Leventhal on February 6, 2012. Petitioner reported that he felt the physical therapy was working, but he still had lumbar pain, although better than it had been. Petitioner further stated that his right hip pain was very mild and he was walking much better. Petitioner also stated that bending and holding things in front of him made the pain worse, and sitting made the pain better. Petitioner had been taking one Tramadol a day. Dr. Leventhal recommended that Petitioner be referred back to "his treating surgeon" as Petitioner continued to have "some pain" in his back. Dr. Leventhal discharged Petitioner from his care. Dr. Leventhal did not comment on any need for restrictions -- permanent or otherwise. (PX. 12)[3]

On February 6, 2012 Petitioner telephoned his nurse case manager regarding his earlier appointment with Dr. Leventhal. Petitioner reported that his hip was much better and resolved but he was still experiencing persistent "unresolved issue" with what Dr. Leventhal said could be L3. According to the note if Dr. Lange was not receptive to seeing Petitioner Dr. Leventhal planned on referring Petitioner to a doctor in Champaign. (PX 15)

On February 17, 2012 Dr. Lange ordered a CT scan. (PX 15)

Petitioner underwent a CT scan on February 28, 2012. (PX 15)

In a letter addressed to Genex dated March 2, 2012, Dr. Lange stated he had reviewed the records of Dr. Leventhal, as well as a CT scan of Petitioner's lumbar spine performed on February 27, 2012. Dr. Lange reported that the CT scan suggested a very mature enlarged fusion mass laterally on the right side extending from the S1 level to the L4 level. Dr. Lange did note that the interbody fusion at L4-5 did not have a significant amount of bone, but Dr. Lange also noted the natural history of such situations is that, with a solid posterior fusion, there is no reason to redo interbody procedures and, in fact, spontaneous fusion tends to occur given enough time. Dr. Lange reiterated his opinion that Petitioner had reached maximum medical improvement and there was no place for further medical treatment. (PX. 6; PX. 15)

[3] Yellow highlights contained in PX 12 were not done by the Arbitrator.

On March 21, 2012 Genex closed its file regarding Petitioner as Petitioner was felt to no longer need medical case management in light of Dr. Lange's last visit. (PX 15)

Respondent's Exhibit 3 is a letter from Respondent's attorney to Petitioner's attorney dated May 16, 2012 offering Petitioner a job offer on the "ice cream" side of the business as evidenced by the job description attached thereto. According to the job description essential job activities included the ability to pull and push up to 50 lbs. and lift or carry up to 50 lbs; however, these activities were to be done on a rare occasion. (RX. 3)

Petitioner was seen by Dr. George at the Veterans Administration on May 31, 2012. Dr. George had a CT scan of the lumbar spine performed and he recommended physical therapy for a TENS unit and a Theracane. Petitioner returned to see Dr. George on June 22, 2012. Dr. George reported that Petitioner denied any generalized radicular symptoms in the lower extremities, but Petitioner did say, sometimes, he had a tingling sensation in the medial dorsal of the right foot, but when he would get up and walk, this sensation went away. Petitioner was to continue physical therapy. Petitioner was seen again by Dr. George on August 27, 2012. Dr. George reported that he advised Petitioner that he would defer to "his spine surgeon" for an opinion. Dr. George also reported that Petitioner easily arose from a seated position and was noted in the hallway to be walking with a normal gait, but Petitioner claimed he had significant difficulty walking. Dr. George also recommended continued conservative treatment with the TENS unit and aquatics. Dr. George did not recommend interventional pain procedures as they were of no help before. It was also noted that Petitioner told Judy Bishop, an RN, that he was planning to go back to work and then have an accident and have to start the process of evaluation and treatment all over. (PX 13, 14)

Dr. Lange testified via evidence deposition taken on February 28, 2013. On direct examination, Dr. Lange confirmed his opinion that Petitioner was discharged from his care with a 50 pound lifting restriction on an occasional basis. Also on direct examination, Dr. Lange testified that the restrictions were based on Petitioner's residual subjective complaints, and if Petitioner stated he felt great and wanted to try to work full duty, it would have been difficult to argue with that. Dr. Lange also testified on direct examination that, even though the FCE indicated Petitioner had trouble lifting more than 40 pounds, people who have solid fusions and particularly no neurological deficits get better and better as time goes on, and a 50 pound restriction on a permanent basis going forward seemed appropriate. (PX. 1, pp. 22-25)

On May 6, 2013, Petitioner underwent a DOT examination by Dr. Rudert. Dr. Rudert reported that Petitioner met the regulatory standards and qualified for a two-year certificate. Dr. Rudert commented that Petitioner had a 35 pound lifting restriction as a result of back surgery. Dr. Rudert also suggested Petitioner should try driving a truck with an automatic transmission as bouncing in a truck might not be tolerated. A second examination was performed that same day and Petitioner was deemed qualified to drive for one year with periodic monitoring. (PX. 16)

Petitioner was again seen by Dr. George on August 16, 2013. Dr. George ordered lumbar flexion/extension x-rays, prescribed Diclofenac 75mg and a lumbar brace, as well as an EMG. Petitioner returned to see Dr. George on September 17, 2013 and it was reported that the flexion/extension x-rays demonstrated the stability of the fusion as did the prior CT scan. The EMG indicated chronic right S1 radiculopathy. Dr. George reported this was a pain management situation and he advised Petitioner to consider vocational rehabilitation, and discharged Petitioner from his care. (PX. 13)

Petitioner was again seen at the Veterans Clinic on September 17, 2013, having been referred by the orthopedic clinic for evaluation of his hips. Petitioner was found to have, essentially, a normal hip exam and x-rays. Dr. Begley assessed Petitioner with chronic back pain with radiation into the right hip, status post 3 level lumbar fusion. He assessed the situation as one warranting pain management and advised Petitioner to consider looking into vocational rehabilitation. Petitioner was discharged from the orthopedic clinic. (PX 13)

On November 15, 2013, Dr. Lange authored a letter addressed to Respondent's attorney. In this letter, Dr. Lange reiterated his opinion that, as of September 9, 2012, Petitioner was fit to lift up to 50 pounds occasionally with lesser amounts more frequently. Dr. Lange wrote that, over a year farther done the line and away from surgery, one might logically suggest that a 50 pound lifting restriction was conservative. In regard to what type of transmission Petitioner could operate, Dr. Lange wrote that, from a scientific point of view, it is unclear why Dr. Rudert would suggest a restriction of an automatic transmission only. Dr. Lange also wrote there was no scientific basis that Petitioner would not be able to tolerate the vibration of driving a commercial vehicle. (RX. 2)

Petitioner underwent a lumbar spine MRI at the VA Clinic on February 27, 2014. It revealed post-operative changes in Petitioner's lower spine consistent with his earlier surgeries, mild chronic changes, and no significant disc bulges or protrusions. (PX 13)

Petitioner was seen at the VA Clinic on February 27, 2014 in follow-up after his recent lumbar MRI study. Petitioner was noted to have a significant history for right lower extremity and low back pain. Petitioner had filed for social security disability. Petitioner's pain score was "6/10." He was somewhat slow to rise from a seated position and walked with a slight right legged limp. Petitioner reported the limp was "accentuated" in the past when he underwent epidural steroid injections and had an exacerbation of pain with the injections. Petitioner was encouraged to follow conservative treatment measures including the VA's "pain boot camp" for he and his spouse. (PX 13)

According to the VA Clinic records Petitioner agreed to participate in a Chronic Pain Restorative Wellness Program on March 13, 14, and 15th. Petitioner attended the Pain Boot Camp and learned some ways to deal with pain. He was seen by Dr. Lizzette Colon on March 14, 2014 at which time he was offered medications to assist with smoking cessation and given a general, overall examination. No tenderness was elicited over his spine or in the paraspinal region. Straight leg raising was negative. Petitioner reported he was using his TENS unit for his back pain and taking Tramadol as needed.

Petitioner was assessed with some hip pain which the doctor noted "might come from back." X-rays and an orthopedic evaluation were recommended for his hip. Aquatics exercises and Gabapentin were recommended for his back. (PX 13)

Prior to his arbitration hearing Petitioner had undergone no further medical treatment.

At the arbitration hearing Petitioner testified that he underwent work hardening after Dr. Lange's surgery and that the most he could pick up off the floor was 40 pounds. He further testified that when doing so he would notice severe back pain. Petitioner was also taking four Hydrocodeine pills per day at that time.

Petitioner also testified that the FCE was supposed to take four hours; however, the test was stopped after two and a half hours because Petitioner couldn't get forty pounds off the floor and, therefore, there was no reason to continue. Petitioner then returned to see Dr. Lange who found him to be at maximum medical improvement and released him with a 50 pound weight restriction. Petitioner testified that he then called his supervisor, Sean Evans, to inquire about coming back to work. Petitioner testified he was told there were no job openings at that time as the position had been "backfilled" and Mr. Evans would need to hear from Human Resources before he could do anything else.

Petitioner testified that during this time he was continuing to experience low back pain and tried to get in to see Dr. Lange but couldn't. According to Petitioner, he spoke with the doctor's nurse who said that Dr. Lange recommended over-the-counter medication and walking. Petitioner then went back to Dr. Kowalski who referred him back to Bonutti Clinic where he was seen by Dr. Gapsis on September 6, 2011. Dr. Kowalski then referred Petitioner to Dr. Leventhal, an orthopedic surgeon in Effingham. Dr. Leventhal gave Petitioner an injection into his hip, initiated physical therapy and placed a 35 pound lifting restriction with no repetitive bending or lifting on Petitioner.

Petitioner testified that the therapy improved his right leg but he still had pain. Petitioner also testified that he did light duty between January 9, 2012 and February 6, 2012. Petitioner testified that on February 6, 2012 Petitioner was released with the same restrictions. According to Petitioner, Dr. Leventhal also recommended that Petitioner return to see Dr. Lange; however, Dr. Lange would not see him.

Petitioner acknowledged that in May of 2012 he received a letter from Respondent's attorneys offering him a job that would require him to lift up to 50 pounds.

Petitioner testified that he then proceeded to go to the VA in Marion where his condition was monitored by Dr. George. According to Petitioner as of September 24, 2012 Dr. George did not want to "touch him" because he was involved in a workers' compensation lawsuit and he wished to keep the VA out of it.

Petitioner testified that he has looked for work within his 35 pound weight restriction by watching the paper and checking the Internet.

Petitioner testified that he was continuing to receive benefits during the aforementioned time period.

Petitioner acknowledged that a pre-trial conference was held between the parties and a different arbitrator in April of 2013. Thereafter, Respondent requested that Petitioner undergo a DOT physical and if he didn't pass it the agreement was to initiate vocational rehabilitation. Petitioner testified that he underwent the exam on May 6, 2013 at Bonutti Clinic and he was placed on a 35 pound weight restriction and advised that he should only drive a truck with an automatic transmission to avoid the need to operate a clutch. There were also some other restrictions about repetitive bending and so forth. According to Petitioner the doctor was also concerned about lifting and whether Petitioner could handle bouncing around in the truck.

Petitioner denied that he has ever been offered vocational assistance.

Petitioner continued to treat at the VA Clinic and returned in August of 2013 at which time an EMG was ordered, Petitioner was given a back brace, and he was ultimately referred for pain management and vocational rehabilitation. Petitioner testified that he continues to wear the back brace.

Petitioner testified that on February 5, 2014 he received a call from Christy at Respondent's main office. According to Petitioner, Christy wanted to know how he was doing and whether he felt he could resume his old job. Petitioner replied that he didn't think he could because of his restrictions. Christy further asked him about his willingness to relocate which he replied was not an option due to his family situation. Their conversation was then cut off by another phone call but when they resumed speaking thereafter Christy advised him she was calling for purposes of "an ADA call" and had already spoken with "Mr. Quincy." Petitioner testified that the purpose of Christy's call was to find out what Petitioner could and couldn't do.

Petitioner testified that he then proceeded to treat with the pain management clinic at the VA and he underwent a three day "boot camp" in Marion to address pain management. Petitioner further testified that he continues to work with the pain management department in order to get necessary medications. He currently takes Tramadol for pain, an anti-inflammatory, and a sleeping medication. Petitioner is scheduled to see Dr. George in August.

Petitioner testified that he currently has a difficult time sitting on hard furniture and noted he was sitting on the edge of the witness chair to keep his hip off it. He sold his motorcycle and four-wheeler and sold his jeep Wrangler to buy a full-size truck to provide a smoother ride for his back. Petitioner has a small child at home and plays with him but the child knows not to climb on his father. He still mows his yard but purchased a special bracket to hold his weed eater over his shoulders rather than in front of him. He mows as slowly as possible and sits sideways to keep the weight off his hip. He takes longer to shower and shaving is difficult because it requires him to lean forward over the sink. Petitioner can attend to the laundry but he usually kneels on the floor to remove items from the dryer. Dishes are difficult to do for the same reasons as shaving. Petitioner testified that about twenty minutes into the arbitration proceeding that day his

hip and back were killing him. Petitioner also expressed difficulty walking long distances. He also notices when a storm or rain is coming.

Petitioner testified that he traveled approximately one hundred miles to the hearing and by the time he arrived at the hearing sight the bottom of his right foot was like someone had put little needles into it because it tingled. Petitioner testified that his leg tends to go numb if he sits too long. He also had to stop half-way and walk around a little bit.

On cross-examination Petitioner clarified that he declined the job offer made by Respondent because of the restrictions imposed by Dr. Leventhal.

The Arbitrator concludes:

1. **Prospective medical care (Issue K), Temporary Total Disability Benefits (TTD) (Issue L), and Vocational Rehabilitation (Issue 0)**

Petitioner's request for prospective medical care is denied. While Petitioner seeks prospective care, nothing definite has been recommended nor did Petitioner testify that he would like any specific care or treatment to be authorized. Petitioner's rights under Section 8(a) remain open.

Petitioner is entitled to temporary total disability benefits from October 27, 2010 through May 16, 2012, the date upon which Respondent offered Petitioner a position within his restrictions. This is based upon the records of Dr. Lange and Dr. Leventhal.

While Petitioner seeks temporary total disability benefits beginning on October 23, 2010, there is no evidence supporting that Petitioner was off work prior to October 27, 2010. According to Dr. Gabriel's records, Petitioner was still working regular duty as of August 25, 2010, at which point Dr. Gabriel imposed restrictions. No evidence was presented showing Respondent was unable to accommodate those restrictions. Petitioner then presented to Dr. Gabriel on October 27, 2010 and was taken off work because Petitioner was having difficulty working light duty. (PX 3)

Petitioner was released by Dr. Lange to return to work with a 50 pound lifting restriction in March of 2012. He then continued treating albeit with a different doctor for right hip complaints. That treatment ended in February of 2012. While Petitioner testified that Dr. Leventhal imposed restrictions on him, Dr. Leventhal's records don't entirely corroborate Petitioner's testimony and the doctor wasn't deposed. Dr. Leventhal's records indicate Petitioner was given some work restrictions after his firt injection; however, when Dr. Leventhal discharged Petitioner from care and referred him back to Dr. Lange, he said nothing about any restrictions. Petitioner was then evaluated by Dr. Lange (vis a vis a records review and CT scan) and released with the 50# permanent restriction. That was on March 2, 2012; however, Respondent did not offer Petitioner a position within his restrictions until May 16, 2012.

The Arbitrator views Respondent's job offer as a valid one. Dr. Lange's explanation

as to why he imposed a 50# restriction despite Petitioner's abilities at the FCE appears well thought out and reasonable. Respondent's letter evidences its intent to work with Petitioner in an attempt to return to work, including accommodation. Petitioner never attempted the return to work relying upon restrictions he felt Dr. Leventhal had imposed upon him. However, Petitioner's belief is not corroborated by the doctor's records. By the written descriptions attached to the offer, it appears that the job was on the "cold side" of the business, a lighter position, by Petitioner's own testimony.

The Arbitrator also views Petitioner as resistant to even attempting to return to work for Respondent. While he voiced concerns about his ability to return to work for a ten hour period of time and the therapist had noted Petitioner might have trouble with long hours, no doctor restricted Petitioner as to the number of hours he could work. The Arbitrator believes it would have been reasonable for Petitioner to attempt to return to work when it was offered to him in light of the status of his medical care.

The Arbitrator further notes that after May 16, 2012 no doctor took Petitioner off work for a work-related condition. Petitioner testified that he looked for work; however, he did not submit any job search records to corroborate his testimony.

Dr. Lange, the only doctor who has operated on Petitioner, found Petitioner to be at maximum medical improvement on August 22, 2011. On that date, Dr. Lange noted that, although the inter body component of the spinal fusion was not healed, Petitioner did have a solid posterior fusion and there was simply nothing further to offer Petitioner from a surgical point of view. Dr. Lange also noted that, given enough time, the inter body component should solidify. Dr. Lange also reported and testified that Petitioner can work lifting fifty pounds on an occasional basis with lesser amounts more frequently. Dr. Lange testified that, although the FCE indicated Petitioner had trouble lifting more than forty pounds, people who have solid fusions and no neurological deficits get better and better as time goes on, therefore, a fifty pound lifting restriction was more appropriate than a forty pound lifting restriction. While Petitioner did see Dr. Leventhal after Dr. Lange placed Petitioner at maximum medical improvement, Dr. Leventhal referred Petitioner back to "his treating surgeon", that being, Dr. Lange. It is noted that Petitioner was also seen by Dr. George subsequent to Dr. Lange placing Petitioner at maximum medical improvement; however, Dr. George deferred to "his spine surgeon", that being, Dr. Lange. Dr. George also noted that Petitioner, on August 27, 2012, easily arose from a seated position and was noted in the hallway walking with a normal gait even though Petitioner claimed he had significant difficulty walking. It was also noted in Dr. George's records that Petitioner told an RN that he was planning to go back to work and then have an accident and have to start the process of evaluation and treatment all over. Subsequently, Dr. George reported that radiological studies confirmed the stability of the lumbar fusion.

Also significant is that Petitioner was examined by Dr. Rudert for a DOT evaluation. Dr. Rudert placed a thirty-five pound lifting restriction on Petitioner, as well as suggesting that Petitioner drive a truck with an automatic transmission; however, Dr. Rudert gave no basis for these restrictions other than the fact Petitioner had undergone back surgery. Petitioner was also seen by FNP McMahan (sp?) who determined Petitioner was certified for one year of driving with periodic monitoring. The bottom line

is that Petitioner has been certified for truck driving by the Department of Transportation. All in all, Dr. Lange's opinions regarding Petitioner are most credible.

In light of the foregoing Petitioner's request for vocational rehabilitation is denied. Petitioner is able to return to work to as a truck driver and was offered a position within his restrictions which he declined.

2. Penalties and attorneys fees (Issue M):

In light of the Arbitrator's determination that Petitioner is not entitled to prospective medical care, additional TTD benefits, or vocational rehabilitation, penalties and attorneys' fees are not warranted.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nancy Brenczewski,
Petitioner,

15IWCC0566

vs.

NO: 12 WC 25662

United Airlines, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 10, 2014, is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $16,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUL 22 2015
o7/15/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0566

BRENCZEWSKI, NANCY
Employee/Petitioner

Case# 12WC025662

UNITED AIRLINES INC
Employer/Respondent

On 7/10/2014, 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 0.06% 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:

0365 BRIAN J McMANUS & ASSOC LTD
JENNIFER E BUGAI
30 N LASALLE ST SUITE 2126
CHICAGO, IL 60602

0560 WIEDNER & McAULIFFE LTD
KAREN E COON
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

15IWCC0566

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook County)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Nancy Brenczewski,
Employee/Petitioner

v.

United Airlines, Inc.,
Employer/Respondent

Case # **12** WC **25662**

Consolidated cases: **N/A**

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 **Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago, IL**, on **01-14-2014**. 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. [x] Is Petitioner's current condition of ill-being causally related to the injury? * **Only from 09-09-2011 onward.**
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. [x] 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. [x] 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 **08-07-2011**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**38,752.48**; the average weekly wage was $**745.24**.

On the date of accident, Petitioner was **56** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**2,178.26** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**2,178.26**.

Respondent is entitled to a credit of $**6,440.09** under Section 8(j) of the Act.

ORDER

Credits

Respondent shall be given a credit of $**2,178.26** for TTD, $**0** for TPD, and $**0** for maintenance benefits, for a total credit of $**2,178.26**.

Respondent shall be given a credit of $**6,440.09** 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 Section 8(j) of the Act.

Respondent shall be given credit for $**N/A** for **N/A** benefits paid under Section **N/A** of the Act.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $**496.82**/week for **4-2/7** weeks, commencing **08-10-2011** through **09-08-2011**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **N/A** through **N/A**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $**2,178.26** for temporary total disability benefits that have been paid.

Medical benefits

Respondent shall pay reasonable and necessary medical services of $**15,639.49**, as provided in Section 8(a) of the Act. * **However, the only amount due is $1,688.86 which is awarded representing unpaid bills and out of pocket expenses.**

Respondent shall be given a credit of $**6,440.09** 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 Section 8(j) of the Act.

Permanent Partial Disability: Person as a whole

Note: If awarding both 8(e) and 8(d)2 benefits, list each benefit in a separate sentence. Do not combine benefit amounts.

Respondent shall pay Petitioner permanent partial disability benefits of $**447.14**/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.

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

03-28-14
Date

JUL 10 2014

(I.) Findings of Facts

(Ia.) The summary of Nancy Brenczewski's testimony

Ms. Brenczewski has been employed by United Airlines, Inc. as a flight attendant for the last fourteen years. (TR p9) Prior to August 7, 2011, Ms. Brenczewski had never suffered a work related injury. (TR p9) Prior to August 7, 2011, Ms. Brenczewski had never injured her low back before nor had she ever seen a doctor for low back complaints. (TR p9)

On August 7, 2011 while pulling the beverage cart out of it's housing, turbulence struck while Ms. Brenczewski was "swinging around" the beverage cart causing her to hear and experience a "pop" in her low back. (TR p10)

Following this occurrence, Ms. Brenczewski finished the beverage service and sat down. (TR p10) Upon landing in La Guardia when Ms. Brenczewski attempted to get up out of her jump seat, she felt tremendous pain and spasming in her low back. (TR p10)

Ms. Brenczewski reported the accident on the next day when she arrived to Chicago. (TR p10) Ms. Brenczewski had never experienced spasming and low back pain before August 7, 2011. (TR p11)

Ms. Brenczewski first sought medical care with Dr. Eileen Heffernan, her primary care physician, on August 10, 2011. (TR p12) Ms. Brenczewski was under Dr. Heffernan's care from August 10, 2011 through September 7, 2011. Radiculopathy was diagnosed and an MRI was discussed. (TR p12) Dr. Heffernan released Ms. Brenczewski to return to work on September 9, 2011. (TR p13) While off work Ms. Brenczewski received all of her TTD and did physical therapy. (TR p12 & 13)

Upon returning to work on September 9, 2011, Ms. Brenczewski was still experiencing low back pain. (TR p13) Walking long distances and working with bins caused Ms. Brenczewski low back pain.

Between September 9, 2011 and July 11, 2012, even though Ms. Brenczewski worked full duty, she continued to experience low back pain. (TR p14) Trying to bend caused low back pain in this period of time. (TR p14) In addition, walking, sleeping, straightening up and laying caused Ms. Brenczewski pain. (TR p14)

Economic circumstances factored into Ms. Brenczewski's return to work. (TR p14) When Ms. Brenczewski was off work she couldn't make it on two thirds of her salary. (TR p14)

Between September 8, 2011 and July 11, 2012, Ms. Brenczewski suffered no re-injuries on the job nor did she have any low back injuries at home. (TR p15)

On July 11, 2012, Ms. Brenczewski went back to see Dr. Heffernan complaining of persistent low back pain and a lumbar MRI was ordered. (TR p15) Upon getting the results of the MRI, Dr. Heffernan referred Ms. Brenczewski to Dr. Thomas Hurley, a neurosurgeon. (TR p15) Ms. Brenczewski treated with Dr. Hurley between August 14, 2012 and September 6, 2013

receiving some four low back injections. (TR p15 & 16) Pursuant to Dr. Hurley's orders, Ms. Brenczewski also received acupuncture and yoga. (TR p16)

Presently Ms. Brenczewski's low back is still troublesome. (TR p17) Driving long distances and working long hours causes increased low back pain. (TR p17) When Ms. Brenczewski pushes and pulls liquor carts at work she notices the strain on her low back. (TR p17)

Dr. Hurley prescribed Ms. Brenczewski a muscle relaxer however she chose not to take them. (TR p19) Dr. Heffernan wanted to do an MRI on September 9, 2011 however Ms. Brenczewski wanted to return to work. (TR p20) Ms. Brenczewski, at Respondent's request, attended a Section 12 examination with Dr. Gleason on June 18, 2013. (TR p21)

(II.) <u>In support of the Arbitrator's decision concerning (F) Is petitioner's current condition of ill-being causally related the Arbitrator finds as follows.</u>

The Arbitrator notes respondent stipulated to the fact that petitioner suffered a low back injury on August 7, 2011. (TR p7) Respondent's contention with causation centers around petitioner's renewed treatment beginning on July 11, 2012.

The Arbitrator notes there is no evidence to suggest petitioner injured her back either at home or at work between September 9, 2011 and July 11, 2012. Petitioner returned back to work partly for economic reasons and clearly and unequivocally testified to experiencing low back pain while working between September 9, 2011 and July 11, 2012. In looking at Dr. Heffernan's records on August 24, 2011, a lumbar MRI is being discussed and lumbar disc involvement is suspected. (See Petitioner's Exhibit #1)

When Ms. Brenczewski returns to see Dr. Heffernan on July 11, 2012 a history of "complaining of low back pain, injured on August 2011" is recorded. Nowhere in Dr. Heffernan's records is an intervening accident or cause recorded for low back pain other than the work injury. (See Petitioner's Exhibit #1) On July 11, 2012 Dr. Heffernan orders the lumbar MRI which winds up being indicative for a L4-L5 broad based disc herniation. (See Petitioner's Exhibit #1) As a result of the disc finding petitioner is referred by Dr. Heffernan to Dr. Hurley, a neurosurgeon. (See Petitioner's Exhibit #1)

Upon seeing Dr. Hurley on August 14, 2012, Dr. Hurley clearly and unequivocally diagnosed a L4-L5 herniated disc unequivocally caused by the August 2011 work injury.

The Arbitrator finds petitioner's treating doctor's persuasive especially in the absence of any evidence suggesting any either possible cause for petitioner's low back pain. (See Petitioner's Exhibit #2)

The Arbitrator finds petitioner persuasive and her treating doctors consistent and reliable. The Arbitrator chooses to rely on the petitioner's testimony and that of her treating doctors'

rather than relying on the opinions of respondent's section 12 examiner, Dr. Gleason. As such the Arbitrator finds petitioner's present condition of ill-being causally related.

(III.) In support of the Arbitrator's decision concerning (J) medical expenses, the Arbitrator finds as follows,

The Arbitrator notes respondent's dispute towards medical to have been a liability one with causal connection being respondent's defense. There is no suggestion from any medical provider that petitioner's care was either unreasonable or not necessary. Having found causal connection for petitioner the Arbitrator awards the $1,688.86 which represents actual unpaid amounts as well as out of pocket amounts after taking into consideration the total medical as well as respondent's credits.

(IV.) In support of the Arbitrator's decision concerning (L) what is the nature and extent of petitioner's injury the Arbitrator finds as follows,

It is clear that petitioner suffered a L4-L5 broad based disc herniation as a result of her August 2011 work injury. (See Petitioner's Exhibit #1 & 2) This herniation presently causes petitioner daily low back pain and stiffness when at home and at work. As such the Arbitrator believes petitioner to have sustained a 10% loss of use of man as a whole or 50 weeks of PPD at the applicable PPD rate of $447.17.

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

☐ 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

Julie A. Scroggins,

Petitioner,

vs. NO: 12 WC 08022

15IWCC0576

Simonton Windows,

Respondent.

DECISION AND OPINION PURSUANT TO SECTIONS 19(h) & 8(a)

This matter comes before the Commission on Petitioner's Petitions pursuant to Sections 19(h) and 8(a) filed on November 7, 2013. No question has been raised concerning the timeliness of the petition. The underlying claim arises from Petitioner's left shoulder injuries incurred on November 11, 2011.

An Application for Adjustment of Claim was filed on March 2, 2012, The case was tried before Arbitrator Douglas McCarthy on December 20, 2012. In his decision, filed on January 24, 2013, Arbitrator McCarthy found the following:

Petitioner sustained a compensable work injury to the left shoulder on November 11, 2011. Petitioner was welding a large window frame and as she removed the frame from the welding machine, she felt a pull and twinge in her left shoulder. Petitioner initially treated at Respondent's company clinic with Dr. Jeff Bower, who provided conservative treatment. Petitioner later started treating with Dr. Sameer Bavishi, who had Petitioner undergo a left shoulder MRI, performed on February 3, 2012, which showed tendinopathy or tendinitis of the left rotator cuff, a possible a small partial thickness tear of the rotator cuff, and minor degenerative changes in the AC joint. Dr. Bavishi opined that Petitioner's left shoulder condition was causally related to the November 11, 2011 work accident. Dr. Bavishi provided conservative treatment, including physical therapy, which failed to alleviate Petitioner's left shoulder pain. Due to the failure of conservative treatment, Dr. Bavishi ordered surgical treatment.

Petitioner underwent a Section 12 examination with Dr. Lawrence Li on March 1, 2012. Dr. Li diagnosed Petitioner as having an acute shoulder strain on chronic left supraspinatus tendinopathy. Dr. Li opined that the strain was caused by the November 11, 2011 accident, but

15IWCC0576

that Petitioner's tendinopathy was a pre-existing condition and not related to the accident. Dr. Li did not feel surgery was indicated for Petitioner.

On April 12, 2012, Dr. Bavishi performed a left arthroscopy on Petitioner's left shoulder with limited arthroscopic debridement and subacromial decompression. Following post-operative care and treatment, Dr. Bavishi released Petitioner to return to work full duty on July 9, 2012. Petitioner testified that she continued to have pain in her left shoulder which she would notice when she used it at work and at home. Petitioner also noted diminished range of motion and loss of strength in the shoulder. Petitioner testified that she could no longer lift big frames and requires help to remove them out of the welder at work. Petitioner explained that while she was able to put separate frame parts in the welder, she was not able to lift the completed window frame out of the welder.

Having found that Petitioner suffered a compensable work accident on November 22, 2011, Arbitrator McCarthy awarded temporary total disability benefits and medical expenses. Arbitrator McCarthy also found that Petitioner suffered a 5% loss of use of the person as a whole as a result of the work accident.

Respondent initially appealed the Arbitrator's decision, but on April 4, 2013, withdrew its appeal. Commissioner Michael Latz dismissed Petitioner's Petition for Review on April 12, 2013.

After reviewing the record in its entirety, the Commission grants Petitioner's Petition for Review under Sections 19(h) and 8(a), finding that Petitioner's left shoulder condition has materially worsened to the extent of an additional 15% loss of use of the person as a whole. The Commission further finds that Petitioner has proven entitlement to additional benefits, specifically left shoulder surgery and temporary total disability benefits pursuant to Section 8(a) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner argues that Petitioner's current, worsened condition of ill-being is causally related to the November 11, 2011 accident and is, therefore, entitled to additional benefits pursuant to Sections 19(h) and 8(a).

As explained by the Illinois Supreme Court in Gay v. Industrial Commission, 178 Ill. App. 3d 129, 132 (1989):

> "The purpose of a proceeding under section 19(h) is to determine if a petitioner's disability has "recurred, increased, diminished or ended" since the time of the original decision of the Industrial Commission. (Ill. Rev. Stat. 1985, ch. 48, par. 138.19(h); *Howard v. Industrial Comm'n* (1982), 89 Ill. 2d 428, 433 N.E.2d 657.) To warrant a change in benefits, the change in a petitioner's disability must be material. (*United States Steel Corp. v. Industrial Comm'n* (1985), 133 Ill. App. 3d 811, 478 N.E.2d 1108.) In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine if the petitioner's position has changed materially since the time of the Industrial Commission's first decision. (*Howard*, 89 Ill. 2d 428, 433 N.E.2d

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> 657.) Whether there has been a material change in a petitioner's disability is an issue of fact, and the Industrial Commission's determination will not be overturned unless it is contrary to the manifest weight of the evidence. *Howard*, 89 Ill. 2d 428, 433 N.E.2d 657; *United States Steel Corp.*, 133 Ill. App. 3d 811, 478 N.E.2d 1108."

The Commission notes that following the original arbitration hearing, Petitioner returned to work for Respondent in May of 2012 in the same capacity she worked prior to the November 11, 2011 accident. However, in October of 2012, Petitioner started noticing pain in her left shoulder similar to the pain she had following the work accident. She eventually returned to Dr. Bavishi who noted that Petitioner had suffered a recurrence of her left shoulder pain. (PX1) Dr. Bavishi found that Petitioner seemed to have aggravated her left shoulder condition "when she returned to work." Dr. Bavishi further found that Petitioner's pain was "related to her initial work as she has not had any interim injury to the shoulder." A July 22, 2013 MRI showed that Petitioner had a partial tear of the supraspinatus tendon anteriorly near the tendon insertion, mild supraspinatus tendinopathy, and minimal subacromial bursitis. (PX2) On August 8, 2013, Dr. Bavishi performed a left shoulder arthroscopy with limited debridement of the labrum, open rotator cuff repair, and open biceps tenodesis. (PX3) After post-operative conservative treatment, Dr. Bavishi released Petitioner to return to work without restrictions on February 24, 2014.

Respondent had Dr. Raab prepare a records review report in which Dr. Raab ultimately found that Petitioner's second surgery and ongoing left shoulder pain is not causally related to the November 11, 2011 accident, but is instead causally related to her pre-existing degenerative disease in the left shoulder. (RX1) However, the Commission notes that Dr. Raab seemed to forget his initial finding that Petitioner's left shoulder pain appeared to be related to the rotator cuff, which is the site of the November 11, 2011 injury.

At hearing, Respondent noted that Petitioner sought treatment from Dr. Bavishi regarding the return of her left shoulder pain around the same time she was reprimanded and, in essence, fired from Respondent's employ. However, Petitioner testified that her pain returned in October of 2012, but failed to improve in time, leading her to seek treatment. This testimony is unrebutted and is supported by the history taken by Dr. Bavishi on June 5, 2013. (PX1) There is also no question that her failure to improve led to a second left shoulder surgery.

Based on the totality of the evidence, The Commission finds that Petitioner has established that she suffered a recurrence of her left shoulder condition caused by the November 11, 2011 accident. The Commission further finds that Petitioner has also established, based on the diagnostic findings and the opinions of Dr. Bavishi, that Petitioner's need for the second left shoulder surgery was causally related to the recurrence, and in turn to the original accident. Therefore, the Commission finds that Petitioner is entitled to payment of that second surgery by Respondent, along with the prescribed physical therapy following surgery, totaling $38,793.77, as well as temporary total disability benefits from August 8, 2013 through February 24, 2014, when Dr. Bavishi released Petitioner to return to work without restrictions.

Regarding Petitioner's claim that she has suffered a material increase of her disability, the Commission notes that Petitioner has been released to full duty work without restrictions, which is what she had been released to prior to the recurrence of her condition. Petitioner testified that while she continues to have pain in her left shoulder and limited use of the left shoulder, she is

able to perform her work duties for her new employer. On June 6, 2014, Dr. Bavishi indicated that "it may take up to 1 year to regain full strength and use of the shoulder." (PX1)

Considering Petitioner's need for additional treatment, including surgery, and ongoing left shoulder symptoms, the Commission finds that Petitioner has suffered a material worsening of her condition under Section 19(h) of the Act to the extent of an additional 15% loss of use of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION Petitioner's 19(h) and 8(a) Petition is granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $433.33 per week for a period of 28-5/7 weeks, from August 8, 2013 through February 24, 2014, 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 pay medical expenses totaling $38,793.77, pursuant to Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $390.00 per week for a further period of 75 weeks, as provided in Section 8(d)2 of the Act, for the reason that the injuries sustained caused the 15% loss of use of the person as a whole.

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

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

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

DATED: JUL 23 2015
MJB/ell
O-06/22/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SCROGGINS, JULIE A
Employee/Petitioner

Case# **12WC008022**

SIMONTON WINDOWS
Employer/Respondent

15IWCC0576

On 1/24/2013, 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:

0157 ASHER & SMITH
CRAIG SMITH
P O BOX 340
PARIS, IL 61944

2965 KEEFE CAMPBELL BIERY & ASSOC
WRIGLEY
119 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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

☐ 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

JULIE A. SCROGGINS
Employee/Petitioner

v.

SIMONTON WINDOWS
Employer/Respondent

Case # **12** WC **08022**

Consolidated cases: _____

15IWCC0576

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 **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Urbana**, on **12/20/2012**. 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 **11/11/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**33,800.00**; the average weekly wage was $**650.00**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **0** dependent children.

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

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

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

Respondent is entitled to a credit of medical bills paid by its group carrier under Section 8(j) of the Act, and shall hold the Petitioner harmless from all claims which may be made against her by virtue of the payments.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $433.33/week for 13 weeks, commencing February 22, 2012, through May 23, 2012, as provided in Section 8(a) of the Act, for a total of $5,633.29.

Respondent shall pay Petitioner permanent partial disability benefits of $390.00/week for 25 weeks, because the injuries sustained caused the 5% loss of a person as a whole, as provided in Section 8(d)(2) of the Act.

Respondent shall pay reasonable and necessary medical services of $15,942.74, as provided in Section 8(j) of the Act, subject to the Fee Schedule.

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.

D. D. McCarthy
Signature of Arbitrator

Jan. 16, 2013
Date

JAN 24 2013

FINDINGS OF FACT:

The parties stipulated that the Petitioner was an employee of the Respondent on November 11, 2011. They further stipulated that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act.

The Petitioner, Julie A. Scroggins (hereinafter referred to as Petitioner) testified she had been an employee of the Respondent since 1996, and on November 11, 2011, she was a Group Leader. She said that the position allowed her to choose the job she would perform each shift. She testified that she was working evening shifts. She went to work on the evening of November 11, 2011, and completed her work shift at approximately 2:30 to 3:00 a.m. on November 12, 2011. On that shift, she worked on the retro frame line welding window frames of various sizes. As she was welding large window frames, referred to a sliders and end vents when she felt a pull and twinge in her left shoulder as she lifted the window frame out of the welding machine. The window frame measured approximately 100 inches in width and 59 inches in height. She testified that due to the size of the frames, they are harder to lift than the double-hung frames which are 27.75 inches in width and 69.3 inches in height. She has to use both of her hands and her knees in order to left the large sliders from the machine, and that is when she felt a pain and a twinge in her left shoulder.

She continued to work that evening, and then went home and slept for approximately 2 hours. Upon waking, she noticed continued pain in her left shoulder, and she continued to notice that pain until she went to work on Monday, November 14, 2011. At that time, she reported the accident, and prepared an Incident Report with her Supervisor and Team Leader, Jim Kimball. (Petitioner's Exhibit 1.)

On November 15, 2011, the Company Nurse, Todd Brewer, set up an appointment for Ms. Scroggins to see Dr. Jeff Brower, a Family Medicine Specialist, who has a contract with Simonton Windows to provide on-site services, typically two times per month to see employees at the Simonton Windows' site in Paris, Illinois. (Brower Deposition, pp. 5, 6.) Dr. Brower's office record of that visit reveal that the Petitioner told him that on Friday night she had welded 97 units, 30 of which were the larger units described above. She said that they were shorthanded, and so the work was performed over a four hour period. She said that she did not have any shoulder symptoms while performing the job that evening, but that she woke up the following day with left shoulder pain. (PX 2) However, Petitioner testified that she told Dr. Brower that she felt a pull and a twinge, and pain in her shoulder while lifting the large window frame. His examination on November 15, 2011, noted that Petitioner had pain with full abduction, which is raising the arm all the way above the head; she had some pain bringing the arm across the chest, which has some significance in certain shoulder conditions, and mild tenderness anteriorly. (Brower Deposition, p. 13, PX 2)

Dr. Brower then saw her again on November 29, 2011, and noted that the Petitioner was starting to demonstrate more signs of impingement. So, he diagnosed left shoulder impingement.

He gave her a steroid injection in her shoulder at that appointment. (Brower Deposition, pp. 18-19.)

Dr. Brower next saw the Petitioner on January 11, 2012. She still had pain with internal rotation. So, he felt that she still had left shoulder impingement. He further noted that the fact that she had not responded to the injection is also good evidence that she had shoulder impingement. (Brower Deposition, p. 19.) At that time, Dr. Brower felt that it was appropriate for the Petitioner to seek treatment from Dr. Bavishi, an orthopedic surgeon in Terre Haute, Indiana. (PX 2)

Petitioner saw Dr. Sameer Bavishi on January 16, 2012. At that time, Petitioner told Dr. Bavishi that she injured her shoulder at work two months ago when she was lifting a large window frame when she felt a sudden pull or twinge in her left shoulder. She said that the pain was not too severe initially but that by the next morning she had quite significant pain with difficulty lifting her arm above her shoulder level. (PX 3.) His impression at that time was primarily shoulder pain. (Bavishi Deposition, p. 6.) At that time, Dr. Bavishi ordered an MRI, which was performed on February 3, 2012. (PX 4) Dr. Bavishi next saw the Petitioner on February 15, 2012, and noted that her MRI showed that there was a tendinopathy or tendinitis of the rotator cuff and possibly a small partial thickness tear of the rotator cuff. He said it further showed minor degenerative changes in the AC joint, and no significant signs of degeneration or osteoarthritis (Bavishi Deposition, p. 7, 19) It was Dr. Bavishi's opinion that her work injury on November 11, 2011, when she lifted a large window frame, caused the injury noted in his diagnosis. (Bavishi Deposition, pp. 7, 8.) He placed her on work restrictions of not lifting more than 10 pounds and no repetitive motions. (Petitioner's Exhibit 12.) At that time, he also recommended that she try anti-inflammatory medication and physical therapy, which was done. (Bavishi Deposition, p. 8.)

When the Petitioner saw Dr. Bavishi on March 28, 2012, she had completed approximately 6 weeks of physical therapy, and really had not seen much benefit. She also had been taking her anti-inflammatory medication, again without significant benefit. (Bavishi Deposition, p. 9.) The Petitioner continued to have pain, especially when lifting her arm above her shoulder level, and Dr. Bavishi discussed proceeding with surgical treatment. (Bavishi Deposition, p. 9.)

On March 1, 2012, the Respondent set up an IME with Dr. Lawrence KD Li. Dr. Li's report contains a history that on November 11, 2011, the Petitioner was loading parts into a machine which basically welds windows, and felt a pull in her left shoulder. She said that she woke up the next morning with pain, and then sought medical treatment. (Respondent's Exhibit 1.) Dr. Li reviewed her earlier treatment records and diagnosed an acute shoulder strain on chronic left supraspinatus tendinopathy. He opined that her shoulder strain definitely was caused by the alleged accident that occurred on November 11, 2011, and that the tendinopathy was pre-existing and not related to the accident. (Respondent's Exhibit 1.) He felt that her exam revealed some symptom magnification, but further stated that he would agree that a 4 to 6 week course of physical therapy would be appropriate. He further noted that surgery currently would not be indicated for the injury in question, and that she could not return to full duty yet because she was still having symptoms from her shoulder strain. (Respondent's Exhibit 1.) The Petitioner testified that she spent approximately 5 minutes with Dr. Li for an examination, and then waited 5 minutes for him to view Respondent's Exhibit 8. (DVD Job Video.)

On April 12, 2012, Dr. Bavishi performed surgery on Petitioner's left shoulder. The procedure performed was left shoulder arthroscopy with limited arthroscopic debridement and subacromial decompression. (Petitioner's Exhibit 6.) His preoperative and postoperative diagnosis was left shoulder impingement syndrome. Dr. Bavishi opined that her left shoulder impingement was causally related to her work injury. (Bavishi Deposition, p. 11.) He further opined that the surgery, which was performed on the Petitioner, was needed as a result of the work injury. (Bavishi Deposition, p. 11.)

Dr. Bavishi continued to follow the Petitioner until July 9, 2012, when she was released to return to full duty.

Ms. Scroggins testified that she missed work from February 22, 2012, until May 23, 2012, when she returned to work under restrictions. Dr. Bavishi's records show that on May 23, 2012, Petitioner's restrictions were no lifting greater than 20 pounds, with left shoulder; no repetitive or overhead work. (Petitioner's Exhibit 12.)

The Respondent called John Richey, Production Manager during the day shift. Mr. Richey testified about the job video admitted into evidence. He said that the video did not show production of the large window frame Petitioner was working on at the time of her injury. He corroborated Petitioner's testimony that the video shows a double-hung window being produced, which is only 27.75 inches in width by 69.3 inches in height. He further admitted that the Petitioner was working on the slider/end vent large window frame, which was approximately 100 inches in width and 59 inches in height, which weighs approximately 17 pounds. Petitioner testified that Respondent's Exhibit 8 did not contain the job she was performing when she injured her left shoulder. She was present when the Company Nurse was preparing the DVD, and she told them that they were not taping the job that she was doing at the time of her injury.

Ms. Scroggins testified that she still has pain in her left shoulder, which she notices when she uses it at work or even at home. She states that she has to rub it, and move it around to relief that pain. She continues to take Tylenol for pain relief. She further noted that she has diminished range of motion, and loss of strength. She testified that she cannot lift the big frames and has to have someone help her at work to get them out of the welder; she is able to put the separate frame parts in the welder, but is not able to lift the completed window frame out.

When she last saw Dr. Bavishi for treatment on July 9, 2012, she reported that her pain comes and goes. She had completed physical therapy, and had been back to work with restrictions since May 23, 2012. His examination showed full range of motion and normal strength, and she was told to follow up as needed. There is no evidence of any follow up treatment by any medical provider.

CONCLUSIONS OF LAW:

Based upon the evidence presented at arbitration, the Arbitrator concludes that the Petitioner did establish that Petitioner sustained injury that arose out of and in the course of her employment by the Respondent.

Petitioner testified that she was unloading a large frame from her machine at around 3:30 A.M. on her Friday shift, which began at 7:00 PM. The evidence shows that the frame weighted approximately 17 pounds, and the Petitioner testified that she lifted it with her left arm underneath, up and out of the machine. Her supervisor's report indicates the frame would have to be lifted about eight inches to be removed. She said that as she lifted, she felt a pull and twinge in her left shoulder, which felt like a rubber band being stretched. She finished her shift, went home and slept, and when she woke up her shoulder hurt. There is no indication that she did anything to injure the shoulder over the week-end.

There is no evidence that she had any prior problems with the left shoulder. Medical records show that she received treatment for pain in her wrists and elbows from the plant physician, Dr. Brower, in the weeks preceding Nov. 11, and there is no indication that she was having any symptoms referable to her left shoulder.

On the following Monday, she reported her accident to her supervisor Jim Kimball. Mr Kimball did not testify, but the accident report, completed by both he and the Petitioner shows that she reported injuring her left shoulder the Friday before welding on the retro frame line. He indicated that the job required her to lift frames out of the welder, that she welded and lifted 97 total units, and that they had to be lifted approximately eight inches to be removed. He further reported that the Petitioner told him that she did not have any "soreness pain" until Saturday morning. (PX 1)

On Tuesday, she was seen by the Respondent's plant nurse. Again she reported no pain until Saturday morning, but also said she believed her pain was the result of working on the retro frame line on Friday. (RX 2) She saw Dr. Brower the same day and described in detail what she was doing at work on Friday evening. She said that they were shorthanded, and that she welded 97 units, 30 of which were large, over a four hour period. She also told him that her pain began on Saturday morning, but that she believed that it was caused by her work on Friday night. (RX 3 at 42)

Her examination by Dr. Brower revealed findings consistent with an acute injury. She had pain with full abduction, mild pain in the cross arm test, and mild tenderness anteriorly. Dr. Li opined that, based on his review of that examination, the Petitioner had sustained an acute left shoulder strain. (RX 1)

While the Arbitrator is bothered by the fact that the Petitioner apparently told Dr. Bavishi that she had pain on Friday night after lifting the frame, he finds the rest of the evidence not to be contradictory. The Petitioner said she felt a pulling or twinge on Friday when she lifted. She told all three of the company representatives; her supervisor, the nurse and the plant physician that she

Saturday morning. She had no preexisting symptoms, and she had clear evidence of an acute injury when she first saw Dr. Brower.

The Arbitrator finds that the above evidence shows that the Petitioner did sustain an accidental injury while working for the Respondent on her Nov. 11, 2011 evening shift.

On the issue of causation, there are two conflicting medical opinions. Dr. Li believes the accident caused a temporary strain not related to any rotator cuff pathology. Dr. Bavishi testified that there was a relationship between his surgical findings and the Petitioner's accident. His opinion, however, is faulty as it was based upon the fact that the Petitioner's pain began when she lifted the frame instead of the morning after. The Arbitrator believes that the chain of events referred to above and the surgical findings do support the Petitioner's claim of causality.

The Petitioner probably did sustain a strain at work, which resulted in impingement between the top of the supraspinatus tendon and the bottom of the acromion. Dr. Bavishi testified that there was mild fraying of the tendon at that location, which he treated with debridement. He went on to do a standard decompression. The Petitioner had no shoulder symptoms prior to her accident, consistent symptoms which were resistant to conservative care after the accident and improvement after the surgery. In order for Dr. Li's theory to make sense, the Petitioner would had to have shown improvement to the point that her symptoms had resolved prior to her surgical treatment, which was not the case.

In order to sustain her burden of proof, the Petitioner must show that her accident was a cause of the resulting injury. Having found that the accident did occur, the Arbitrator believes the Petitioner has sustained her burden of proof on the issue of causal connection.

The care and treatment Petitioner received from Dr. Bavishi represents reasonable and necessary treatments for her work injury on November 11, 2011. Medical was disputed on the basis of liability, and the Arbitrator incorporates his above findings onto this issue.

Respondent shall pay reasonable and necessary medical expenses of $15,942.74 as provided in Sections 8(a) and 8.2 of the Act, as reflected in Pet's Exhibits 7-11. Respondent is entitled to credit for any amounts paid on the awarded bills by Respondent either directly or through group policy that falls within the purview of Section 8(j) of the Act. To the extent that 8(j) credit exists, Respondent shall keep Petitioner safe and harmless from any and all claims or liabilities that may be made against her by reason of having received such payments pursuant to 8(j) of the Act.

The Petitioner's testimony and the medical records of Dr. Bavishi indicate that Petitioner was temporarily totally disabled from February 22, 2012, through May 23, 2012, representing 13 weeks. The Petitioner is entitled to receive 13 weeks of TTD payments, in the amount of $5,633.29.

On the issue of nature and extent, the Arbitrator must refer to Section 8.1(b) of the Act. The Petitioner was and still is employed as a group leader by the Respondent. She works on the frame line where she was injured from time to time, but is free to choose the job which she wants to

perform on any given shift. She was 48 years old when she returned to work following her surgery, and she was released with no work restrictions. There was no evidence submitted to show any impairment on her future wage earning capabilities.

Her accident caused a strain or sprain of her shoulder resulting in impingement. Her rotator cuff did not show any full or partial tears. She testified to having throbbing pain, restrictions of motion and problems lifting larger window frames, but she has not returned for medical care since her release by Dr. Bavishi. His findings, as noted above, were consistent with a good recovery.

The parties did not submit an AMA impairment report.

Based on the factors set forth in the Act, the Arbitrator awards 5% Person as a Whole disability.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Petra Flores,
Petitioner,

15IWCC0578

vs.

NO: 08 WC 24293

Executive Mailing Service,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 15, 2014, is hereby affirmed and adopted.

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

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

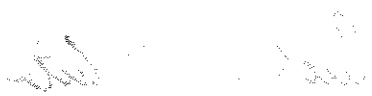
Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $7,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JUL 23 2015
o7/14/15
RWW/rm
046

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin



ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

FLORES, PETRA
Employee/Petitioner

Case# **08WC024293**

15IWCC0578

EXECUTIVE MAILING SERVICE
Employer/Respondent

On 9/15/2014, 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 0.04% 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:

1922 SALK, STEVEN B & ASSOC LTD
FRANK I GAUGHAN
150 N WACKER DR SUITE 2570
CHICAGO, IL 60606

1408 HEYL ROYSTER VOELKER & ALLEN
BRAD ANTONACCI
120 W STATE ST 2ND FL
ROCKFORD, IL 61105

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

STATE OF ILLINOIS)
)
COUNTY OF COOK)

15IWCC0578

ILLINOIS WORKERS' COMPENSATION COMMISSION

CORRECTED ARBITRATION DECISION

PETRA FLORES
Employee/Petitioner

Case #08 WC 24293

v.

EXECUTIVE MAILING SERVICE
Employer/Respondent

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 Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on August 20, 2014. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

A. ☐ Was the 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 the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☒ Was timely notice of the accident given to the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☐ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?

L. ☐ What is the nature and extent of injury?

M. ☒ Should penalties or fees be imposed upon the respondent?

N. ☐ Is the respondent due any credit?

O. ☐ Prospective medical care?

FINDINGS

- On April 9, 2008, the respondent was operating under and subject to the provisions of the Act.

- On this date, an employee-employer relationship existed between the petitioner and respondent.

- In the year preceding the injury, the petitioner earned $16,500.10; the average weekly wage was $317.30.

- At the time of injury, the petitioner was 33 years of age, married with three children under 18.

- The parties agreed that the petitioner received all reasonable and necessary medical services.

- The parties agreed that the respondent paid $1,485.78 in temporary total disability benefits, and $16,397.44 toward medical bills.

ORDER:

- The petitioner's request for temporary total disability benefits is denied.

- The respondent shall pay the petitioner the sum of $300.00/week for a further period of 25 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 5% of the person as a whole.

- The respondent shall pay the petitioner compensation that has accrued from April 9, 2008, through August 20. 2014, and shall pay the remainder of the award, if any, in weekly payments.

- The initial six physical therapy sessions rendered the petitioner, the functional capacity evaluation, the EMG/NCV on May 16, 2008, the September 15, 2008, bilateral L5-S1 epidural steroid injection, the October 6, 2008, left-sided L4-5/L5-S1 transforaminal

epidural steroid injection, the November 15, 2008, bilateral SI joint injections and the physical therapy after her surgery from May 13, 2009, through July 17, 2009, were reasonable and necessary and are awarded. The respondent shall pay the medical bills in accordance with the Act, the medical fee schedule or any prior adjustments or negotiated rate. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.

- The petitioner's request for penalties and fees is denied.

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.

Robert E. Williams

Signature of Arbitrator

September 12, 2014
Date

SEP 15 2014

FINDINGS OF FACTS:

On April 17, 2008, the petitioner received medical care for back pain from Concentra Medical Centers and reported hurting her back while lifting trays on April 9, 2008. The petitioner reported non-radiating bilateral lumbar pain that was acute, moderate, aching and constant and that was aggravated by activity, flexion, extension, touch, movement or standing from a seat. The doctor noted tenderness of the right paraspinous muscles at levels L4 through S1, a decreased range of motion and a negative bilateral leg raise. X-rays were negative for fractures or subluxation. She was treated with medication and modified work duties for a lumbar strain. She reported some improvement on the 21st and was started with physical therapy. She was no better at a follow-up on the 28th.

The petitioner started care at Centros Medicos on May 9th and was treated for mid and lower back pain and stiffness and constant numbness and tingling in her left leg. X-rays revealed biomechanical alteration of her thoracic and lumbar spines and degenerative disc of her thoracic spine. Physical therapy was started at the Neck and Back Clinic on May 12th, at which time, the petitioner reported back and lumbosacral pain with bilateral radiation. An MRI on May 15th was reported to reveal a 4 mm broad-based central herniation at L4-5 and a 7 mm central herniation at L5-S1. A neurologic study on May 16th concluded that there was electrophysiological evidence of acute denervation of the left L5-S1 nerve roots. Dr. Derrick Wallery saw the petitioner on May 19th and assessed multiple disc herniations and radiculopathy. She followed up with Dr. Wallery and later on with Dr. Fernando Perez approximately two to three times per week and received physical therapy two to three times per week through February 17, 2009,

without any reported improvement. She started care with Dr. Francisco Espinosa of Neurological Surgery and Spine Surgery on May 20th, who recommended epidural injections on June 13th and July 18th. The petitioner started care with Dr. Krishna Chunduri of Medicos Healthcare Group on June 19th, who performed epidural injections on September 15th, October 6th and November 5th. Dr. Jain of Pain Care Specialists opined that his discogram procedure on October 29th was positive at L4-5 and L5-S1. On February 20, 2009, Dr. Stanley Fronczak of West Suburban Neurosurgical Associates and Dr. Lorenz performed an L4-5 and L5-S1 discectomy, root decompression and interbody fusion at Adventist Hinsdale Hospital. She received twenty–four physical therapy sessions at ATI Physical Therapy from May 13, 2009, through July 15, 2009. At her last follow-up on August 31, 2009, the petitioner reported improvement. She had a light-duty FCE with a maximum lifting of nineteen pounds occasionally. She was released with the permanent restrictions.

FINDING REGARDING THE DATE OF ACCIDENT AND WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT:

Based upon the testimony and the evidence submitted, the petitioner proved that she sustained an accident on April 8, 2008, arising out of and in the course of her employment with the respondent. Although the job description video shows infrequent and light lifting activities contrary to the petitioner's testimony, her testimony of bending and twisting while lifting is not rebutted. The video shows a worker bending frequently and twisting while bent over to stack trays.

FINDINGS REGARDING WHETHER TIMELY NOTICE WAS GIVEN TO THE RESPONDENT:

The petitioner's supervisor, Irma, was notified on August 17, 2008. The respondent received timely notice of the petitioner's injury.

FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:

The initial six physical therapy sessions rendered the petitioner, the functional capacity evaluation, the May 16, 2008, EMG/NCV, the September 15, 2008, bilateral L5-S1 epidural steroid injection, the October 6, 2008, left-sided L4-5/L5-S1 transforaminal epidural steroid injection, the November 15, 2008, bilateral SI joint injections and the physical therapy after the surgery from May 13, 2009, through July 17, 2009, were reasonable and necessary and are awarded.

The remaining forty physical therapy sessions provided to the petitioner and the physical therapy from August 28, 2008, through November 18, 2008, and from November 21, 2008, through January 2, 2009, were not reasonable or necessary are denied. The therapy provided very limited benefit and was not certified per utilization reviews. The epidural injections provided the petitioner on October 6 and November 5, 2008, the May 15, 2008, lumbar MRI, the October 6, 2008, right-sided L4-5/L5-S1 transforaminal epidural steroid injections, the November 15, 2008, L3-4, L4-5, and L5-S1 bilateral transforaminal epidural steroid injections, the lumbar fusion surgery, the chest X-ray on September 19, 2008, the October 29, 2008, lumbar discography and post-discography CT scan and the lumbar CT scan on March 27, 2009, were not certified per utilization reviews and are denied.

FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that her current condition of ill-being with her lumbar spine is causally related to the work injury on April 9, 2008. Her work duties involved only light lifting with some bending and twisting. The petitioner reported only non-radiating back pain when she initially sought medical care over a week later at Concentra on April 17, 2008. Moreover, it was noted that she had a negative bilateral leg raise. On April 21, 2008, she reported some improvement and positive Waddell's signs were noted. It is not believable that the petitioner sustained more than a lumbar strain/sprain. The petitioner has magnified her symptoms and has over-treated for her injuries. The opinions of the petitioner's medical providers are not consistent with the evidence and are not given any weight.

FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:

Based upon the testimony and the evidence submitted, the petitioner failed to prove that she is entitled to temporary total disability benefits. The petitioner's request for temporary total disability benefits is denied.

FINDING REGARDING THE NATURE AND EXTENT OF INJURY:

The respondent shall pay the petitioner the sum of $300.00/week for a further period of 25 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent of 5% of the person as a whole.

FINDING REGARDING PENALTIES AND FEES:

The petitioner's request for penalties and fees is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Edith Harris,
Petitioner,
vs.
City of Chicago,
Respondent,

NO: 11WC 00167

15IWCC0577

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 medical expenses, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 2, 2014, is hereby affirmed and adopted.

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

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

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: JUL 23 2015
MJB/bm
o-07/21/15

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HARRIS, EDITH
Employee/Petitioner

Case# **11WC000167**

CITY OF CHICAGO
Employer/Respondent

15IWCC0577

On 6/2/2014, 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 0.05% 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:

0226 GOLDSTEIN BENDER & ROMANOFF
DAVID FEUER
ONE N LASALLE ST SUITE 2600
CHICAGO, IL 60602

0010 CITY OF CHICAGO
MICHELLE BRYANT
30 N LASALLE ST 8TH FL
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Edith Harris
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # 11 WC 0167

Consolidated cases: _____

15IWCC0577

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **April 11, 2014**. 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. X 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. X 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. X 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. X 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 **June 8, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**47,904.00**; the average weekly wage was $**921.23**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **0** 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** 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

Claim for compensation denied. Petitioner failed to prove a causal connection between the accidental injuries of December 8, 2010 and her current condition of ill-being.

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

May 30,2014
Date

JUN - 2 2014

15IWCC0577

STATEMENT OF FACTS

Petitioner is employed by Respondent as a personnel assistant.

Petitioner testified that, on December 8, 2010, she was working in that position, operating a computer and felt a shock of electricity through her entire body. The power had gone out in the building and the lights went out. Petitioner said that her hair stood up. She reported the incident.

The first medical treatment was at Mercy Hospital emergency room, where Petitioner received an appropriate work-up for an electrical shock. An EKG was performed and was thought to be normal. Labs revealed a slightly elevated CK level. A physician's note documented complaints of aching and redness in the right forearm, which was said to have resolved. The physical exam of the right arm revealed normal range of motion, with some mild tenderness noted on the inside of the wrist. No bruising or burn was noted. There was no mention of elbow or shoulder complaints or findings. Petitioner was discharged with a diagnosis of electrical shock, right upper extremity from office computer and possible UTI. She was instructed to follow up with her PMD (for the UTI ?) and with MercyWorks. (PetEx. 1)

Petitioner was seen at MercyWorks on December 9, 2010 and December 14, 2010. Mild tenderness in the right forearm was noted. There were no other complaints or findings noted. When she was seen on December 9th, she said that she felt much better than the day before. Petitioner was not taken off work and was released from care, PRN, on December 14, 2014. The bill from Mercy Hospital and MercyWorks appears to have been paid. (PetEx. 2)

Petitioner then had treatment with Dr. Mark Gerber at Fullerton Drake Medical Center, per her testimony from December 20, 2010 through February 3, 2011. The records from Fullerton Drake show that Petitioner was seen on December 18, 2010 with complaints of severe pain and limitation of motion in the right shoulder, elbow and wrist. "Bruising and redness" of the right arm was noted distal and proximal to the elbow. Therapy and a pain consult with Dr. Kiang were recommended by Adam Stone DC. Petitioner had follow up care with Dr. Gerber, who noted right wrist and arm pain and limitation of motion at various times. Petitioner underwent therapy and actually had a bilateral upper extremity EMG/NCS performed by Dr. Kiang on January 13, 2011. The EMG notes a history of "abnormal MRI". The chief complaints are said to be "neck and right arm pain radiating into digits one through four" on the first page of the consultation note and "back and leg, neck and arm pains" on page one of the EMG/NCS study. (PetEx. 4) The claimed bill from Fullerton Drake is $1,687.00. (PetEx. 3)

Petitioner denied prior right arm or shock injuries. She is right handed. She has pain and loss of strength in her right arm. She has trouble sleeping. She has trouble bending her hands. Her hand hurts when she reads. She still works at the same job, typing daily. She has worked full duty since returning to work. She can do her job. She takes Motrin three times a week for hand pain.

Petitioner denied having only forearm complaints at Mercy E.R. and denied that she told the physicians at Mercy Works that she was much better.

Petitioner testified that she was seeing her PMD, "Dr. Vanessa Clubman", for complaints regarding her right arm, although she had no records from this physician. She later said that she had an appointment with this physician and later said that she was going to make an appointment with her.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the following Conclusions of Law.

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

Petitioner did sustain accidental injuries that arose out of and in the course of her employment by Respondent on December 8, 2010 as a result of a minor electrical shock that occurred when she was typing on her computer. The records of Mercy Hospital and MercyWorks support Petitioner's unrebutted testimony on this issue.

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

Petitioner's testimony and the medical records do not support a finding of causal connection. Petitioner's testimony as to her current complaints as, they relate to the accident is not believable. The initial records show a complaint of mild forearm tenderness only. Notably, there was no burn, redness or bruising noted by the physicians at MercyWorks. No elbow or shoulder complaints were noted. Petitioner returned to her regular job shortly after the accident and has continued to work full duty since that time.

The records of Fullerton Drake Medical Center are unpersuasive and do not support Petitioner's claim. The charting of back and leg complaints and regarding a positive MRI (of what?) and the lack of charting of a detailed physical exam on the initial visit of December 18, 2010 (Petitioner testified that it was December 20, 2010 and that is what the bill says) leads the Arbitrator to find the records of this provider to be not credible.

The Arbitrator finds that Petitioner has failed to prove a causal connection between the accidental injuries of December 8, 2010 and her condition of ill-being with respect to her right upper extremity after December 14, 2010, the date of the last visit at MercyWorks. There is no causal connection between the said accidental injuries and her current condition of ill-being, if any.

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

The Parties stipulated that Respondent was entitled to a credit for all bills paid.

The Arbitrator finds that the medical services provide by Mercy Hospital and MercyWorks from December 8, 2010 through December 14, 2010 were necessary to cure or relieve the effects of the accidental injuries of December 8, 2010. It appears from Respondent's Exhibit 1 and Petitioner's Exhibit 2 that these bills have been paid.

The Arbitrator finds that Respondent shall have no liability for the bill from Fullerton Drake because this provider did not provide reasonable and necessary care to Petitioner and the care provided by this facility is not causally connected to the accidental injuries that are the subject of this claim.

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

As the Arbitrator has found that Petitioner failed to prove a causal connection between her current condition of ill-being and the accidental injuries of December 8, 2010, the Arbitrator needs not decide this issue.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANTONIO BALCAZAR,

Petitioner,

15IWCC0579

vs.

NO: 11 WC 13286

CASTLE & COOKE STORAGE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §§8(a) and 19(b) of the Act having been filed by both the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, and medical expenses both current and prospective, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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).

The Arbitrator found that Petitioner proved a condition of ill being of the lumbar spine was caused by a work-related accident on February 25, 2011. He awarded Petitioner 182&3/7 weeks of temporary total disability benefits, and ordered Respondent to authorize and pay for prospective medical treatment including surgery recommended by Dr. Rinella. The Commission concurs with these findings of the Arbitrator as well as the specific award of temporary total disability benefits, and his order to authorize prospective medical treatment. Therefore, the Commission affirms and adopts the Decision of the Arbitrator regarding those issues.

15IWCC0579

The Arbitrator also awarded only two physical therapy visits, pursuant to two utilization review reports both dated July 14, 2014. In the first utilization review report 20 physical therapy sessions for the low and middle back were requested from June 8, 2011 to August 26, 2011 for lumbar radiculopathy. Two physical therapy sessions were certified. It appears that the other sessions were not certified because no functional goals were clearly defined and there was no documented improvement in functionality, in spite of the notations that he was making significant progress. In addition, there was no indication of any flare up of symptoms to justify additional visits. The report also notes that the ODG-TWC recommends up to 10-12 physical therapy visits "over 8 weeks for medical treatment of sciatica, and unspecified thoracic/lumbosacral neuritis/radiculitis or intervetebral disc disorders." To justify additional treatment patients should be formally assessed after "a six-visit clinical trial."

In the second utilization review report 43 PT sessions for the low and middle back were requested from November 17, 2011 to July 20, 2012 for lumbar radiculopathy. None of these requested physical therapy sessions were certified. It appears these sessions were not certified because Petitioner showed no improvement after the 1st round of physical therapy sessions. The report also reiterated the lack of identifiable goals and lack of indication of flare up of symptoms. Finally, the report noted that with Petitioner's extensive previous physical therapy he should be well versed to be able to engage in a home exercise program successfully.

The Commission agrees with the Arbitrator that the physical therapy treatment appears excessive and it was of dubious benefit. Nevertheless, the Commission is not convinced that the limitation to only two physical therapy sessions was adequately explained or justified. The first utilization report itself provides that up to 12 physical therapy sessions were indicated for medical treatment of sciatica, and unspecified thoracic/lumbosacral neuritis/radiculitis or intervetebral disc disorders. In addition, Petitioner testified that the physical therapy did provide some relief, even if only temporarily. The Commission finds that because of initial benefit of the physical therapy the initial request for 20 physical therapy sessions was reasonable and was not outlandishly in excess of the utilization review general recommendation of up to 12 physical therapy sessions. Therefore, the Commission awards payment for 20 physical therapy sessions. However, after it was clear that the treatment was not of substantial lasting benefit after that initial round of physical therapy, continuation of such treatment was no longer reasonable. Therefore, the Commission affirms the denial of all physical therapy after the initial 20 visits.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $352.50 per week for a period of 182.4 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §8(a) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

15IWCC0579

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of 20 physical therapy sessions as for medical expenses under §8(a) of the Act and subject to the applicable medical fee schedule in §8.2 of the Act.

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.

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

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

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

DATED: JUL 23 2015

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-7/15/15
46

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

15IWCC0579

BALCAZAR, ANTONIO Case# **11WC013286**

Employee/Petitioner

CASTLE & COOKE COLD STORAGE

Employer/Respondent

On 11/19/2014, 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 0.07% 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:

1357 RATHBUN CSEVENYAK & KOZOL
LUIS J MAGANA
3260 EXECUTIVE DR
JOLIET, IL 60431

0766 HENNESSY & ROACH PC
LAUREN A SERAFIN
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

15IWCC0579

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

- ☐ 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
19(b)

Antonio Balcazar
Employee/Petitioner

v.

Castle & Cooke Cold Storage
Employer/Respondent

Case # **11** WC **13286**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **New Lenox**, on **October 3, 2014**. 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 15IWCC0579

On the date of accident, **2/25/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**27495.00**; the average weekly wage was $**528.75**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**2430.96** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**2430.96**.

Respondent is entitled to a credit of **any related bills paid through group insurance** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of $352.50/week for 182.4 weeks, commencing 3/11/11 through 3/15/11, and 4/4/11 through 10/3/14, as provided in Section 8(a) of the Act.

Respondent is not responsible for the medical expenses related to Petitioner's physical therapy as set forth in the Respondent's Utilization Review Reports, pursuant to Section 8.7 of the Act. Respondent shall pay all other reasonable and necessary medical services subject to the fee schedule, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall authorize the prospective medical treatment recommended by Petitioner's treating physicians, including the surgery recommended by Dr. Rinella.

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

11/17/14
Date

NOV 19 2014

15IWCC0579

FINDINGS OF FACT

On the day of hearing Antonio Balcazar, Petitioner, testified that he last worked for Castle and Cold Storage, Respondent, in April, 2011. Petitioner indicated that Respondent is a warehouse involved in packaging and distributing food products. Petitioner's position with Respondent involved filling orders, stacking and unstacking pallets and moving merchandise throughout Respondent's facility. Petitioner indicated that he operated sit down and stand up forklifts called "pacers" to move product.

Petitioner indicated that on February 25, 2011, he began his shift at 4:00 p.m. and was operating one of the pacers to fill an order. He described getting a pallet on the other side of the warehouse when the mast of his pacer was unable to clear a doorway and struck a beam of the warehouse. He indicated that the force of the collision caused the mast to tilt backwards. Petitioner described that his body shifted back in the pacer and he struck the upper right portion of his buttocks on a ledge in the back of the pacer. Petitioner demonstrated during his hearing how his right lower back/right upper buttocks region was bent over the ledge by leaning and twisting backwards over a chair. He testified that after this occurred, he backed the pacer up so the mast was not resting on the beam. He sought out his supervisor "Wayne" to report the incident. Petitioner indicated his adrenaline was up and he did not notice any problems with his body.

Petitioner indicated that his supervisor drove him to the Silver Cross Emergency Room after reporting the accident to him. He began to notice discomfort in his lower back region during the ride to the hospital. Upon arrival at the emergency room, he reported right low back complaints since about 8:30 p.m. when his forklift hit a beam. (PX 2) Petitioner was prescribed Flexeril and released home after an examination. (PX 2) Petitioner indicated that he continued to notice pain in his right lower back region after his release home. He continued to work light duty but noticed increasing lower back symptoms. Given his symptoms, he presented to Primary Care on March 1, 2014. He reported the accident at that time and indicated that he was continuing to have right lower back pain. The doctor referred Petitioner to physical therapy, prescribed Flexeril, Motrin and Norco following the examination and gave him a note to excuse him from work for one week. (PX 2)

Following his March 1st doctor's appointment, Petitioner testified that he was involved in a car accident on March 5, 2011 and proceeded to the Silver Cross emergency room. He testified that his vehicle was struck and he noticed mostly neck pain but also noticed an increase in his lower back symptoms. He described that the lower back complaints were the same type but that if they were a 5 on a 1-10 pain scale after the work accident, the car accident caused them to increase to a 7 before they returned to a level of 5. Petitioner reported the low impact car accident and described neck and lower back pain upon his examination at Silver Cross. (PX 2) The attending emergency room nurse also documented Petitioner's work accident and his previous complaints of back pain. (PX 2) The nursing notes documented at the time of his discharge that, "the patient's symptoms have improved." (PX 2)

Petitioner indicated at hearing that his right lower back symptoms were ongoing in March 2011 and he continued treatment at Primary Care. Petitioner indicated on his March 15th appointment that his right lower back pain was improving but that he was still experiencing symptoms. (PX 2) Primary Care again recommended physical therapy, kept him on his previous medications and indicated that he could attempt light duty work. (PX 2) Petitioner testified that as of the March 15th appointment, the medication had

helped his right lower back complaints. He further indicated that after returning to light duty work after his March 15th appointment, he was responsible for pulling food products off pallets to fill smaller orders. To do this, he indicated that he was not operating a fork lift and was getting around Respondent's facility by foot. Petitioner indicated that when working light duty he began to notice a hot sensation in his right lower back area that went into his right leg around mid-afternoon during his shift. He further testified that he noticed that his right leg felt like it was falling asleep.

Petitioner initially presented to Primary Care Physical Therapy on March 28, 2011 after approval from Respondent's insurance carrier. (PX 5) During his initial evaluation, the therapist documented Petitioner's work accident and indicated that Petitioner presented with complaints of right lower back pain moving to his right lateral thigh. (PX 5) Petitioner further reported that the sharp and burning pain in his right lower back and right leg was worse with prolonged standing, bending and lifting. (PX 5) As of his last appointment with the Primary Care physician on April 4, 2011, Petitioner was prescribed ongoing physical therapy and an MRI for his lower back. (PX 5)

Petitioner testified that he was referred from Primary Care to Dr. Blair Rhode at Orland Park Orthopedics. He first saw Dr. Rhode on March 30, 2011 but indicated that was for his neck and "whiplash" complaints that were ongoing after the motor vehicle accident. Dr. Rhode's records reflect that the initial appointment was only for the cervical whiplash injury Petitioner suffered as a result of his motor vehicle accident. (PX 4) Petitioner first saw Dr. Rhode on April 4, 2011 for his ongoing lower back complaints. Petitioner reported the work accident at that appointment and indicated that he had right buttocks pain with numbness to the lateral thigh and calf. (PX 4) Dr. Rhode prescribed Petitioner Soma and Norco, ordered a lumbar spine MRI and indicated that he could not work at that time. (PX 4) As of his next appointment on April 11, 2011, Petitioner had undergone the MRI that Dr. Rhode indicated revealing bilateral foraminal stenosis. (PX 4) Dr. Rhode diagnosed Petitioner with low back pain and lumbar radiculopathy following his examination which demonstrated a positive right straight leg raise. (PX 4) Petitioner testified that he underwent physical therapy at Orland Park Orthopedics as well as a lumbar injection. Although Mr. Balcazar indicated that the injection temporarily relieved his pain, his right lower back and right leg symptoms returned.

Petitioner testified that Respondent initially sent him for a Section 12 independent medical examination on March 10, 2011 with Dr. Monaco. Petitioner indicated that he told Dr. Monaco about the work accident and symptoms. However, he did not receive any workers' compensation benefits of any kind and his treatment was not paid for following that appointment.

Petitioner indicated that he continued with physical therapy throughout 2011 and was kept off of work by Dr. Rhode. Orland Park Orthopedics Physical Therapy notes continually document Petitioner's ongoing and continuing right lower back and right lower extremity symptoms. (PX 4) Petitioner testified that throughout this period his symptoms continued and that therapy only temporarily decreased the symptoms. Dr. Rhode referred Petitioner to Dr. Anthony Rinella at Illinois Spine & Scoliosis Center because of his ongoing complaints. Petitioner first presented to Dr. Rinella on November 7, 2011. (PX 6) Petitioner reported the forklift accident and indicated that he suffered pain in his lumbar spine radiating to his posterior thigh. (PX 6) Upon his physical examination, Dr. Rinella noted that Petitioner had decreased sensation at the L4-S1 distribution level and pain at the L5-S1 level with hyperextension. (PX 6) The doctor noted that Petitioner was suffering from a lumbar strain, lumbar radiculopathy and right

15IWCC0579

L5-S1 facet arthropathy. (PX 6) Dr. Rinella referred Petitioner to Dr. Faris Abushariff for a right L5-S1 facet injection due to his condition. (PX 6) Petitioner again noted that the injection afforded him relief of his symptoms but that it was only temporary. Dr. Rinella indicated that he believed the radiating right leg pain was confirmed by the fact that petitioner did get temporary relief from the epidural steroid injections. (PX 8 at 10)
Petitioner continued following up with Dr. Rhode and physical therapy. He also followed up with Dr. Rinella on February 23, 2012. Petitioner continued with the same complaints and Dr. Rinella, after expressing his concerns that conservative treatment will not improve Petitioner's symptoms significantly, ordered a new lumbar MRI. (PX 6) Petitioner followed up with Dr. Rinella on March 2, 2012 after undergoing the MRI on February 29, 2012. Dr. Rinella indicated that he was able to visualize a far right L5-S1 lateral disc herniation as opposed to the image on the original MRI. (PX 8 at 15) Dr. Rinella diagnosed Mr. Balacazar with right L5 radiculopathy secondary to a right L5-S1 far lateral disk herniation after reviewing the MRI. (PX 6) Given his opinion that the herniation was causing Petitioner's right L5 radiculopathy, Dr. Rinella recommended an L5-S1 transforaminal lumbar interbody fusion. (PX 6) Dr. Rinella indicated Petitioner was to remain off of work and return to him after considering his options. (PX 6)

Respondent sent Petitioner for a Section 12 examination with Dr. Alexander Ghanayem instead of approving the prescribed surgery. Petitioner testified that he saw Dr. Ghanayem on September 24, 2012 and told him about his job and work accident. When asked to describe his visit with Dr. Ghanayem, Mr. Balcazar testified that he described the accident and symptoms exactly as he described them at hearing and he only had about 3 minutes of face to face time with the doctor.

In his report dated September 24, 2012, Dr. Ghanayem indicated that he believed Petitioner sustained an injury when he was jostled in the forklift but that it was nothing more than a strain. (RX 2) As for his review of the MRI, Dr. Ghanayem indicated that there were degenerative changes but no foraminal stenosis or disc herniations. (RX 2) He further indicated that the alleged vehicle accident is "irrelevant relative to his work injury and his lower back claim". (RX 2) Finally, he indicated that Mr. Balcazar has no ongoing disability and requires no further medical care.

Petitioner indicated that he received no further workers' compensation benefits of any kind following his examination with Dr. Ghanayem. Petitioner continued treatment with Dr. Rhode given his ongoing lower back and right leg symptoms. In his note dated December 5, 2012, Dr. Rhode documented Petitioners ongoing symptoms including low back pain and radiculopathy. (PX 4) He further noted that Petitioner had a positive right leg raise and that he continued to wait for authorization for surgery. (PX 4) Petitioner remained off of work at that time.

Petitioner testified that he last saw Dr. Rhode on March 1, 2013. At that time, the doctor documented Petitioner's ongoing lower back pain and increasing radicular symptoms. The doctor kept petitioner off of work, prescribed medication and indicated that he continued to await authorization for surgery. (PX 4) Petitioner testified that he has not returned to Dr. Rhode's office because he has too many accumulated bills. He further indicated that he continues to have significant lower back and right leg pain. When asked to explain, he indicated that it feels like a ball above his right buttocks and heat going down his right leg. Petitioner indicated that he notices the symptoms if he sits, stands or walks too long. He further

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noted that the symptoms are constant.

Mr. Balcazar further testified that he has not returned to work of any kind, that he has not receive any benefits of any kind and that he has had no further treatment of any kind. He testified that Respondent informed him that he no longer was employed by them. He indicated that it is his intention to get the surgery and that he wants to return to Dr. Rinella. He indicated that he wants to undergo the surgery because physical therapy only provided temporary relief.

Respondent offered into evidence, two separate Utilization Review Reports. CorVel completed a Utilization Review on July 14, 2014 to review twenty physical therapy sessions for low back and mid-back from 6/8/11 through 8/26/11. The UR made a determination of a partial certification of two physical therapy sessions to low back and mid-back beginning 6/8/11. (RX 6). CorVel also completed a Utilization Review for forty-three physical therapy sessions to low back and mid-back from 11/17/11 through 7/20/12. The UR made a determination of non-certification of all forty-three physical therapy sessions. (RX 7).

CONCLUSIONS OF LAW

1. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. In support of this finding, the Arbitrator relies on both the Petitioner's credible testimony and the medical evidence of Petitioner's treating physicians. The Arbitrator notes that in defense of this issue, the Respondent relies on their IME physician's opinions that the Petitioner merely sustained a strain which had resolved weeks after the undisputed accident date of February 25, 2011. However, the Petitioner testified that he continued to experience pain that radiated down his back and into right leg. The initial medical records show that the Petitioner had radiculopathy, which comport with Petitioner's testimony. On the other hand, Respondent's IME physicians do not indicate Petitioner's radiculopathy, nor comment on the fact that the epidural injections prescribed by Petitioner's treating physicians appeared to provide some temporary relief for his condition. Respondent's IME physicians also do not indicate that the Petitioner's subsequent motor vehicle had any effect of worsening Petitioner's lower back condition. In comparing the medical evidence in light of the Petitioner's uncontroverted testimony, the Arbitrator is persuaded by the findings and opinions of the Petitioner's treating physicians. Accordingly, the Arbitrator concludes that the Petitioner's current condition of ill-being is causally related to his undisputed work accident from February 25, 2011.

2. Given the Arbitrator's findings with regard to the issue of causation, the Arbitrator further finds that the Petitioner is entitled to TTD from March 11, 2011 through March 15, 2011 and from April 4, 2011 through October 3, 2014. This finding is supported by both the Petitioner's testimony and the Petitioner's treating medical records, which indicate the Petitioner was medically authorized off work for the time periods in question. The Arbitrator notes that the Respondent's denial of TTD is based on the opinions of their IME physicians. However, the Arbitrator finds the opinions of the Respondent's IME physicians are outweighed by both the Petitioner's testimony and the medical evidence.

3. With regard to the issue of medical expenses, the Arbitrator notes that the Respondent offered into evidence Utilization Review Reports that essentially conclude the Petitioner's physical therapy sessions were unnecessary because they did not demonstrate any improvement in Petitioner's condition. Under

15IWCC0579

Section 8.7 of the Act, when payment for medical services has been denied or not authorized by an employer or when authorization for medical services is denied pursuant to utilization review, the employee has the burden of proof to rebut the findings of the utilization review. Petitioner did not offer any direct rebuttal to the findings set forth in the UR reports, nor was there any appeal of these findings. Even by Petitioner's own account, the physical therapy did not appear to improve his condition. Accordingly, the Arbitrator relies on the UR reports in denying only the medical treatment as set forth in those reports – i.e. physical therapy sessions. As for the remainder of Petitioner's medical expenses, the Arbitrator finds those expenses to be reasonable and necessary to treat Petitioner's condition in his low back, in accordance with the Arbitrator's findings with regard to the issue of causation. Accordingly, Respondent shall pay for any and all related medical expenses, subject to the fee schedule, with the exception of those expenses disputed in the UR reports.

4. Based on the findings with regard to the issue of causation, the Arbitrator finds that the prospective medical treatment recommended by Petitioner's treating physician is reasonable and necessary. Accordingly, the Respondent shall authorize said treatment, including the surgery indicated by Dr. Rinella.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Francisco Martinez,

Petitioner,

vs. NO: 13 WC 32387

ABM Janitorial Services,

Respondent.

15IWCC0584

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 medical expenses, prospective medical care, temporary total disability benefits, and permanent partial disability, corrects the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that the Order portion of the Arbitrator's Decision shows an accident date of April 5, 2013; however, the actual accident date, as reflected throughout the record, in all filings, and in the body of the decision, is September 5, 2013. Therefore, the Commission hereby corrects the Arbitrator's Decision to reflect an accident date of September 5, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 26, 2014, is hereby corrected as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner $327.92 per week for a further period of 2.85 weeks, as provided in Section 8(e)(3) of the Act, because the injuries sustained caused Petitioner to sustain a 7.5% loss of use of the left middle finger.

15IWCC0584

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.

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

DATED: JUL 28 2015
MPL/ell
o-06/16/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MARTINEZ, FRANCISCO
Employee/Petitioner

Case# 13WC032387

ABM JANITORIAL SERVICES
Employer/Respondent

15IWCC0584

On 9/26/2014, 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 0.04% 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:

4069 LAW OFFICE OF JONATHAN SCHLACK
200 N LASALLE ST
SUITE 2330
CHICAGO, IL 60601

2461 RYAN BAMBRICK KINZIE & LOWRY PC
GRANT ELLIS MILLER
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

FRANCISCO MARTINEZ,
Employee/Petitioner

Case # **13 WC 32387**

v.

15IWCC0584

ABM JANITORIAL SERVICES,
Employer/Respondent

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 **JESSICA HEGARTY**, Arbitrator of the Commission, in the city of **CHICAGO**, on **July 15, 2014**. 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 **Prospective medical**

FINDINGS

On the date of accident, **4/5/2013**, Respondent *was* operating under and subject to the provisions of the Act. 15IWCC0584

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 for the left middle finger *is* causally related to the accident.
Petitioner's current conditions of ill-being for the left shoulder, neck and back *are not* causally related to the accident.

In the year preceding the injury, Petitioner earned $\$28,419.39$; the average weekly wage was $\$546.53$.

On the date of accident, Petitioner was 56 years of age, *married* with 0 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 $\$ 0$ 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 $\$3,507.56$ under Section 8(j) of the Act.

ORDER

Temporary Total Disability

The Arbitrator finds Petitioner ***is not*** entitled to temporary total disability benefits.

Medical benefits

The Arbitrator finds Petitioner ***is not*** entitled to further medical benefits.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $\$327.92$/week for ___ weeks, because the injuries sustained caused 7.5 % loss of use of the **left middle finger**, as provided in Section 8(e) of the Act.

Penalties

The Arbitrator finds Petitioner is ***not*** entitled to penalties or attorney's fees under Sections 19(k), 19(l) and 16 of the Workers' Compensation Act.

Prospective Medical

Petitioner's request for prospective medical treatment for his low back, bilateral shoulders and neck are denied.

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

9/26/14
Date

ICArbDec p.

SEP 26 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS	)	
	)	ss.
COUNTY OF COOK	)	

FRANCISCO MARTINEZ	)	
	)	
Petitioner,	)	
	)	
	)	No. **13 WC 32387**
	)	
vs.	)	
	)	**15IWCC0584**
ABN JANITORIAL SERVICES	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION
STATEMENT OF FACTS

Petitioner testified that he was hired by Respondent in August of 2011. (R1. 9). His job duties required him to perform cleaning activities such as mopping, taking out garbage, vacuuming, cleaning bathrooms and moving furniture. (R1. 9-10).

On September 5, 2013, Petitioner began his work assignment by cleaning furniture but was later asked to help move an armoire with two co-workers, Arturo Munoz and Norberto Lopez. (R1. 11-13). While moving the furniture Mr. Munoz fell, causing the armoire to land on Petitioner's left middle finger. (R1. 13-14 & 21).

Petitioner testified he mainly had pain in his left middle finger radiating to the top of his left shoulder and left bicep, and in his lower back "a little bit". (R1. 14 & 16). Petitioner finished working the rest of his four hour shift before reporting the accident. (R1. 16-17).

Petitioner testified that the work accident of September 5, 2013, caused left shoulder pain, but not right. (R1. 57). Both Mr. Munoz and Mr. Lopez testified that Petitioner complained of pain only in his finger, not in either shoulder, his low back or his neck. (R2. 67 & R2. 77-78).

Petitioner gave notice of the accident to his supervisor, Hugo Martinez, on the date of the occurrence. The supervisor asked Petitioner the questions from the accident report and filled in the report with the answers Petitioner provided. (R2. 6 & R2. 88). The supervisor translated the answers he wrote back in to Spanish for Petitioner. (*Id.*). Petitioner testified that he told his supervisor about throbbing in his left middle finger and a headache, but no other pain or problems. (R2. 5). The supervisor testified that Petitioner did not mention a headache. (R2. 86). Petitioner mentioned no injury to his shoulder, neck or back. (R2. 91). The accident report reflects only an injury to the left middle finger. (RX3). Only the left middle finger is circled on the diagram on the accident report. (R2. 9). Petitioner testified that he "didn't feel almost anything" in his low back, "did not feel what was hurting me" in his left shoulder and "wasn't thinking what it was that I hurt." (R2. 9). After the form was completed and read back to him, Petitioner signed the report. (R2. 6-7 & R2. 88). *See also* RX 3.

After reporting the injury, Petitioner drove himself to Concentra for medical care. (R1. 17). Petitioner gave a history of injuring his left hand. (R2. 12 & PX1 p.1). X-rays demonstrated a fracture of the terminal phalanx of his left middle finger. (*Id.*). Petitioner testified he had only a headache and finger pain while at Concentra. (R2. 12-13). He was given Ibuprofen and light-duty work restrictions. (PX1, p. 2). He followed-up with Concentra again on September 7, 2013, when he was treated for his left hand. (PX1, p. 3).

Petitioner worked light-duty for two weeks. (R1. 29 & R2. 18). Petitioner reported to the same supervisor while working light-duty. (R2. 91). While working light-duty, the supervisor asked Petitioner how he was feeling. (R2. 97). Petitioner mentioned finger pain. (R2. 92 & R2. 97). Petitioner required no assistance while working light-duty. (R2. 95-96).

On September 12, 2013, Petitioner presented to Dr. Nolan Lewis, a hand surgeon. (PX2, p. 1). Petitioner reported a history of injuring his left middle fingertip when it was crushed by a piece of furniture he was moving. (R2. 15 & PX1, p. 1). Dr. Lewis reviewed x-rays and diagnosed a comminuted tuft fracture of the left middle finger. (PX2, p. 3). Dr. Lewis instructed Petitioner to follow-up in two weeks, but Petitioner did not do so. (PX 2).

On September 24, 2013, Petitioner presented at Cook County Medical Center with a history of two days of urinary frequency, hesitancy and abdominal cramping. (PX3, p. 9). Petitioner also reported catching someone who was losing their balance and having left shoulder pain as a result. (PX3, p. 9). Petitioner was diagnosed with abdominal pain and released. (*Id.*).

Petitioner testified that he went to Cook County Hospital because he "started feeling pain in (his) neck and (his) lower back and (his) shoulder." (R1. 25). Petitioner testified this was the first time he mentioned any pain in his left shoulder or low back to a doctor. (R2. 20).

On September 27, 2013, Petitioner presented to Dr. Ravi Barnabas at Herron Medical Center where a history of wrenching his back and right shoulder was noted. (PX4, p. 1). Petitioner's complaints of pain in his low back and both shoulders were noted. (*Id.*). Petitioner was referred for physical therapy and an MRI for his right shoulder. (R1. 26 & PX4, p. 2). Petitioner was authorized off work. (R1. 50 & PX4, p. 3).

On September 30, 2014, an MRI of the right shoulder revealed rotator cuff tendinopathy, a possible partial thickness tear of the distal supraspinatus tendon and post-surgical changes. (PX5, p.1).

On October 1, 2013, Petitioner presented to Dr. Barnabas who noted Petitioner's complaints of pain to his left shoulder. (PX3, p. 4). Dr. Barnabas referred Petitioner for an orthopedic consultation. (*Id.*).

On October 3, 2013, Petitioner presented to a chiropractor, Dr. Dariusz Bialon who noted a history of the injury to his left middle finger, low back and right shoulder pain that had been increasing since the injury. (PX6, p.1). The chiropractor's office rendered ultrasound, electrical stimulation and therapy through February 6, 2014. (PX6).

On October 21, 2013, Petitioner presented to Dr. Barnabas who noted complaints of left shoulder and low back pain despite physical therapy. Dr. Barnabas ordered left shoulder and low back MRIs. (PX4, p. 9).

On October 23, 2013, an MRI of Petitioner's left shoulder showed a possible partial thickness tear and mild hypertrophic spurring indenting the supraspinatus tendon that likely caused mild-to-moderate impingement. (PX5, p. 2). The low back MRI showed loss of hydration and a 3-4mm posterior disc herniation at L5-S1 without significant spinal stenosis or significant neuroforaminal narrowing. (PX5, p. 3).

On October 25, 2013, Dr. Barnabas recommended Petitioner seek orthopedic and pain management consultations. (PX4, p. 12).

On October 28, 2013, Dr. Giannoulias, an orthopedic surgeon, examined both of Petitioner's shoulders on a referral from Dr. Barnabas. (PX9, p. 1). The doctor noted a history of developing shoulder pain about 10 days after the work accident. (PX9, p. 1). Dr. Giannoulias diagnosed bilateral shoulder impingement and recommended continued physical therapy. (PX9, p. 1).

On November 5, 2013, Petitioner presented to Dr. Ossama Abdellatif who noted a history of lifting the armoire with co-workers when he took the entire weight of the object causing immediate bilateral shoulder, lumbar and cervical discomfort. (PX11, p. 1). Dr. Abdellatif ordered a cervical MRI, lumbar epidural steroid injections, bilateral shoulder injections, trigger point injections, and EMG/NCV, and lumbar facet blocks. (*Id.*). He also authorized Petitioner off work. (*Id.*).

On November 13, 2013, Petitioner underwent an L4-5 epidural steroid injection, facet injections, and bilateral shoulder Marcaine injections. (PX7, pp. 1, 7 &52).

On November 15, 2013, Petitioner underwent a cervical MRI which revealed a 3-4 mm disc herniation at C3-4 and 2-3 mm disc protrusions/herniations at C4-5, C5-6 and C6-7. (PX10, p.1)

Petitioner returned to Dr. Abdellatif on November 21, 2014, reporting a 20% improvement in his back pain. (PX11, p. 5). Dr. Abdellatif recommended further injections and an orthopedic consultation for Petitioner's shoulders. (*Id.*).

Petitioner followed-up with Dr. Giannoulias for his shoulders on November 25, 2013, when Petitioner advised that he was "pretty happy" and Dr. Giannoulias told him to return as needed. (PX9, p. 5). He has no further follow-up visits scheduled with Dr. Giannoulias. (R1. 42).

On November 27, 2013, Dr. Abdellatif repeated the L4-5 epidural injection, facet blocks and a left shoulder Marcaine injection. (PX7, p. 13 & 15). Petitioner returned to Dr. Abdellatif on December 5, 2013, when he reported 40% improvement in his lumbar pain and continued shoulder pain. (PX11, p. 9).

On December 7, 2013, an EMG/NCV was performed revealing a radiculopathy affecting C5-T1 bilaterally and L5-S1 on the right. (PX11, p. 13). Dr. Abdellatif then performed a third epidural injection and another set of facet injections and a trigger point injection on December 11, 2013. (PX7, pp. 24-32). Petitioner reported a 60% improvement in his lumbar pain but continued neck and shoulder pain. (PX 11, p. 15).

On December 18, 2013, Petitioner presented to Dr. Geoffrey Dixon who noted a history of neck, arm, low back and leg pain. (PX8). Dr. Dixon recommended a discogram. (*Id.*).

On January 8, 2014, Dr. Abdellatif performed an epidural steroid injection at C7-T1, cervical facet blocks for Petitioner's cervical facet syndrome, cervicalgia and degenerative disc disease. (PX7, pp. 33-36). Petitioner followed-up on January 14, 2014, reporting a 20% improvement in his cervical pain with 6/10 low back pain and 7/10 bilateral shoulder pain. (PX11, p. 21). Dr. Abdellatif ordered STAT surgical and orthopedic consultations for Petitioner's cervical/lumbar and shoulder complaints. (PX11, p. 23). He also ordered Petitioner off work and recommended work conditioning and an FCE. (*Id.*).

On January 29, 2014, Petitioner consulted with a neurosurgeon, Dr. Sean Salehi, for his low back and neck complaints. (R1. 37, R2. 27 & PX12, p.1). The doctor noted a history of his arms jerking down with the armoire, feeling pain in his neck, shoulders and low back about a week later. Petitioner reported that he was told he needed left shoulder surgery, and denied having any prior neck or low back pain. (R2. 28 & PX12, p.1). Dr. Salehi recommended Petitioner repeat the cervical MRI since the prior was of poor quality. (*Id.*).

On February 3, 2014, Petitioner underwent the repeat cervical MRI which showed no change from the prior MRI. (PX10, p. 2).

Petitioner last saw Dr. Salehi on February 13, 2014, with complaints of neck pain into both shoulders and upper arms, and low back pain without radiation into his lower extremities. (PX12, p. 5). Dr. Salehi told Petitioner that if his symptoms were "intolerable," a single level lumbar fusion might be an option. (*Id.*). Dr. Salehi further indicated that if the Petitioner was interested in a lumbar fusion surgery, he should return to discuss the procedure. (Id.). The doctor noted that he is not a surgical candidate for his neck. (*Id.*).

Petitioner has not seen Dr. Salehi since February 13, 2014 and has no further follow-up visits scheduled. (R1. 39). Petitioner testified that he does not want the lumbar fusion surgery mentioned by Dr. Salehi. (R1. 40).

On February 21, 2014, Petitioner presented to Dr. Barnabas who noted complaints of neck pain and Dr. Barnabas encouraged Petitioner to see Dr. Hassan for cervical epidurals. (PX4, p. 21).

Since February, Petitioner has continued to see Dr. Barnabas monthly. (PX4, pp. 22-29). Dr. Barnabas most recently recommended a second surgical opinion for his lumbar spine with a physician at the University of Illinois. (PX4, p. 28).

On March 13, 2014, Petitioner was examined pursuant to Section 12 of the Workers' Compensation Act by Dr. Daniel Troy. (R1. 38-39, R-. 51 & RX10). An interpreter was present for the examination. (R1. 53). This examination took 30 minutes. (*Id.*). Dr. Troy took a history of the incident from Petitioner, who reported bilateral shoulder pain on the date of accident and a warm sensation to his back without pain. (RX10, p. 1). Dr. Troy reviewed all of the records from Petitioner's treatment from a 2010 work injury, and post-2013 records. (RX10, pp. 1-11).

At the time of the examination, Petitioner reported minimal back pain, neck and bilateral shoulder pain. (RX10, p. 11). After performing a physical examination, reviewing all of the medical records and pre- and post-2013 injury imaging, Dr. Troy found no causal connection between the September 5, 2013 work accident and the neck, bilateral shoulder and low back complaints. (RX10, p. 14). Dr. Troy based this opinion on the lack of any complaints of neck, shoulder or low back pain during the first four medical visits. (*Id.*). Dr. Troy found the treatment rendered by Dr. Abdellatif unrelated to the work accident. (RX10, p. 15). He found Petitioner at maximum medical improvement as of September 26, 2013, and found him capable of full-duty work as of that date. (*Id.*).

Prior Workers' Compensation Claim:

Petitioner testified that he had not injuring his left shoulder prior to September 5, 2013. (R1. 43, 57 & 65). However, Petitioner filed an Application for Adjustment of Claim which was assigned case number 10 WC 14714, alleging a work accident on February 9,

2010, resulting in injuries to his left and right shoulders. (R1. 44, R1. 56 & RX1). Petitioner testified in 2011 to ongoing pain in his low back and right shoulder and that he continued to take Naprosyn for pain. (R1. 63-64 & RX12, p. 10). $5,000.00 was paid to Petitioner at the start of the claim. The claim was denied with no further benefits paid until Petitioner settled the case. Case 10 WC 14714 settled on January 30, 2014. (R1. 75-76 & RX 2).

Medical records demonstrate treatment to *both* shoulders from 2010 through 2011. (RX7-9).

When questioned about the prior left shoulder treatment, Petitioner ultimately admitted to both the treatment and pain. (R1. 65 & 67-69). During the present Arbitration hearing, Petitioner denied having shoulder pain prior to the September 5, 2013 accident. (R1. 44). He denied telling co-workers about shoulder problems prior to the September 5, 2013 accident. (R1. 72-73). Petitioner testified that he had no problems with his right shoulder when he started working at ABM. (R1. 45). Petitioner also testified that he had no pain in his left shoulder in the six months prior to the September 5, 2013 work accident. (R2. 30). Arturo Munoz and Norberto Lopez each testified that they worked with Petitioner in the three months prior to the September 5, 2013 work accident. (R2. 66). During that time, Mr. Munoz heard Petitioner talking about his prior shoulder claim almost daily. (R2. 68). Prior to the September 5, 2013 work accident, Mr. Lopez heard Petitioner complain of shoulder pain more than once. (R2. 78-79).

Petitioner admitted low back pain prior to his September 5, 2013 work accident, but claimed he had no treatment recommendations for that condition, nor did he have any work restrictions before the September 5, 2013 work accident. (R1. 46). Medical records from the 2010 injury confirm that Petitioner had physical therapy for both shoulders and his low back at Marque Medicos in 2010. (RX7). A lumbar MRI demonstrated L5-S1 pathology, and surgery was discussed. (RX9, pp. 34-35). Petitioner underwent right shoulder surgery on December 14, 2010, (RX9, pp. 17-19), followed by physical therapy at Accelerated Rehabilitation for his low back and right shoulder in 2010 and 2011. (RX8). He also complained of cervical stiffness to his therapist in January, 2011. (RX8, p. 31). Eventually, he was released from Accelerated Rehabilitation, noting no improvement in his low back pain on March 28, 2011. (RX 8).

Current condition:

Petitioner testified he sustained no other accidents or injuries since September 5, 2013. (R1. 50). He can work around the house, grocery shop, drive, run errands, lift bags of groceries and perform his activities of daily living. (R1. 54-55).

Investigator Dan Smith testified that he performed surveillance of Petitioner on four days: May, 23, 2014; May 28, 2014; June 2, 2014; and June 3, 2014. (RX4). Mr. Smith observed Petitioner exiting his vehicle, driving, walking, pushing a cart containing a child, carrying small bags and watering his yard. Mr. Smith took approximately 40 minutes of video over the course of 20 hours. (R2. 42 & RX5). The only abnormalities

Mr. Smith noticed were in the mornings when Petitioner walked with a slight limp. The limp was no longer present in the afternoons.

The Arbitrator viewed the videotapes taken by Mr. Smith in their entirety. The only times Petitioner demonstrated any abnormalities were in the mornings, when he walked with a slight limp. At all other times Petitioner ambulated normally. He could briskly walk for many blocks while pushing a cart containing a child with both arms. He could hold a hose for nearly an hour while manually watering his yard. He demonstrated no difficulties in lifting his arms or holding them away for his body for prolonged periods of time. He also bent at the waist without difficulty. He could stand for more than an hour without demonstrating pain or fatigue. The Arbitrator notes Petitioner could sit without pain for more than an hour at a time at trial without standing.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision on issues (C) and (E), whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent and whether timely notice was given to Respondent, the Arbitrator finds:

Petitioner testified he injured himself when an armoire fell on his left middle finger. Notice of the accident was given to the supervisor, Hugo Martinez, on the day of the occurrence. Petitioner's two co-workers, Mr. Lopez and Mr. Munoz, confirmed the accident occurred and that notice was given. Based on the totality of the credible evidence, the Arbitrator finds that Petitioner sustained his burden of proving that he both sustained and gave timely notice of an accident arising out of and in the course of his employment with Respondent while working on September 5, 2013.

In support of the Arbitrator's decision on issue (F), whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds:

The Arbitrator finds that Petitioner proved a compensable left middle finger fracture on September 5, 2013. The Arbitrator further finds that Petitioner failed to prove that his lumbar, neck and bilateral shoulder complaints, which Petitioner eventually admitted did not surface for weeks after the work accident, are causally related to the September 5, 2013 accident. The Arbitrator therefore finds that the surgery discussed by Dr. Salehi is not causally related to the work injury.

Petitioner's left middle finger became trapped under an armoire on September 5, 2013. He immediately pulled his finger out from under the furniture, but in the process sustained a comminuted tuft fracture to that finger. He promptly reported an injury to that finger, and that finger only. He immediately sought medical care for that finger, and had consistent finger complaints through at least September 12, 2013. The Arbitrator therefore finds that Petitioner sustained his burden of proving that his left middle finger tuft fracture is causally related to the September 5, 2013 work accident.

While causal connection between the work accident and the left middle finger injury is supported by the trial testimony and medical evidence, Petitioner failed to prove that his bilateral shoulder, neck and low back complaints are causally related to the work accident.

Relative to Petitioner's right shoulder, Petitioner admitted that his right shoulder condition was related to his prior workers' compensation claim, not the present claim. (R1. 57-58). He testified to ongoing right shoulder pain and problems during the Arbitration hearing in case 10 WC 14714 in 2011. (RX12). He voiced no right shoulder complaints to any physician until September 27, 2013, over three weeks after the present accident. (PX4, p. 1). Given the lack of contemporaneous medical history and Petitioner's own admissions that the condition is unrelated, the Arbitrator finds Petitioner's right shoulder complaints are not causally related to the September 5, 2013 work accident.

Relative to Petitioner's neck, the first complaints of neck pain in the medical records were noted on November 5, 2013. (PX11, p.1). The contemporaneous medical records, accident report and medical records for the first two months of treatment fail to mention the neck. Even when Petitioner complained of neck pain in November, 2013, he did not explain any mechanism of injury explaining how his neck was injured. Dr. Troy, who had all of the medical records available to him, credibly opined the neck complaints to be unrelated to the September 5, 2013 work accident. The Arbitrator therefore adopts Dr. Troy's opinion in finding that Petitioner failed to prove his neck condition related to the September 5, 2013 work accident by a preponderance of the credible evidence.

Relative to the left shoulder and low back, Petitioner's co-workers credible testified that Petitioner complained of neither pain nor injury to anything other than his left finger at the time of the occurrence. (R2. 67 & 77-78). Petitioner admitted he did not mention his low back, neck or shoulder complaints to his supervisor. (R2. 5). The supervisor credibly testified that Petitioner reported only an injury to his left middle finger. (R2. 86). The accident report he signed corroborates this. (RX 3). Petitioner testified he "didn't feel almost anything" in his low back on the date of accident. When questioned about why he did not mention his left shoulder pain to his supervisor, he testified he "wasn't thinking what it was that I hurt." (R2. 8-9). Petitioner admitted on re-cross examination that he had no shoulder or back pain for two weeks after the accident. (R2. 32).

Petitioner also gave contradictory histories to various physicians concerning the date of onset for his low back or left shoulder, telling some that this pain began immediately and others that his pain began a week or more later. (Immediate pain: PX4, p.1, PX8. Delayed pain: PX9, p. 1, PX11, p. 1, PX12, p.1,). Petitioner failed to disclose his prior left shoulder and low back complaints and diagnoses to his treating doctors. Given the inconsistencies in both the medical records and in Petitioner's testimony, the Arbitrator cannot rely on Petitioner's representations that he suffered from low back and left shoulder pain on the date of accident.

Petitioner offered no medical evidence addressing causation other than the June 2, 2014 office note from Dr. Barnabas. (PX4, p. 27). In that record, Dr. Barnabas bases his opinions concerning causation upon Petitioner's history of neck, back and shoulder pain since the date of accident. (*Id.*). Since Petitioner admitted this to be untrue at trial, the Arbitrator places no weight on this opinion.

Dr. Troy reviewed all of the Petitioner's medical records. Dr. Troy provided detailed notes of Petitioner's medical records that he reviewed in his report. Dr. Troy based his opinion that Petitioner's neck, low back and bilateral shoulder conditions did not begin for weeks or more after the work accident is supported by the medical records and, after cross examination, Petitioner's own testimony.

Accordingly, the Arbitrator finds that Petitioner's allegations of continuous left shoulder and low back pain from the date of accident forward unreliable. Instead, the Arbitrator relies and places the most weight on the opinion of Dr. Troy and the contemporaneous medical histories, in finding no causal connection between the work accident and Petitioner's low back, neck, right shoulder and left shoulder conditions. Accordingly, the Arbitrator also finds the lumbar fusion discussed by Dr. Salehi to be unrelated to the work accident of September 5, 2013.

In support of the Arbitrator's decision on issue (J), whether the medical treatment was reasonable and necessary and whether the Respondent has paid for reasonable and necessary medical treatment, the Arbitrator finds:

The Arbitrator finds that the Petitioner reached maximum medical improvement for his left middle finger tuft fracture on September 25, 2013. Based on the credible opinion of Dr. Daniel Troy, the Arbitrator finds that the Petitioner is not entitled to payment of any medical expenses after September 25, 2013 as any medical treatment rendered after that date is unrelated to the Petitioner's September 5, 2013 work accident.

As none of the Petitioner's other claimed conditions are causally related to the Petitioner's work accident, the Respondent has paid all reasonable and necessary medical expenses and will not be held liable for medical expenses from any of the providers that treated the Petitioner after September 25, 2013 including, but not limited to, Cook County Hospital, Herron Medical Center, Dr. Sean Salehi, Lakeshore Open MRI and CT, New Life Medical Center and Lakeside Surgery Center.

In support of the Arbitrator's decision on issue (K), whether Petitioner is entitled to prospective medical care, the Arbitrator finds:

The Arbitrator finds that Petitioner reached maximum medical improvement for his left middle finger on September 25, 2013. In so finding, the Arbitrator adopts the credible opinion of Dr. Daniel Troy. No further treatment has been recommended for the left middle finger and therefore no prospective medical treatment is awarded for that finger. Since no other conditions are related to the work accident, Petitioner fails to meet his burden of proving entitlement to any prospective medical benefits, including the lumbar fusion.

In support of the Arbitrator's decision on issue (L), whether Petitioner is entitled to TTD benefits, the Arbitrator finds:

The Arbitrator finds that only the left middle finger condition is related to the work accident. Petitioner worked light-duty from September 6, 2013 through the date he reached maximum medical improvement on September 26, 2014. Petitioner admits that the Respondent accommodated his light-duty restrictions while he recuperated for his left middle finger. (T2. 20). No physician gave Petitioner work restrictions for his left middle finger after September 12, 2014, when Dr. Lewis imposed light-duty restrictions for two additional weeks. (PX2, p. 3).

The medical records and Petitioner's own testimony confirm that Petitioner was authorized off work from September 27, 2013 through the date of arbitration hearing for his low back, shoulder and neck complaints only. (PX4, PX8, PX9, PX11 & R2. 28). Having failed to establish causal connection between these conditions and the present work accident the Arbitrator denies Petitioner's claim for TTD benefits from September 27, 2014 through the date of arbitration.

In support of the Arbitrator's decision on issue (M), whether penalties or fees should be imposed upon Respondent, the Arbitrator finds:

The Arbitrator declines to award penalties or attorney's fees.

In support of the Arbitrator's decision on issue (L), the nature and extent of the injuries, the Arbitrator finds:

Petitioner sustained a hematoma and fracture to his left middle fingertip treated with splinting, medication and activity modification. (PX1 & PX2). Petitioner did not testify to any residual complaints relative to the left middle finger. The most recent medical records show no complaints to the finger. (PX4, p. 28). The Arbitrator finds these injuries caused a loss of use of 7.5% of the left middle finger pursuant to Section 8(e)3 of the Act.

As the Arbitrator finds that Petitioner's neck, low back and bilateral shoulder complaints are unrelated to this accident, the Arbitrator awards no permanent and partial disability for these conditions.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Audelia Velazquez,
Petitioner,

vs.

NO: 11 WC 22136

United Building Maintenance,
Respondent,

15IWCC0586

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, medical expenses, prospective medical expenses, temporary total disability, causal connection and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 5, 2014 is hereby affirmed and adopted.

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

DATED: JUL 28 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:6/4/15
43

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

VELAZQUEZ, AUDELIA
Employee/Petitioner

Case# **11WC022136**

15IWCC0586

UNITED BUILDING MAINTENANCE
Employer/Respondent

On 11/5/2014, 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 0.06% 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:

4998 LAW OFFICES OF HUGO A ORTIZ PC
4440 S ASHLAND AVE
CHICAGO, IL 60609

0445 RODDY LAW LTD
ROBERT DOHERTY
303 W MADISON ST SUITE 1900
CHICAGO, IL 60606

15IWCC0586

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Audelia Velasquez
Employee/Petitioner

v.

Case # 11 WC 22136

United Building Maintenance
Employer/Respondent

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 **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **February 4, 2014**. 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

15IWCC0586

On the date of accident, **May 3, 20011**, 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 not* sustain an accident that arose out of and in the course of employment.

In the year preceding the injury, Petitioner earned $**22,776.00**; the average weekly wage was $**438.00**.

On the date of accident, Petitioner was **46** years of age, *married* with **0** dependent children.

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

Denial of benefits

The Arbitrator denies this claim as he finds no accident occurred that arose out of and in the course of Petitioner's employment by Respondent. All other issues are moot.

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

November 4, 2014
Date

ICArbDec19(b)

NOV 5 - 2014

Audelia Velasquez v. United Building Maintenance
IWCC #: 11 WC 22136

FINDINGS OF FACT

Audelia Velasquez was employed at United Building Maintenance as a maintenance/custodial worker on May 3, 2011. (T-16) She was a member of SEIU Local 1. (T-55) Her regular work shift started at 5:00 p.m. and ended at 2:00 a.m. (T-14) She denied any injuries involving her back, right arm and shoulder, right hand and right knee prior to May 3, 2011. (T-47) Velasquez testified that on May 3, 2011, between approximately 11:00 and 12:00 p.m., (T-30) she only had to finish cleaning the cafeteria in order to complete her job duties. She went into closet J-9, which was depicted in photographs. (Respondent's Group Exhibit 1) (T-17) Velasquez entered the room. She attempted to turn on the light and the light did not go on. She went inside the room and was only approximately a step or two inside the room when she slipped and fell landing on her back. (T60-63) She testified: "My body was all wet; and I looked up and there was water leaking on my head." The closet is about 9 feet deep by 12 feet wide, (T-66) and was entirely filled with water when she fell. (T-65) She tried to get up on two subsequent occasions, the first time falling forward on both knees, but primarily on her right knee, which resulted in a cracking sensation, and then she fell a second time on her right arm and shoulder. (T 19-20,23) She testified that she could not get up because it was too slippery. (T-20) "Everything was wet like as if I had taken a soapy bath.... All my clothes were wet." (T-77) She crawled next to the door and eventually was able to help herself up. (T-25) She further testified that she continued to work but had difficulty bending down and had no strength in her right arm and her knee was cracking and it hurt her to walk. (T-28)

Approximately 15 to 30 minutes after the fall Velasquez was in the cafeteria working. (T-78) She testified that her clothes were completely soaked and her body was covered in soapy liquid. She brought her bucket with her after she fell to the cafeteria. (T-88) Her clothes were still wet and dripping when she saw her supervisor, Eduardo Garcia, walk by. She called out his name and told him that she had slipped and fell in water in the closet. (T-31) Petitioner testified that Mr. Garcia kept walking and called Petitioner a "pig or a slob" and told her that she should clean up the mess in the closet. (T-82, 83) Velasquez continued working and when she went to punch out, she again confronted Mr. Garcia and asked him whether or not he had filled out an incident report. According to Velasquez, Garcia declined and again called Petitioner a pig or a slob in front of other individuals in line to punch out. (T-33, 83)She punched out a little after 2:00 a.m. (T-84) (Rx 3) Her clothes including her shirt, pants and even her undergarments were still wet. (T-85) She got a ride home with Karina Sanchez. (T-96) Petitioner worked the following day according to her time card and again on May 6, 2011. (Rx.3) (T-99)

Petitioner stopped working on May 9, 2011 when she was suspended and then fired for leaving notes with personnel at Northrop Grumman, Respondent's client. (T-102-103) (Rx.4)

Velazquez testified that she pursued a grievance and that she was sexually harassed by Mr. Garcia, her supervisor. (T-104, 105) She told her story to union representatives while they considered a grievance but they did not listen to her. (T-106-110)

Respondent presented testimony from several witnesses. Karina Sanchez testified that she was not working in the area where Petitioner worked on May 3, 2011. She is unaware of Petitioner falling and certainly did not witness any type of accident as they do not work in the same area. (T-130) Karina normally drove Petitioner home. On the night of the accident, Karina was "behind Petitioner" in line to punch out at approximately 2:00 a.m. Sanchez did not observe anything out of the ordinary on Petitioner's clothes and did not see her jeans being wet. (T-140) She recalls that Petitioner was wearing a sweater and/or jacket that was zipped up to her neck. (T-131) Her pants were not dripping or wet. (T-132) They got into a car and Karina drove her home. (T-132) Karina denied that Petitioner ever reported any type of injury and Karina denied that Petitioner was observed limping or favoring any parts of her body on that evening. (T-132)

Velasquez testified that she and Karina did not get along and she and other workers who were with Petitioner in the car driving home at night would sometimes make fun of Petitioner. (T97-98) Ms. Sanchez denied this ever took place. (T-133)

Respondent next presented testimony from Alejandro Estrada. Estrada is another maintenance worker who does not work specifically in the area where Petitioner works. He testified that sometime between approximately 10:00 and 11:00 p.m., he was walking by closet J-9 when Petitioner called out his name and asked him to call her supervisor, Eduardo Garcia, because there was water on the floor in the closet. (T-146) He testified that the light in the closet was on. (T-146) Mr. Estrada identified the location of the water he observed, which was adjacent to a wall but was not all over the floor leading up to the doorway. He identified the area of water in *Respondent's Exhibit 1F.* (T.) He spoke with Ms. Velasquez. She wanted Eduardo to be notified of the water. (T-149) Alejandro called Mr. Garcia and Garcia informed Estrada to clean up the floor. (T-149) Estrada denied that Petitioner ever reported any type of injury to him at this time. He did not observe her clothes to be wet or covered with soap and/or dripping. (T-149)

Later in the shift, Estrada was in the area when Petitioner punched out. She was ahead of him and he never saw her after he observed her in line. When she was in line, he did not see any wet or dripping clothes on Petitioner at that time. (T-156) He acknowledged that he did not watch her the rest of the evening between the meeting outside of the closet in J-9 between 10:30 and 11:00 p.m. until she was in line to punch out. (T-153)

Eduardo Garcia was a supervisor on duty on May 3, 2011. (T-162) He denied ever having an accident reported to him by Ms. Velasquez on that evening. (T-162) All accidents are to be reported to Northrop Grumman and if one is not reported, they have a problem with the building. (T-163) He recalled receiving a phone call from Mr. Estrada about water on the floor of the closet in

J-9. Such location was consistent with the spot Mr. Estrada had marked on *Respondent's Exhibit 1F.* (T-163-164) He believes he received a call between 11:30 p.m. and 12:00 a.m. (T-164) Garcia also denied that Petitioner ever reported any type of a slip and fall occurring to him on that evening. (T-163) He testified that he saw Petitioner approximately four times between seeing the water on the floor on J-9 and Petitioner's departure from the jobsite after she punched out at approximately 2:00 a.m. on the morning of May 4th. (T-165) When she punched out, Velazquez's clothes were not wet or soapy clothes. (T-167) Garcia testified that on none of the four occasions that he saw Petitioner on the floor - - after he looked into Closet J-9 until she punched out - - did Ms. Velasquez ever report any type of injury to him that occurred on or about that date. (T-165) Garcia reviewed *Respondent's Exhibit 3* and noted that Petitioner worked on two subsequent dates. He did not recall Petitioner reporting any complaints of pain or an accidental injury on either of these subsequent dates. (T-168-169)

Petitioner testified that she was notified on May 9, 2011 that she was suspended or fired for complaining about Respondent's personnel to individuals at Northrop Grumman, which was where Respondent was providing cleaning services. (T-103) (Rx. 4) Petitioner admitted that the last page of *Respondent's Exhibit No. 4* was a copy of the notes that she left. Those notes were interpreted at trial and Petitioner complained in those notes that her supervisor was saying things about her to Clarena. (T-170-174) At trial, Petitioner testified that she was being physically harassed and groped by Mr. Garcia on the jobsite. (T-105,105) Garcia specifically denied any type of physical harassment. (T-174-175) He denied receiving any knowledge of any complaints of this nature prior to the hearing. (T-178) The Arbitrator notes that nowhere in *Respondent's Exhibit No. 2,* Petitioner's union grievance records, is there an assertion that she was injured on the job just prior to her termination. Furthermore, the Arbitrator notes that there is no mention of any physical harassment in the investigation that was performed by the Union. (Rx. 2) In addition, there is no mention of any of these allegations about harassment or an injury in the Separation forms completed in Spanish and dated May 9, 2011. These documents were signed by Petitioner. (Rx.4)

Respondent also produced testimony from Sair Pena, who was the day shift supervisor who would be notified of any accident. Ms. Pena denied that any type of accident was ever reported to her. She was present when Petitioner was initially suspended and then ultimately fired on May 9, 2013. (T-194) She interviewed Ms. Velasquez and Velasquez did not report any type of physical harassment. (T-197) From her personal knowledge, she denied that Petitioner ever had problems with Garcia. (T-197, 199)

The Arbitrator notes that Petitioner did not seek medical care and treatment until May 27, 2011. (T-111)(Px.4) Petitioner testified she did not seek medical treatment for twenty-four days because she did not have money. (T-111) She admitted she did not seek treatment on any of the days after her accident until she was fired almost a week later. (T-112) She admitted that when she met with her union representative, Maria, to discuss her grievance issues, she did not tell Maria that she had fallen at work. (T-113)

On May 27, 2011, Petitioner first sought treatment at Grandview Health Partners. Petitioner provided a history of having pain in multiple parts of her body. Petitioner asserted that she fell on a slippery substance at work. The history Petitioner gave to Grandview Health Partners was that she was wringing out a mop when one of the cleaning agents began to drip from one of the dispensers above her head onto her body. She stepped forward, slipped and fell on the fluid on the floor and hit her head on the back of the wall behind her. She swallowed some of the fluid that spilled on her. She stated that she reported the incident to her supervisor, finished her shift and began to feel pain and itchiness later in the shift, which has progressed since that time. (Px.4)

When Petitioner saw Dr. Thurston, a neurologist at Grandview Health Partners, on June 28, 2011 (Px.4), she gave the following history:

"On the date of the injury (5/3/11) patient states she was wringing out her mop in a bucket underneath a dispenser of cleaning fluid when she suddenly lost her footing and slipped on the cleaning fluid that was on the floor around her. She states that when she fell she spilled the bucket of cleaning fluid and water all over and that the cleaning fluid was still flowing out of the dispenser above her on to her body and her face until she was able to move out of the way and get to her feet. She states that the cleaning fluid was very slippery and when she lost her footing her feet slipped out from under her and she fell very suddenly and hard against the floor and the wall striking her head as well as her neck and back, right shoulder and knee. She states she also injured her right hand because her hand was outstretched trying to break her fall." (Px.4)

At the request of Respondent, Petitioner underwent two Section 12 examinations. Dr. Romeo examined Petitioner's right shoulder. (Rx.10, Rx.11) Dr. Gleason examined Petitioner's back. (Rx.12)

CONCLUSIONS OF LAW

In support of his decision relating to issue (C)"Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?", the Arbitrator concludes as follows:

Petitioner testified that she suffered an accident when she entered Closet J-9 at the Northrop Grumman facility on May 3, 2011 between approximately 11-12 p.m. Petitioner testified she attempted to enter J-9, but that when she tried to turn the light on, the bulb was burned out. Alejandro Estrada testified that he was at Closet J-9 and had a conversation with Petitioner about water on the floor between 10:30 and 11:00 p.m. He testified that there was no problem with the light functioning at that time. Eduardo Garcia, Petitioner's supervisor, testified that he was called by Estrada to Closet J-9 between 11:30 and 12:00.

Petitioner further testified that she then stepped inside the room and slipped and fell on what turned out to be water on the floor. Originally, she testified she that she fell almost immediately upon entering the room. She subsequently clarified this and testified that she went deeper into the room and was almost near the sink when she fell. She testified that there was water all over the place, although she testified that there was no light on in the closet and she could not see much in the closet. Petitioner testified that when she tried to get up and was covered with soapy water, she fell twice more. She testified that her clothes were dripping wet until she left work at 2:00 a.m. She testified that even her undergarments were wet at that time. Petitioner initially that after she fell three times, she crawled on the floor out of the closet. She later testified that she actually got up and pulled the cart out of the closet and into the cafeteria.

This history is different than the history of the accident she provided when she first sought treatment at Grandview Health Partners. She saw Dr. Christ on May 27, 2011 and Dr. Thurston on June 28, 2011. The history provided to Dr. Christ was that Petitioner was wringing out one of her mops when a cleaning agent began dripping on her head. As she stepped forward she slipped and fell on the fluid and the floor. She also said she swallowed some of the fluid. Somewhat similarly, the history in Dr. Thurston's records indicates Petitioner was wringing out a mop when she suddenly lost her footing and slipped on the cleaning fluid that was on the floor. In neither of these reports, there is no mention of the room being unlit at the time of the fall and no mention of two subsequent falls in which additional parts of her body were purportedly injured. There was no evidence that Petitioner experienced any problems communicating with the providers of medical care. Therefore, there is no factual basis to assert any language barriers may have existed, despite the fact that Ms. Velazquez testified via an interpreter.

Petitioner testified that she reported the incident to Eduardo Garcia, her supervisor. She testified further that Mr. Garcia did not respond to her and "ignored her." She then testified that Garcia kept walking down the hall even though she told him that her clothes were wet and he told her that she was a "pig or a slob" and that she should clean up her mess in the closet. Garcia specifically denied any type of conversation to this effect. Petitioner testified that her clothes were soaking and dripping wet for the rest of her shift. However, all of Respondent's witnesses denied observing Petitioner with wet, dripping and/or soapy wet clothes that evening.

Petitioner testified that she was in great pain but continued to work the remainder of her shift, which included getting on her knees and cleaning over 100 chairs. She testified that she then punched out and asked Garcia again about completing an accident report at 2:00 a.m. According to Velazquez, other people were present when Garcia declined to fill out an accident report. Petitioner claimed that Garcia again called her a pig or a slob. Eduardo Garcia denied this allegation.

Respondent presented witnesses, Karina Sanchez and Alejandro Estrada, who specifically testified that they were there around 2:00 a.m. and neither of them observed that Petitioner's clothes were wet. They did not see her limping and did they hear her complain to Eduardo Garcia about an

accident when they were in line with her punching out for the evening. Ms. Sanchez even drove Petitioner home and denied that there was any type of an accident reported to her at that time and she did not observe wet and dripping clothes on Petitioner during the ride home. Velasquez testified that Ms. Sanchez and other co-employees who she would ride home with would "make fun of her" at night. Sanchez denied this.

Ms. Sanchez testified that she did not see or hear about Petitioner's falls and further that Petitioner's clothes were not wet when she saw her as they were punching out. However, Ms. Sanchez admitted that Petitioner did not have an obligation to report her work injury to her. Most notably, Ms. Sanchez admitted that she only glanced at Petitioner's clothes for a few seconds, did not touch Petitioner's clothes at all, and only guessed that Petitioner's clothes were not wet when she saw her.

Alejandro Estrada testified that he spoke with Petitioner on the evening of May 3, 2011. He recalled that the conversation took place sometime between 10:30 and 11:00 p.m. The conversation occurred adjacent to the J-9 closet. He also identified that Petitioner was complaining that there was some water on the floor at that time. He identified a small area of water adjacent to a wall as identified on *Respondent's Exhibit 1F.* Mr. Estrada denied that Petitioner was wet and she did not report any fall at that time. Estrada admitted he did not work with Petitioner the rest of the night, although he did see her when she punched out and he again denied that she was wet, soaking or dripping. He testified that if he had seen her that way, he expects that he would have remembered it.

Mr. Estrada testified that when he saw Petitioner between 10 p.m. and 11 p.m., he observed that her clothes were dry. Assuming that Mr. Estrada did in fact see Petitioner at that time, it would have been approximately one hour before the time Petitioner testified her injury occurred. Mr. Estrada testified that he did not see Petitioner again until punch-out time and did not hear Petitioner report her work injury to Mr. Garcia. Mr. Estrada admitted that he did not know if the light bulb was still on after 10:30 p.m. when he last saw Petitioner in the J-9 closet. He further admitted that he would not have been near the J-9 closet at the time Petitioner fell. Most notably, Mr. Estrada admitted that he did not recall many details about that night and did not really get a good look at Petitioner's clothes as they punched out.

Finally, and most importantly, Respondent presented testimony from the supervisor, Eduardo Garcia. Mr. Garcia testified that he was aware of a small area of water accumulating in closet J-9. He said that the area of water was consistent with the area identified by Mr. Estrada in the photo. He testified that as part of his job duties as supervisor, he walks around and he walked past the cafeteria on at least four occasions after he visited the closet at J-9 until that shift ended. He specifically denied having any conversations with Petitioner on any of those occasions wherein she advised him she had suffered an accident and slipped and fell in closet J-9. Garcia further denied having a subsequent conversation with Petitioner at 2:00 a.m. when they were punching out

near his office. He denied calling Petitioner a pig or a slob on these occasions. He also denied ever abusing Ms. Velasquez physically.

Velazquez was suspended on May 9, 2011 for leaving notes in which she complained to Northrop-Grumman personnel. (Rx.4) Petitioner was suspended and ultimately terminated as a result of this infraction. (Rx.5) Respondent presented evidence from Sair Pena, who met with Petitioner and discussed the allegations with her the morning of May 9, 2011. Ms. Pena never received a report of Petitioner being physically harassed or groped as she had alleged at trial. The Arbitrator notes that there is no mention in these reports or Petitioner's subsequent grievance filing of any type of physical harassment, nor is there any mention of a work-related injury occurring on May 3, 2011. (RX. 2, 4 & 5)

The Arbitrator notes that Petitioner testified that she did not seek medical treatment for twenty-four days due to financial reasons. However, she had been a Union member for at least six days and even though she complained of being in severe pain and was taking pills, she did not seek medical treatment.

This case comes down to a finding of credibility. Despite the fact that Petitioner testified to an incident on May 3, 2011, the Arbitrator notes that the details of the incident as she described to Dr. Christ on May 27, 2011 and to Dr. Thurston on June 28, 2011 are markedly different from the way Petitioner testified at the time of trial. Furthermore, the Arbitrator finds Petitioner's testimony to be less credible than the testimony of Eduardo Garcia and Petitioner's co-workers.

The Arbitrator places great weight on the following facts: (1) nowhere in *Respondent's Exhibit No. 2,* Petitioner's union grievance records, is there an assertion that she was injured on the job just prior to her termination (2) Petitioner admitted that when she met with her union representative, Maria, to discuss her grievance issues, she did not tell Maria that she had fallen at work, and (3) Petitioner did not seek medical treatment following her alleged accident for over three weeks.

Based on the foregoing, the Arbitrator finds that Petitioner failed to meet her burden of proof by a preponderance of the evidence that on or about May 3, 2011, she sustained an accident. As such, her claim for benefits is denied. All other issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

☒ 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

Calvin Ross,

Petitioner,

vs. NO. 12WC013956

15IWCC0587

Washington Group International/URS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, notice, and employment relationship, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 2014 is hereby affirmed and adopted.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $4,900.00. 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: JUL 28 2015
SJM/sj
o-7/19/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

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

ROSS, CALVIN
Employee/Petitioner

Case# **12WC013956**

12WC013957

WASHINGTON GROUP INTERNATIONAL/URS
Employer/Respondent

15IWCC0587

On 5/27/2014, 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 0.05% 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:

0564 WILLIAMS & SWEE LTD
JEAN SWEE
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

0299 KEEFE & DePAULI PC
JAMES K KEEFE JR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

15IWCC0587

STATE OF ILLINOIS)
)SS.
COUNTY OF St. Clair)

☐ 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
19(b) 8(a)

Calvin Ross
Employee/Petitioner

v.

Washington Group International/URS
Employer/Respondent

Case # 12 WC 13956

Consolidated cases: 12 WC 13957

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Belleville**, on **3-20-14**. 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, **4-4-12**, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**84,240.00**; the average weekly wage was $**1620.00**.

On the date of accident, Petitioner was **42** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** 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

Medical benefits

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $4,206.00 to McLean County Orthopedics, $282.75 to Advocate Medical Group, and $19.00 to Bloomington Radiology, as provided in Sections 8(a) and 8.2 of the Act.

Respondent is ordered to pay Petitioner $307.25 for amounts paid by his group carrier as Respondent does not receive 8(j) credit.

Prospective Medical Care Under Section 8(a)

Respondent is ordered to authorize the EMG and the bilateral carpal tunnel releases as recommended by Dr. Oakey.

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.

15IWCC0587

Signature of Arbitrator

5/23/14
Date

ICArbDec19(b)

MAY 27 2014

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 42-year-old union plumber and pipefitter, began developing carpal tunnel syndrome during the course of his employment by Respondent, Washington Group International URS (hereafter referred to as URS) between his dates of employment from 7-5-10 through 4-21-11.

Petitioner's union, Local 99, placed him at URS to work at the Conoco Oil Refinery in Wood River, Illinois.

Petitioner worked at URS as a pipefitter from 7-5-10 to 7-24-10 performing hand intensive work preparing pipe for welding installation. Petitioner's work involved lifting carbon steel pipe in 20 foot lengths that weighed up to 50 pounds, using chain pulleys to lift pipes over 50 pounds, using wrenches to ratchet bolts, using cranks, and performing some welding activities.

Petitioner was promoted to a foreman on the "fin fan" deck on 7-25-10. Petitioner said that this was a less physical job than the installation job. As a fin fan foreman, Petitioner ran a crew of approximately 8 workers to install piping to the fifth floor of the oil rigs. Petitioner said that the crew he ran needed to transport piping to the "fin fan" located on fifth floor of the oil rigs. Petitioner said that he and his crew used a chainfall (or pulley) to transport the pipes. Petitioner and his crew would then use bolts and pipe wrenches to secure the pipes and apply flanges.

Petitioner's job as a foreman involved supervision, reading blueprints, writing reports, and assisting his crew. Petitioner worked an average of 1 to 1 ½ hours a day performing pipe fitting duties, such as using cranks, wrenches, and the chainfall, with his crew so the crew could meet production. Petitioner would use a rope and pulley daily to transport heavy tools to the fifth floor.

In the last 2 to 3 weeks that Petitioner worked for Respondent, URS, he performed pipefitter work and steam tubing. Petitioner said that this was physical work which involved installing steam tubing on the existing oil pipes from the ground floor to the fifth floor. Petitioner said that the steam tubing came on a large spool which was approximately 4 foot in diameter. Petitioner would unroll and install up to 50 foot of tubing a time. Petitioner said that 50 foot of tubing weighed approximately 100 pounds (2 pounds a foot). Petitioner said it involved pulling and grasping with his hands throughout his workday.

Petitioner began noticing numbness, tingling, and difficulties gripping with both hands after he began working for Respondent, URS, on July 5, 2010. Petitioner said that he noticed the symptoms in July, August, and September of 2010. Petitioner said that the symptoms began waking him up at night. After Petitioner was promoted to the "fin fan" foreman job, Petitioner noticed numbness and tingling in

his arms when he rested them on the "headache box" studying blueprints as well as when he worked alongside his crew members.

Petitioner worked for GRP Mechanical Company as a foreman from 4-29-11 through 5-4-11 at the Conoco Oil Refinery performing steam tracing work (PX 10, RX 9).

Petitioner worked for co-Respondent, Bechtel Group Inc., at the Conoco Oil Refinery from 5-5-11 through 9-30-11 (see companion case 12 WC 13957). For the first one to one-and-a-half weeks, Petitioner worked as a pipe fitter. Petitioner ran two inch screw pipe with a coworker. Petitioner would lift galvanized piping that was between 1 to 2 inches in diameter into a machine which would thread it. Petitioner used pipe wrenches and other hand tools in this position. Petitioner was then promoted to a working foreman in the hydro crew. As a foreman for Bechtel Group, Inc., Petitioner lifted up to 50 pounds regularly and used his hands to gather materials, such as large bolts and nuts, for the jobs. Petitioner said that he worked 1 to 1 ½ hours per day with his crew spreading flanges and installing bolts in addition to the material gathering.

Petitioner noticed that the discomfort in his hands and arms continued while he worked for Respondent in the companion case, Bechtel Group Inc.

Petitioner worked as a pipefitter for Cherne Contracting at the Conoco Oil Refinery from 10-3-11 through 11-3-11 (PX 10, RX 5). Petitioner continued to experience hand and arm pain.

Petitioner worked as a weld tester for Power Processing Piping on 12-7-11 (PX 10, RX 7).

Petitioner worked as a plumber for Dick Rich Plumbing from approximately 2-1-12, or 2-2-12, through 2-23-12 (PX 10, RX 6). Petitioner performed the job duties of a plumber during this time.

Petitioner worked as a welder for X-treme Mechanical, Inc., on 3-22-12 and 3-23-12 (PX 10, RX 8).

Petitioner testified that his symptoms, which included numbness and tingling into both hands, did not improve after July, August, and September of 2010. Petitioner's symptoms were worse at times and better at other times and seemed to wax and wane. At times, Petitioner's symptoms increased when he was inactive.

Petitioner treated with his family doctor, Dr. Steffan, on 3-26-12. Dr. Steffan took a history that Petitioner was a pipefitter and a welder and has a lot of repetitive motion activities. Dr. Steffan stated that Petitioner had a two week history of numbness and tingling of his arms and that it often occurs when he is inactive. Dr. Steffan stated that Petitioner experienced numbness while riding a motorcycle or with work. Dr. Steffan diagnosed pain in the arms, numbness, shoulder strain, lateral epicondylitis, and carpal tunnel. Dr. Steffan ordered an EKG and an EMG (PX 4, RX 4).

Dr. Steffan referred Petitioner to Dr. Carmichael on 4-4-12. Dr. Carmichael stated that Petitioner had numbness in his hands in the summer of 2011 riding a motorcycle or with work. The EMG was consistent with his bilateral carpal tunnel syndrome. Dr. Carmichael stated that Petitioner works out of the labor hall and would prefer to put off surgery if possible. Dr. Carmichael stated that, given the nature of the work, it seems Petitioner would be a good candidate for a carpal tunnel release (PX 3, RX 3).

Petitioner testified that he learned that his diagnosis was carpal tunnel syndrome after his EMG. Petitioner contacted Respondent, URS, to report a work related injury. Petitioner said that he reported the injury to URS because he believed that his symptoms of numbness and pain had begun when he worked for them. In the Form 45 dated 4-24-12, it states that Petitioner has carpal tunnel from repetitive and constant use of tools (PX 5).

Petitioner filed an Application for Adjustment of Claim with the Workers' Compensation Commission against URS for his bilateral carpal tunnel with a proof of service of 4-12-12 (A.H. 6) and an Application for Adjustment of Claim with the Workers' Compensation Commission against Bechtel Group, Inc., for a bilateral carpal tunnel claim with a proof of service of 4-12-12 (Arb. Ex. 5).

Dr. Carmichael referred Petitioner to Dr. Oakey, an orthopedic hand specialist, on 5-17-12. Petitioner filled out an information sheet stating that this was a work related injury. Petitioner stated that his problem began using his hands doing repetitive work. On 5-17-12, Dr. Oakey took a history that Petitioner began having symptoms in his hands after he began working for URS (Washington Group International) in July of 2010. Dr. Oakey performed an exam which showed positive Tinel's bilaterally and diminished sensation to light touch in the middle finger on the right hand. Dr. Oakey diagnosed Petitioner with carpal tunnel syndrome and recommended a bilateral carpal tunnel release. Dr. Oakey stated that he spoke to Petitioner about what caused his symptoms. Dr. Oakey said that it was his opinion that, as Petitioner's symptoms began after he started working at URS doing repetitive grasping and twisting several hours a day, Petitioner's symptoms were causally related to the work he described to him (PX 2, Respondent, Bechtel Group Inc., RX 3).

Dr. Oakey recommended bilateral carpal tunnel releases on 8-6-12, 9-17-12, 2-18-13, and 8-28-13. On 8-28-13, Dr. Oakey recommended another EMG before proceeding with the surgery (PX 8, RX 8).

Petitioner underwent a Section12 exam with Respondent, Washington Group International, URS, on 2-4-13. Dr. Rotman testified by deposition on 10-29-13. Dr. Rotman testified that Petitioner had informed him that he began working for URS in 2008 and last worked for them in 2010 (Respondents' Exhibit 1, page 8). Dr. Rotman took a history that Petitioner was hired to perform some pipefitting, but after a short stay with the company, he became a supervisor. Dr. Rotman took a history that Petitioner

oversaw a crew and that he assisted them physically when it was needed. Dr. Rotman stated that Petitioner would either lay out the work or would help line up the flanges. Dr. Rotman stated that Petitioner would work with blueprints and fill in as needed and that his work varied. Dr. Rotman stated that Petitioner had to write reports with his hands, but the hardest part of the job was keeping everybody in his crew working (Respondents' joint exhibit 1, page 8, 9). Dr. Rotman took a history that Petitioner's symptoms started in April of 2009, but they got worse the latter part of 2009 (Respondents' joint exhibit 1, page 9).

Dr. Rotman testified that Petitioner's diagnosis was bilateral carpal tunnel syndrome; however, he did not think it was causally related to Petitioner's work at Washington Group International (URS). Dr. Rotman explained that the basis of his opinion was, in part, because Petitioner said that his symptoms began in 2009 and he was not employed by Respondent, URS, at that time. Dr. Rotman also stated that his opinion was based on the fact that Dr. Steffan recorded a two week history of hand pain when he treated Petitioner on March 26, 2012. Dr. Rotman said that if you take either one of these scenarios into consideration, Petitioner was not working for Respondent, URS, and therefore there was no relationship. Dr. Rotman also opined that Petitioner's work activities did not contribute to the development of his carpal tunnel syndrome because Petitioner was not working on a line doing repetitive heavy gripping activities. Dr. Rotman said that Petitioner might occasionally do that type of work, but not all the time (Respondents' Exhibit 1, pages 10, 11).

Dr. Rotman testified that Petitioner's work activities for different employers did not cause his symptoms to become better or worse. Dr. Rotman stated that Petitioner continued to have the symptoms and that he could shake off the numbness and tingling and resume activities but it was getting more difficult for him to do that (Respondents' Exhibit 1, page 11).

On cross examination, Dr. Rotman testified that the use of grinders or hammers would contribute to an aggravation of carpal tunnel. Dr. Rotman testified that heavy, prolonged gripping activities could aggravate carpal tunnel (Respondents' joint exhibit 1, pages 13, 14).

Dr. Oakey testified by deposition taken 8-30-13. Dr. Oakey testified that he was board certified in orthopedic surgery and that his specialty is the upper extremity from the elbow to the finger tips (PX 1, p.p. 4, 5). Dr. Oakey said that Petitioner's EMG confirmed the diagnosis of bilateral carpal tunnel syndrome (PX 1, p.p. 5-7). Dr. Oakey said that he took a history that Petitioner's symptoms of bilateral carpal tunnel started after he began working for Washington International (URS) in July of 2010. Dr. Oakey stated that Petitioner's work required repetitive grasping and twisting several hours a day as a pipefitter or a plumber (PX 1, p. 8).

Dr. Oakey testified that the last time he had treated Petitioner was on 8-28-13. At that time, he suggested that Petitioner undergo another EMG because the last one was a year and a half old and he needed an updated status of Petitioner's electrical status prior to surgery in the event there are any issues that he needed to address surgically (PX 1, p.p. 12, 13).

During the deposition, Dr. Oakey reviewed Dr. Rotman's narrative report and Petitioner's list of employers (contained in PX 10). Dr. Oakey opined that Petitioner's work as a plumber pipefitter likely caused his bilateral carpal tunnel syndrome (PX 1, p. 19). Dr. Oakey stated that, given Petitioner's history to him about when the symptoms began, and Petitioner's work history, that Petitioner's work at Washington Group International (URS) was a cause of the bilateral carpal tunnel Petitioner suffered from (PX 1, p.p. 20, 21).

On cross examination, Dr. Oakey stated that Petitioner's history to Dr. Steffan on 3-26-12 was not consistent with his history on 5-17-12. Dr. Oakey stated that Petitioner's history to Dr. Carmichael on 4-4-12, that the symptoms began in the summer of 2011 was consistent with co-Respondent, Bechtel Group, Inc., being a cause of Petitioner's bilateral carpal tunnel syndrome (PX 1, p.p. 22, 23). Dr. Oakey explained that the basis of his opinion on causality was Petitioner's report to him as to when the symptoms began (PX 1, p. 24). Dr. Oakey stated that there is no way to determine how long a person has had carpal tunnel based on their EMG; however, Petitioner's EMG findings were consistent with the duration of time that his history (of symptoms beginning in July, 2010) reflected. Dr. Oakey stated that Petitioner's symptoms had sort of waxed and waned on the visits that he had had with him since 5-17-12 (PX 1, p.p. 27, 28). On cross, Dr. Oakey stated that Petitioner's symptoms did not get worse between May 17, 2012 and August 6, 2012. Dr. Oakey stated that Petitioner's symptoms seemed static (PX 1, p. 30).

On cross with Respondent in the companion case, Bechtel Group, Inc., (12 WC 013957), Dr. Oakey stated that Petitioner's work as a pipefitter either caused or aggravated the carpal tunnel. Dr. Oakey stated that Petitioner does use tobacco, which can contribute to carpal tunnel; however he is not diabetic, he does not have any problems with his thyroid, and he does not appear obese. Dr. Oakey stated that given these factors, he thinks that certainly the work activity he does is the most causative factor for the development of Petitioner's carpal tunnel (PX 1, p. 37).

Petitioner did not have symptoms of numbness and pain in his hands prior to working for Washington Group International (URS). Petitioner did not have hand pain which woke him up prior to working for Washington Group International (URS).

(C) Did an Accident Occur that Arose Out Of and In the Course of Petitioner's Employment by Respondent?

The Arbitrator finds that Petitioner's work activities as a pipe fitter for Washington Group International/URS placed him at greater risk than the general public and that he established "accident" under the terms of the Workers' Compensation Act.

Petitioner's work as a pipe fitter and as a foreman for Respondent involved hand intensive work involving lifting 20 foot carbon steel pipe, using wrenches to ratchet bolts, using cranks, chain pulleys, and wrenches.

The Arbitrator finds that the general public does not engage in daily activities this rigorous and hand intensive. The Arbitrator therefore finds "accident."

(D) What was the Date of the Accident?

Petitioner testified that he began experiencing bilateral hand pain and numbness after he started working for Respondent, Washington Group International/URS on 7-5-10. Petitioner said that his symptoms were pronounced in July, August, and September, 2010. Petitioner said that, although his symptoms would wax and wane, he had a continuum of pain and numbness after he began working for Respondent, URS, in July, 2010. Petitioner did not seek medical treatment until he treated with Dr. Steffan, his family doctor, on 3-26-12.

Petitioner said that he did not know that he had bilateral carpal tunnel syndrome until after his EMG on 4-4-12.

In *A.C. & S v Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 1999 Ill.App.Lexis 145, 238 Ill.Dec.40, the First District Appellate Court reinstated the Commission's finding of accident even though the date of accident was after the claimant's employment had ended. The First District Appellate Court, relying on *Larson's Workers' Compensation Law*, stated that, "the modern rule allows compensation even when an injury occurs at a time and place remote from the employment if its cause is something that occurs entirely within the time and place limits of employment" (page 2 of the Lexis decision).

In *A.C. & S. v Industrial Commission*, the Appellate Court stated that, in a repetitive trauma case such as carpal tunnel, the manifestation date should be set at the first time the injury and its relationship to the employment became plainly apparent. In the *A.C. & S.* case, the claimant's complaints of carpal tunnel began in the spring of 1993, he was laid off on 6-10-93, he treated with Dr. Schlenker, on 6-17-93, and the Commission found date of accident on 6-22-93. The Commission concluded that the Claimant's

injury would have become plainly apparent to a reasonable person on 6-22-93 and that it was the appropriate date of accident. The First District Appellate Court agreed.

In this case, although Petitioner's complaints began in July of 2010, and continued periodically with waxing and waning symptoms through the date of his first treatment on 3-26-12, the Petitioner knew he had carpal tunnel syndrome on 4-4-12. At that time, Petitioner knew his injury and was able to determine that it was causally related to his work activities with Respondent.

The Arbitrator therefore finds that Petitioner's work accident occurred on 4-4-12.

(E) Was Timely Notice of the Accident Given to Respondent?

The Arbitrator finds that Petitioner's date of accident is 4-4-12.

Petitioner filled out an accident report for Respondent, Washington Group International, on 4-24-12 (PX 5). On 4-12-12, Petitioner's counsel mailed an application for adjustment of claim to Respondent (Arb. Exhibit 6).

Respondent, URS, filled out a Form 45 on 4-24-12.

The Arbitrator therefore finds that Petitioner gave timely notice within the Workers' Compensation Act.

(F) Is Petitioner's Current Condition of Ill-Being Causally Related to the Injury?

The Arbitrator finds that Petitioner's work at Washington Group International/URS, was a contributing cause to the development of his bilateral carpal tunnel syndrome requiring surgery.

The Arbitrator relies on Petitioner's testimony and Dr. Oakey's testimony that Petitioner's symptoms began in July, 2010 after he began to work for Respondent, Washington Group International/URS.

Petitioner's testimony and Dr. Oakey's records reflect that Petitioner's symptomatology began shortly after he started work at URS in July, 2010. The Arbitrator notes that Petitioner's work duties at URS from 7-5-10 through 7-24-10 were labor intensive and involved significant repetitive forceful use of his hands to lift piping, use chain pulleys, use wrenches, and weld. Petitioner performed these work activities throughout his work day.

After Petitioner was promoted to a foreman on 7-25-10, he still performed some physical work as a pipefitter. Petitioner said that as a foreman, he worked an average of one to one-and-a-half hours a day with his crew performing pipefitting duties such as using cranks, wrenches, and the chain fall. In addition to these activities, Petitioner used a rope and pulley daily to transport heavy tools to the fifth floor, he

studied blueprints, and he wrote reports. Petitioner continued to notice symptoms in his hands in July, August, and September of 2010 and stated that the symptoms began waking him up. Petitioner testified at arbitration that he noticed the numbness and tingling in his arms when he rested them on the "headache" box studying blueprints as well as working alongside his crew members.

When Petitioner first met with Dr. Oakey, his orthopedic hand specialist, on 5-17-12, Dr. Oakey discussed Petitioner's work accident and his work duties for Washington Group International/URS. Dr. Oakey volunteered in the 5-17-12 record that Petitioner's work at URS likely caused the symptoms and his carpal tunnel (PX 2, Respondent Bechtel Group Inc.'s, RX 3).

Dr. Oakey testified that Petitioner's work as a plumber pipefitter likely caused his bilateral carpal tunnel syndrome (PX 1, p. 19). Dr. Oakey testified that he reviewed Petitioner's work history (contained in PX 10) and that Petitioner likely developed the carpal tunnel syndrome as a result of his work with Washington Group International/URS (PX 1, p.p. 20, 21).

The Respondent, Washington Group International/URS, had Petitioner evaluated by Dr. Rotman in a Section 12 exam. Dr. Rotman took a history that Petitioner's symptoms began in April of 2009 and that the symptoms got worse in the latter part of 2009. Dr. Rotman opined that there was no causal relationship between Petitioner's work at URS and his carpal tunnel because: 1. Petitioner's symptoms began in 2009 and he was not employed by Respondent; 2. Dr. Steffan gave a two week history of hand pain when he treated Petitioner on 3-26-12; and 3. Petitioner was not working on a line doing repetitive heavy gripping activities (Respondents' Joint Exhibit 1, p.p. 9, 10, 11).

Petitioner testified that when he met with Dr. Rotman, he did not have his notes with him and he thought his work for URS was in 2009. Petitioner testified that his symptoms waxed and waned and that sometimes his symptoms increased when he was not working.

The Arbitrator finds that Dr. Oakey's record of pain beginning in July, 2010 matches Petitioner's testimony and that it is the likely date that Petitioner's symptoms began. The Arbitrator finds that Petitioner's testimony that his symptoms waxed and waned over time is consistent with carpal tunnel and consistent with Dr. Steffan's 3-26-12 record. The Arbitrator further finds that Petitioner's work activities with Respondent, URS, were sufficient to cause or aggravate his carpal tunnel syndrome.

Dr. Oakey testified that Petitioner's EMG findings were consistent with the duration of time that his history of accident reflected. Dr. Oakey stated that Petitioner's symptoms have waxed and waned in the visits that he had with him since then (PX 1, p.p. 27, 28). Dr. Oakey opined that Petitioner's symptoms were static and did not get worse between 5-7-12 and 8-6-12 (PX 1, p. 30). Respondent's doctor, Dr. Rotman also testified that Petitioner's work activities for different employers did not cause his symptoms

to become better or worse. Dr. Rotman testified that Petitioner continued to have symptoms which he could sometimes shake off but it was becoming more difficult for him to do so (RX 1, p. 11).

The Arbitrator relies on Dr. Oakey's testimony and finds that Petitioner's work with Respondent, URS, likely contributed to or caused his carpal tunnel requiring another EMG and surgery.

(J) Were the Medical Services That Were Provided to Petitioner Reasonable and Necessary? Has Respondent Paid All Appropriate Charges for Reasonable and Necessary Medical Services?

Having found that Petitioner's work with Respondent, Washington Group International (URS) was a contributing cause to the carpal tunnel syndrome, the Arbitrator Orders Respondent to pay the following reasonable and necessary medical bills under the fee schedule:

McLean County Orthopedics	$4,206
Advocate Medical Group	$282.75
Bloomington Radiology	$19.00.

Respondent is also ordered to pay Petitioner $307.25 for amounts paid by the group carrier as Respondent does not receive 8(j) credit.

(K) Is Petitioner Entitled to Any Prospective Medical Care?

Dr. Oakey, Petitioner's treating orthopedic surgeon, testified that Petitioner should undergo an EMG prior to performing the bilateral carpal tunnel releases as proposed.

The Arbitrator therefore Orders Respondent to authorize the EMG and the bilateral carpal tunnel releases as this is reasonable and necessary medical care to treat the ill effects of Petitioner's work accident on 4-4-12 with Respondent.

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

☒ 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

Carol Stults,

Petitioner,

vs.

No. 14 WC 08868

15IWCC0568

Villa Health Care West,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, average weekly wage/benefit rates, medical expenses, prospective medical care, temporary disability and permanent disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 5, 2014, is hereby affirmed and adopted.

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

15IWCC0568

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

DATED: JUL 23 2015
o-05/28/2015
SM/sk
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

STULTS, CAROL
Employee/Petitioner

Case# **14WC008868**

11WC028499

15IWCC0568

VILLAGE HEALTH CARE WEST
Employer/Respondent

On 6/5/2014, 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 0.05% 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:

0332 LIVINGSTONE MUELLER ET AL
MARTIN HAXEL
P O BOX 335
SPRINGFIELD, IL 62705

1337 KNELL & KELLY LLC
MATT BREWER
504 FAYETTE ST
PEORIA, IL 61603

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

15IWCC0568

☐ 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

Carol Stults
Employee/Petitioner

v.

Villa Health Care West
Employer/Respondent

Case # 14 WC 08868

Consolidated cases: 11 WC 28499

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on April 10, 2014. 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 March 18, 2011, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $n/a; the average weekly wage was $n/a.

On the date of accident, Petitioner was 60 years of age, single with 0 dependent child(ren).

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

Based upon the Arbitrator's Conclusions of Law attached hereto, no benefits are awarded.

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

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

William R. Gallagher, Arbitrator

June 2, 2014
Date

JUN 5 - 2014

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim which alleged she sustained accidental injuries arising out of and in the course of her employment for Respondent. In 14 WC 8868, the Application alleged that Petitioner sustained an injury to her right knee while pushing a cart on March 18, 2011 (Arbitrator's Exhibit 2). In 11 WC 28499, the Application alleged that Petitioner sustained an injury to her right knee while pushing a cart on June 3, 2011 (Arbitrator's Exhibit 3). Respondent disputed liability in both cases on the basis of accident, notice and causal relationship. There was also a dispute in regard to the computation of the average weekly wage.

Petitioner worked for Respondent as an LPN and her duties consisted primarily of providing care for the residents of Respondent's facility, a nursing home. Petitioner had to administer medications, do insulin checks, deal with the residents, their families and physicians, etc. One of the duties Petitioner was required to perform was pushing a cart on wheels that contained the various medications she administered to the residents. Petitioner testified that the cart was approximately three feet wide, two and one-half feet deep and four and one-half feet tall. Petitioner estimated that when the cart was empty it weighed approximately 50 pounds and when it was loaded with the medications, the total weight was approximately 75 pounds. Petitioner is five foot tall and stated that, because the cart was on wheels, it was reasonably easy to move around the facility. Petitioner stated that she could push the cart using just two fingers.

Sometime in either late February or early March, 2011, carpeting was replaced throughout the entire facility. The alleged circumstances of both accidents are virtually identical, namely, that while Petitioner was pushing the medication cart she had to use an extreme amount of force to get the cart to move because of the increased resistance caused by the new carpeting and, in so doing, she injured her right knee.

In regard to the accident of March 18, 2011, Petitioner testified that while she was in the process of pushing the cart to the dining room, she braced herself against a wall to get additional leverage and that she felt a pain in her right knee. Petitioner stated that this happened at approximately 12:45 PM to 1:00 PM and that she continued to work until she got off at either 2:00 PM or 2:30 PM. As Petitioner was in the process of getting into her car, she experienced further pain to her right knee. Petitioner did not report the accident to Respondent at that time but, later on that evening, Petitioner experienced increased pain and swelling in her right knee.

Because of the symptoms Petitioner was experiencing in the right knee, Petitioner called her immediate supervisor, Pam Smith, and reported the accident to her. Petitioner testified that, in addition to calling Pam Smith, she exchanged text messages with both Pam Smith and Donna Heneghan, the Facility Administrator. Petitioner stated that Heneghan told her that if she turned in a workers' compensation claim that Tutura (the management company that handled Respondent's workers' compensation claims) would "starve her out." Petitioner did not seek any medical treatment following this accident because she had no medical insurance nor did she lose any time from work. Petitioner continued to experience some pain in her right knee when she was pushing the medication cart but stated that it was not constant.

In regard to the accident of June 3, 2011, Petitioner testified that she was pushing the medication cart in the dining room and experienced another onset of pain in her right knee. Petitioner stated that her knee began to swell and she again reported the accident to Pam Smith. That same day Respondent sent Petitioner to Midwest Occupational Health Associates (MOHA). A First Report of Injury was prepared on that same day and this was received into evidence at trial (Respondent's Exhibit 14).

The MOHA record of June 3, 2011, contained the following history: "Carol tells me that she began work this morning and has been pushing a heavy medication cart. This cart is heavy and tall and the floor is carpeted and it requires quite a bit of effort to push it. She was feeling some pain in her right knee all morning, and then while pushing the cart had a sudden increase in pain as well as an onset of swelling. This is to her right knee. Carol tells me that she had a similar episode in March of 2011 where she was pushing this cart and had pain and swelling in her right knee." (Petitioner's Exhibit 3). The MOHA record of that same date also contained a hand written history prepared by a nurse that was consistent with the preceding.

Petitioner was examined at MOHA by Dr. Gregory Clem on June 3, 2011, and he noted that Petitioner had swelling of the knee. The diagnosis was a right knee strain with possible bursitis. Petitioner was authorized to return to work with a pushing/pulling restriction and no kneeling/squatting. Petitioner was prescribed an Ace bandage (Petitioner's Exhibit 3).

In June, 2011, Petitioner was seen on several occasions by Dr. Clem and received physical therapy at Memorial Medical Center. Petitioner's right knee symptoms did not improve and Dr. Clem ordered an MRI scan which was performed on June 27, 2011. The MRI scan was negative for any internal derangement but did reveal some degenerative changes of the horns of the medial meniscus as well as chondromalacia and osteoarthritis of the patellofemoral compartment. Dr. Clem's record of June 30, 2011, noted that he had reviewed the MRI report and that Petitioner had chronic degenerative changes in the right knee for which she would need to obtain treatment through the group insurance carrier. He noted that Petitioner was returned to work to her regular duties as well is the fact that Petitioner had been recently seen by Dr. Dan Adair, an orthopedic surgeon (Petitioner's Exhibit 3).

Petitioner was seen by Dr. Adair on June 16, 2011, and his record of that date included the history of both the March and June, 2011, accidents. Dr. Adair agreed that an MRI scan of the right knee was appropriate. He also noted that Petitioner could not undergo conservative measures such as anti-inflammatory medications or cortisone injections because she was allergic to them.

Dr. Adair saw the Petitioner on July 5, 2011, and she informed him that while she was pushing the medicine cart on July 1, 2011, that she re-aggravated her right knee condition. Petitioner complained of sharp pain and swelling primarily in the medial compartment of the knee. On clinical examination, Dr. Adair found mild effusion and edema throughout the medial aspect of the knee. The range of motion was full but with some crepitation. He reviewed the MRI scan and opined that it revealed degenerative changes of both menisci and chondromalacia. In regard to causality, Dr. Adair's record of that date noted that Petitioner aggravated her right knee conditions while pushing the cart (Petitioner's Exhibit 2).

Dr. Adair saw Petitioner on July 12, 2011, and recommended that she have arthroscopic surgery performed on the right knee. On August 1, 2011, Dr. Adair performed arthroscopic surgery on Petitioner's right knee which consisted of debridement of the medial meniscus, a partial medial meniscectomy and debridement of the medial femoral condyle and patellofemoral joint. Subsequent to the surgery, Petitioner continued treatment with Dr. Adair, who ordered physical therapy. Petitioner's right knee condition did not improve to any significant degree. When Dr. Adair saw Petitioner on October 4, 2011, he recommended that Petitioner perform only light duty work with sitting (Petitioner's Exhibit 2).

Petitioner testified that she applied for unemployment compensation benefits and attempted to find employment within the restrictions imposed by Dr. Adair. Petitioner stated that she attempted to find work in the medical field and applied for jobs at St. John's Hospital, Orthopedic Center of Springfield and SIU Medical School. Virtually all of Petitioner's job search and applications were conducted on-line and she estimated that she applied to at least three employers per week. Petitioner was seen by Dr. Adair on March 9, 2012, and he released her to return to work without restrictions at that time (Petitioner's Exhibit 2). According to the Petitioner, Dr. Adair removed these restrictions at her request. Petitioner continued her job search but without success until she was awarded SSD benefits effective August 1, 2012.

At the direction of the Respondent, Petitioner was examined by Dr. Michael Watson, an orthopedic surgeon, on March 26, 2012. Dr. Watson examined Petitioner and reviewed medical records provided to him by Respondent. In his report of March 26, 2012, Dr. Watson opined that Petitioner had osteoarthritis that pre-existed the accidents of March and June, 2011, but that the accidents caused the condition to become symptomatic and accelerated the need for treatment. He opined that Petitioner was at MMI and had permanent work restrictions of no climbing, no squatting and no kneeling and that she could not push the medicine cart (Petitioner's Exhibit 1; Deposition Exhibit 2). Dr. Watson was deposed on May 28, 2013, by Petitioner's counsel and his deposition testimony was consistent with his narrative medical report (Petitioner's Exhibit 1).

At the direction of Respondent, Petitioner was examined by Dr. Richard Lehman, an orthopedic surgeon, on May 24, 2012. Dr. Lehman examined Petitioner and reviewed medical records provided to him by Respondent. Dr. Lehman opined that Petitioner had pre-existing degenerative arthritis of the right knee which was not caused or aggravated by her work. He also opined that Petitioner was at MMI and could work without restrictions (Respondent's Exhibit 8).

Petitioner denied having any right leg/knee symptoms prior to the March and June, 2011, accidents. Before these accidents, Petitioner was treated by Dr. Gerald Suchomski, for a variety of medical problems. Dr. Suchomski's treatment records for care provided by him to Petitioner from January 12, 2010, through August 5, 2013, were received into evidence at trial. In the record of June 17, 2011, Dr. Suchomski's record noted that Petitioner had right knee pain and sustained an injury in March while pushing something. It was also noted that Petitioner had re-injured it recently. There was no prior reference to Petitioner having right knee pain in those records (Petitioner's Exhibit 5).

On May 11, 1999, Petitioner was seen at Springfield Clinic for right hip pain and the impression was a lumbosacral strain with sciatica. On September 10, 2008, Petitioner was seen at

Springfield clinic for low back pain and was diagnosed with piriformis syndrome. There was no reference to any right knee symptoms (Respondent's Exhibit 2).

At trial, Petitioner testified that she still has significant pain/discomfort in the right knee. She regularly wears a knee brace and applies ice to the knee as needed. Walking is difficult for Petitioner especially on uneven surfaces and she avoids some activities, including golf and gardening.

Pam Smith testified on behalf of the Petitioner. Smith was Respondent's Director of Nursing at the time of both accidents. She stated that in March, 2011, Petitioner called and informed her that she had hurt her knee while pushing a cart; however, she also said that Petitioner told her that her knee "popped" while getting into her car in the parking lot. Smith notified Donna Heneghan of the March, 2011, accident. She agreed that when the new carpeting was installed that it did make pushing the medicine cart across the floor more difficult.

Pam Smith also testified that she was aware of the accident of June 3, 2011, and that Petitioner had injured her right knee while pushing a cart and was sent to MOHA for medical treatment. On May 7, 2012, Smith prepared a report which stated that Petitioner had sent her a text informing her that Petitioner felt her knee pop getting into her car and wanted to know if it would be "workmen's comp." It also stated that this was before the alleged injury occurred while pushing the medication cart (Respondent's Exhibit 15). Smith had no explanation as to why this report was prepared almost one year after the accident of June 3, 2011. Smith has not worked for Respondent since August, 2013, when she walked off the job for some unknown reason.

Roberta Klokkenga testified on behalf of the Petitioner and she previously worked for Respondent as an LPN. She confirmed that Petitioner had difficulties pushing the medicine cart after the new carpeting was installed; however, she agreed that she did witness either accident. Klokkenga is no longer employed by Respondent because she is presently retired.

Donna Heneghan testified on behalf of the Respondent and she is presently the Administrator and Director of Nursing. In 2011, Heneghan was the Administrator. Heneghan testified that it was her understanding that Petitioner injured her knee while getting into her car after work. She stated that when Petitioner reported this to her Petitioner stated she needed it to be covered by workers' compensation because she did not have health insurance. In regard to Smith's departure from Respondent's employment, she stated that Smith left because she did not like the job and had been disciplined for "bad attitude." She also stated that Klokkenga's employment was suspended because she was at work under the influence of alcohol. She did agree that the medicine cart was more difficult to move once the new carpeting was installed.

Jacqui Murphy testified on behalf of the Respondent and stated that she was the Respondent's Business Manager/HR Director. Murphy was responsible for the filing/maintaining of the paperwork regarding workers' compensation cases. She stated that she never changed or altered any of the information contained therein.

Petitioner was recalled to testify in rebuttal and confirmed that her knee did "pop" when she got into her car; however, she stated that this was after she sustained the March, 2011, accident.

There was also a dispute regarding the computation of the average weekly wage. Petitioner testified she worked for Respondent from March, 2010, through December, 2010, as a part-time employee. She then went through a divorce and began working full-time for Respondent in January, 2011. Petitioner was paid $18.26 per hour. Respondent tendered into evidence wage records for Petitioner's earnings from December, 2009, through July, 2011. Petitioner's number of hours worked and earnings increased substantially when she commenced working on a full-time basis in January, 2011.

Petitioner's position is that the average weekly wage should be based solely on the Petitioner's earnings as a full-time employee. From January, 2011, through May, 2011, Petitioner worked a total of 785.3 hours. January 1, 2011, through June 2, 2011, is a period of 21 6/7 weeks, an average of 35.93 hours worked per week. Using an hourly rate of $18.26 per hour, this computes to an average weekly wage of $656.08. Respondent's position is that Petitioner's average weekly wage should also include earnings as a part-time employee and Respondent's position is that this computes to an average weekly wage of $494.57.

Conclusions of Law

In regard to disputed issues (C) and (E) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained an accidental injury arising out of and in the course of her employment for Respondent on March 18, 2011, and that Petitioner gave notice to Respondent of the accident within the time required by the Act.

In support of this conclusion the Arbitrator notes the following:

It was undisputed that Respondent's facility had new carpeting installed in either late February or early March, 2011, and that this caused the task of pushing the medication cart to be much more difficult.

Petitioner's testimony that she reported the accident shortly after its occurrence to her immediate supervisor, Pam Smith, was corroborated by Smith's testimony.

Petitioner acknowledged that she experienced pain and a "pop" in her right knee when she was getting into her car; however, she testified that this was subsequent to the accident that occurred while she was pushing the medication cart which resulted in an injury to her right knee.

The medical records of the providers who treated Petitioner, MOHA, Dr. Suchomski and Dr. Adair, have consistent histories of the Petitioner injuring her right knee in March, 2011, while pushing either a medication cart or something else.

While Pam Smith agreed that she prepared a written statement in May, 2012, (over one year post accident) which stated that Petitioner injured her right knee while getting in her car and that this incident occurred before the accident of pushing the cart, she had no explanation whatsoever as to why it was prepared at that point in time.

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of March 18, 2011.

In support of this conclusion the Arbitrator notes the following:

There is no evidence that Petitioner had any right knee symptoms prior to the accident of March 18, 2011. Petitioner did have some prior right leg symptoms; however, the symptoms were primarily in the right hip and not the right knee.

Petitioner's primary treating physician, Dr. Adair, and Respondent's initial Section 12 examiner, Dr. Watson, both opined that there was a causal relationship between the accidents of March 18, 2011, and June 3, 2011, and the Petitioner's right knee condition. The only medical opinion to the contrary was Respondent's second Section 12 examiner, Dr. Lehman. The Arbitrator finds the opinions of Dr. Adair and Dr. Watson to be more persuasive and credible than that of Dr. Lehman.

In regard to disputed issues (G), (J), (K), (L) and (M) the Arbitrator makes no conclusions of law as these issues are rendered moot.

In support of the preceding the Arbitrator notes the following:

The Arbitrator finds that a determination of the Petitioner's average weekly wage, Respondent's liability for medical services and temporary benefits as well as the nature and extent of disability is not appropriate in this case because Petitioner lost no time from work and obtained no medical treatment until after the accident of June 3, 2011.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

☒ 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

Calvin Ross,

Petitioner,

vs. NO. 12WC013957

Bechtel Group Inc,

15IWCC0588

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, notice, and employment relationship, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 2014 is hereby affirmed and adopted.

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

DATED: JUL 28 2015
SJM/sj
o-7/16/2015
44

Stephen J. Mathis

David L. Gore

Mario Basurto

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

ROSS, CALVIN
Employee/Petitioner

Case# **12WC013957**
12WC013956

BECHTEL GROUP INC
Employer/Respondent

15IWCC0588

On 5/27/2014, 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 0.05% 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:

0564 WILLIAMS & SWEE LTD
JEAN SWEE
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

0180 EVANS & DIXON LLC
DAVID J REYNOLDS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

15IWCC0588

STATE OF ILLINOIS)
)SS.
COUNTY OF St. Clair)

- [ ] 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
19(b) 8(a)

Calvin Ross
Employee/Petitioner

v.

Bechtel Group Inc.
Employer/Respondent

Case # **12** WC **13957**

Consolidated cases: **12 WC 13956**

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Belleville**, on **3-20-14**. 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. [x] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [x] Was timely notice of the accident given to Respondent?
F. [x] 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. [x] 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. [x] 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 _____

15IWCC0588

FINDINGS

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to his work accident with Washington Group International (see companion case 12 WC 13956). The Arbitrator therefore denies this claim.

ORDER

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

5/23/14
Date

ICArbDec19(b)

MAY 27 2014

STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Leah Bryan,

Petitioner,

vs. NO: 11 WC 27041

Bloomington Normal Public Transit Association,

Respondent.

15IWCC0519

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of accident, causal connection, medical expenses, prospective medical care, benefit rates, temporary total disability, permanent partial disability and credit, and being advised of the facts and law, reverses the Decision of the Arbitrator and denies the claim for the reasons stated below.

Petitioner bears the burden of proving each element of her claim by a preponderance of the evidence. Petitioner, a bus driver, testified that on June 11, 2009 she felt a distinct "pop" in her left hip while she was assisting a wheelchair bound passenger.

This incident was followed by pain in her left hip that led her to seek medical attention that same day from Dr. Moore. Petitioner's x-rays showed: "Mild narrowing and spurring of the left hip joint, subchondral areas of lucency involving the left acetabulum and femoral head may be due to areas of erosion." The medical evidence elicited at hearing was that these were chronic findings indicative of at least moderate degenerative osteoarthritis in the left hip.

Petitioner was diagnosed with a left hip sprain and left greater trochanteric bursitis. She was placed on work restrictions. On July 15, 2009 Petitioner consulted Dr. Christopher Rink for an orthopedic consult. He injected the left hip joint with Kenalog and Marcaine and ordered an MRI.

15IWCC0519

The MRI of the left hip was performed on July 21, 2009. The impression was trochanteric bursitis of the left hip with a minimal partial tear of the gluteus minimus tendon near its insertion on the greater trochanter. At least moderate degenerative joint disease of the left hip was present with minimal degenerative change in the right hip.

Dr. Rink prescribed physical therapy. Petitioner was discharged for non-compliance on August 18, 2009. On August 23, 2009, Petitioner was returned to work full duty by Dr. Rink. She returned to Dr. Rink on September 4, 2009 and reported that she was tolerating her activities well.

On November 5, 2009 Petitioner complained to Dr. Rink of hip pain that was prominent in cold weather. She was assessed as stable with good range of motion and good strength with resisted hip movements. She was directed to return as needed.

Petitioner sought no further medical attention from Dr. Rink. Dr. Rink authored a report at the request of Petitioner's counsel. The April 26, 2010 report concluded that it was not anticipated that Petitioner would have long term disability related to her June 11, 2009 injury and she was not scheduled for any follow-up.

Petitioner's family physician was Dr. Steve Kindred. It is notable that in the records of Dr. Kindred there is a June 24, 2010 reference to a fall that Petitioner sustained in her home resulting in injury to her right shoulder and arm significant enough that Petitioner reported she had been to the emergency room three days prior and was not able to steer the bus. There are no medical records in evidence that relate to this fall so little is known about it other than that Petitioner was prescribed Vicodin. This episode was not commented upon by any witness.

Petitioner received no treatment for her June 11, 2009 accident after November 5, 2009. The next medical attention Petitioner received for her left hip was on November 11, 2010 when she consulted Dr. Carmichael for hip pain. This was 17 months after the June 2009 accident. Petitioner complained of hip pain that was aggravated by "standing, walking or any activity with the hip." A November 17, 2010 MRI revealed severe left hip degenerative arthrosis and degenerated atretic labrum.

In addition to filing an application for adjustment of claim with case No. 09 WC 48397 for a specific accident on June 11, 2009, Petitioner filed an application for benefits in case No. 11 WC 27401 which asserted that on December 1, 2010 an injury secondary to repetitive trauma manifested itself when she was informed by Dr. Novotny that she would require total hip replacement surgery on her left hip due to severe osteoarthritis. She was referred to Dr. Novotny by his partner Dr. Craig Carmichael at McLean County orthopedics.

It is well-established in the medical records that Petitioner had "at least moderate" osteoarthritis in her left hip at the time she sustained her June 11, 2009 work incident. At that time she felt a distinct "pop" in her left hip and experienced pain that lead her to seek medical attention on that same day. In fact, Petitioner's primary care physician Dr. Kindred later noted in the preoperative medical clearance report of January 25, 2011 that preceded Petitioner's left

15IWCC0519

total hip replacement:

> " Reviewed MRI Report for when injury occurred at work and had *at least* moderate degenerative joint disease so could not have been due to the injury. Now told bone on bone by Dr. Novotny 1 ½ years later. L hip DJD of for surgery."

Respondent's Section 12 examiner, Dr. Joshua Jacobs identified evidence of developmental hip dysplasia which is, in and of itself, a competent cause of osteoarthritis and hip pain even without the June 11, 2009 event. The presence of hip dysplasia on the radiographic images is at least tacitly acknowledged by Petitioner's treating orthopedic surgeon, Dr. Novotny, who testified in his evidence deposition: "I believe the hip dysplasia caused the osteoarthritis and I believe the job duties aggravated it, in that, it made it more symptomatic.".

With respect to case No. 11 WC 27401, Petitioner has asserted that the need for a left total hip replacement was secondary to repetitive trauma to the left hip caused by the bus repeatedly "bottoming out" as she operated it causing "jarring" to her left hip and producing pain. She attributed the jarring to defects in the drivers' seating system in the bus. Petitioner admitted that she never reported this defect to her employers "because they were already aware of it."

Respondent introduced evidence concerning the seating system demonstrating that it was a seat with an adjustable hydraulic cushion that could be adjusted for operator comfort. The evidence submitted in its totality is not sufficient to compel a finding that the physical demands of Petitioner's job were significant to support a finding of repetitive trauma, particularly in light of the significant evidence that Petitioner was going to require left hip replacement secondary to developmental hip dysplasia regardless of the June 2009 incident or subsequent work activities.

Petitioner in seeking to establish repetitive trauma in the instant case No. 11 WC 27401 relies upon a response made by Dr. Novotny to a hypothetical question posed in deposition, in which he stated Petitioner's activities as a bus driver "could have aggravated her osteoarthritis." It was not a statement couched in medical probability and when read in the context of the evidence and the totality of Dr. Novotny's testimony is not sufficient to prove repetitive trauma.

Having found that the weight of the evidence gravitates against a finding of repetitive trauma the Commission denies claim number 11 WC 27401.

IT IS THEREFORE ORDERED BY THE COMMISSION that claim No. 11 WC 27401 is denied.

15IWCC0519

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

DATED: JUL 8 - 2015
o:5/27/15
SJM/msb
44

Stephen Mathis

David Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

BRYAN, LEAH
Employee/Petitioner

Case# **11WC027041**

BLOOMINGTON NORMAL PUBLIC TRANSIT ASSOCIATION
Employer/Respondent

15IWCC0519

On 9/25/2014, 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 0.05% 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:

0564 WILLIAMS & SWEE LTD
STEVEN R WILLIAMS
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
ADAM COX
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

15IWCC0519

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION

Leah Bryan
Employee/Petitioner

v.

Bloomington Normal Public Transit Association
Employer/Respondent

Case # 11 WC 027041

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Bloomington**, on **June 27, 2014**. 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. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [x] What was the date of the accident?
E. [x] Was timely notice of the accident given to Respondent?
F. [x] 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. [x] 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. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [ ] TTD
L. [x] 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 **12/1/10**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$52,649.04**; the average weekly wage was **$974.02**.

On the date of accident, Petitioner was **47** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$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 $33590.92 under Section 8(j) of the Act.

ORDER

Temporary Total Disability and Medical Benefits

Petitioner is entitled to Temporary Total Disability and medical benefits as a result of injuries sustained in both this accident and the accident which was the subject of the companion case, 09 WC 48397. The amounts of said benefits are explained in the decision issued in the companion case, and are incorporated by reference herein. Obviously, the Respondent is liable for single payments of said benefits so as to avoid giving the Petitioner a double recovery.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $584.41/week for 86weeks, because the injuries sustained caused the 40% loss of the left leg, as provided in Section 8(e) of the Act. The amount awarded covers the permanent disability from both of the Petitioner's claims.

D. Dylan McCarthy
Signature of Arbitrator

September 22, 2014
Date

SEP 25 2014

Leah Bryan vs. Bloomington Normal Public Transit Association
11 WC 027041

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
F. Is the Petitioner's condition of ill being causally related to her work for the Respondent?

This is a repetitive trauma claim. It was arbitrated by consolidation with 09 WC 48397, a specific accident claim involving the Petitioner's left hip. In the companion decision, the Arbitrator found a causal relationship between the Petitioner's specific accident and her condition of ill being. She was diagnosed with osteoarthritis of the left hip for which a total hip replacement was performed. In the instant case, the Petitioner is claiming her work for the Respondent over her entire career, and more specifically her work after she returned to her regular job after her first accident on August 22, 2009, was also causally related to her arthritic condition which was treated by a hip replacement in January of 2011.

The Petitioner testified that she worked for 40 hours per week for 11 years for the Respondent. She worked 5 days a week. She worked 8 hours a day. She testified as part of her job duties she would use her left foot on a turn signal about 40-50 times a day by raising her left leg off the floor and moving it laterally about one foot in order to step on a pedal. She demonstrated this movement for the Arbitrator. She also described that her bus would bottom out or jar, approximately about 20 times a day. She testified that she would strap down 5-10 wheelchairs per day. She would have to twist and turn about 50 times a day as she would get in and out of her vehicle.

After her initial accident and treatment, the details of which are discussed in more detail in the companion decision, the Petitioner returned to her normal job, as referenced above. She testified that her hip pain gradually increased in severity, and her testimony was corroborated by the histories that she provided to her treating orthopedists, Dr. Carmichael and Dr. Novotny, along with that provided to the Section 12 examining orthopedist, Dr. Jacobs.

John Garman, a mechanic who had also worked for the Respondent for about eleven years, testified that while driving the bus there would be some jarring to the hip or back. He said that when the bus went over a dip in the road, one's body would go up and then down about one to two inches. He also demonstrated the motion used in operating the turn signal. In his demonstration, he kept the heel of his left foot on the floor and pivoted his left foot our away from his body before stepping on the signal pedal.

On December 1, 2010 the Petitioner saw Dr. Novotny. He noted the Petitioner had left hip pain. The Petitioner related this to the fact that she had been a city bus driver for years. She had an onset of hip pain while pulling a wheelchair. Dr. Novotny diagnosed her with advanced hip arthritis. He recommended a replacement.

He was asked about causation through the use of a hypothetical question incorporating the Petitioner's above referenced testimony. He testified that the twisting, turning, bending, lifting and jarring to the hip which the Petitioner experienced could aggravate her arthritic condition. He further explained that by aggravation he meant that the activities could have made her hip symptoms more apparent to the Petitioner, causing her to obtain the treatment referenced above. (PX 1 at 28, 30, 33)

Dr. Jacobs also testified on causation. He agreed with Dr. Novotny's statement that a person such as the Petitioner who has osteoarthritis of the left hip could aggravate that condition by performing the above mentioned activities. (RX 1 at 30)

Dr. Jacobs also provided an explanation which the Arbitrator feels is the key to resolution of this issue. He said that the specific trauma the Petitioner sustained in June 2009 could cause problems to the Petitioner's left hip because she already had diseased cartilage which had been developing since her childhood. (RX 1 at 45)

The evidence shows that the Petitioner had developing arthritis in her left hip prior to June 2009. It also shows that she had a fairly significant injury at that time involving her left hip joint. Further, the Petitioner's treating physician's notes show that her condition remained symptomatic despite five months of conservative care. The activity which she resumed in August 2009, driving her bus, could be causally related to her increase in symptoms which were promptly addressed by Dr. Novotny through hip replacement surgery.

Respondent cites the Commission decision in Watkins v. Bloomington-Normal Transit, 10 IWCC 650, as authority for its position that the Petitioner did not prove an accident arising out of her employment. Watkins also involved a bus driver for the same Respondent doing work very similar to that performed by the Petitioner in this claim. The difference is that the doctor providing a causation opinion in that case based his opinion on the belief that the Petitioner twisted his lower back while opening and closing the doors of his bus. The Arbitrator and the Commission determined that there was no evidence indicating that the Petitioner did twist, and in fact produced a witness, his supervisor, who testified that no twisting was done on the job. Here, as stated above, the Petitioner testified credibly about the twisting, turning, bending, lifting and jarring of the hip relied upon by Dr. Novotny. Furthermore, there was no evidence that the Petitioner in Watkins had a severely degenerated lower back to begin with.

Based on the testimony of the Petitioner and the corresponding medical records by Dr. Novotny, the Arbitrator finds the Petitioner sustained an accident that arose out of the course of her employment on December 1, 2010.

E. Was timely notice of the accident given to Respondent? Is the date of accident December 1, 2010 ?

The Petitioner testified that she learned of having a hip replacement on December 1, 2010 when she first saw Dr. Novotny.. She then contacted her supervisor, Gary Gwin, and told him that she was going to have a hip replacement and believed it was work related.

Based on the above the Arbitrator finds notice. The Arbitrator also finds that December 1 would be the date that a reasonable person would or should know of the injury and it's relation to her work duties.

L. What is the nature and extent of the injury?

On January 26, 2011 Dr. Novotny performed a left total hip arthroplasty. His diagnosis was left hip degenerative joint disease. He used an anterior approach to perform the surgery and explained that the approach results in less limitation to the person's ability to function post surgery. (PX 1 at 12,13) The Petitioner's follow up visits were all good. Dr. Novotny released her to full duty work on April 25, 2011. He testified that he would recommend that all of his hip replacement patients should avoid a return to high impact sports, and that she had a risk of infection, dislocation and a wearing out of the hip in the future.

The Petitioner returned to her regular job and performed it until January 2012. She was terminated by the Respondent at that time for absenteeism. She did seek treatment at an urgent care type facility on January 4, 2012 with complaints of left hip pain with stair climbing. (PX 15) She testified that she couldn't raise her left leg though she did so when demonstrating how she activated the turn signal on her bus. She has not worked nor looked for work since her discharge.

Based upon the above findings, the Arbitrator awards the Petitioner 40 % loss of use of the left leg. As the accident in this case and the accident in the companion case were both causally related to the Petitioner's current condition of ill being, the above award covers both claims.

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?

Respondent's liability for medical is addressed in the companion decision in case number 09 WC 48397.

K. Temporary Total Disability.

Respondent's liability for temporary total disability benefits is addressed in the companion decision in case number 09 WC 48397.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ Affirm and adopt	☐ 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

Scott Caudle,
Petitioner,
vs.

15IWCC0580

NO: 13 WC 24236

Komatsu America Corp.,
Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 23, 2015, is hereby affirmed and adopted.

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

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

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: JUL 24 2015
KWL/vf
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0580

CAUDLE, SCOTT
Employee/Petitioner

Case# 13WC024236

KOMATSU AMERICA CORP
Employer/Respondent

On 1/23/2015, 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 0.07% 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:

0225 GOLDFINE & BOWLES PC
ATTN: WORK COMP DEPT
4242 N KNOXVILLE AVE
PEORIA, IL 61614

2904 HENNESSY & ROACH PC
STEVE KLYCZEK
2501 CHATHAM RD SUITE 220
SPRINGFIELD, IL 62704

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ 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 15IWCC0580

SCOTT CAUDLE
Employee/Petitioner

v.

KOMATSU AMERICA CORP.
Employer/Respondent

Case # 13 WC 24236

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Peoria, Illinois**, on **December 11, 2014**. 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 **06/05/2013**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this alleged 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 **$57,574.40**; the average weekly wage was **$1,107.20**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$9,894.54** for TTD, **$-0-** for TPD, **$-0-** for maintenance, and **$-0-** for other benefits, for a total credit of **$9,894.54**.

Respondent is entitled to a credit of **$4,823.76** under Section 8(j) of the Act.

ORDER

Having found that Petitioner failed to prove that he sustained an accidental injury arising out of and in the course of his employment on June 5, 2013, his claim for compensation is hereby denied.

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

1/23/15
Date

ICArbDec p. 2

JAN 23 2015

FINDINGS OF FACTS

Petitioner testified he is a welder for Respondent. Petitioner testified that on the date of the alleged accident, he was working in the frame setup department. Petitioner provided that his job was to weld pieces to create a frame of a large mining truck. Petitioner testified that the pieces he welds together weigh hundreds and sometime thousands of pounds. Petitioner testified that in order to perform his job duties, he used porta powers, pry bars, sledge hammers, and impact wrenches.

Petitioner testified that on June 5, 2013 he began having pain in his left wrist as the day went along. Petitioner testified that nothing in particular occurred that day at work. Petitioner testified he never had problems with his wrist prior to June 5, 2013.

Petitioner testified that as the work day in question went on, he thought he had sprained his wrist and went to see Respondent's plant nurse. Petitioner testified the nurse provided Petitioner with a brace. Petitioner testified that a week or two later, he went back to the nurse and told her that he felt like his left wrist was getting worse. As a result, the company nurse sent him to the company doctor, Dr. Dru D. Hauter.

Petitioner first saw Dr. Hauter on June 13, 2013 complaining of symptoms going on for the past two weeks which involved a gradual increase of pain and swelling. According to this record, Petitioner attributed the symptoms to repetitive work and that lifting, pushing, and pulling aggravated his symptoms. Dr. Hauter assessed tenosynovitis of the left wrist. The doctor recommended continued use of the brace, prescribed medication and returned Petitioner to full duty work. (PX 1)

Because of continual complaints, Dr. Hauter ordered an MRI of the left wrist on June 27, 2013. The MRI when completed on July 1, 2013 revealed a moderate interstitial and partial tear of the peripheral TFCC at the styloid attachment and a partial tear of the palmar radiolunar ligament. On July 3, 2013, Dr. Hauter reported that the findings of the MRI could only be caused by trauma. The doctor stated, "[t]here is no trauma reported by the worker, only progressively increasing symptoms. I am unable to correlate these findings to any mechanism of injury. As such, this is not a work related injury." Dr. Hauter issued a referral for an orthopedic consult and returned Petitioner to restricted work, minimal use of the left hand. (PX 1)

On July 8, 2013, Petitioner saw his primary care physician, Dr. Henry San German. After reviewing the July 1st MRI results, Dr. San German referred Petitioner to Dr. Jeffrey Garst, an orthopedic surgeon at Great Plains Orthopedics. (PX 2)

Petitioner followed up with Dr. Garst on July 15, 2013. According to Dr. Garst's records, Petitioner provided a history of having left wrist pain for about six weeks. Petitioner told Dr. Garst he was unsure of the exact moment of injury, but he had pain after a work shift and said pain continued. According to Dr. Garst, Petitioner reported that he never had any problems with his wrist before June 5, 2013. After performing an examination and reviewing the MRI, Dr. Garst diagnosed a left TFCC complex tear and left ulnar impaction. Dr. Garst noted that since Petitioner had failed conservative treatment, he recommended a left wrist arthroscopy with debridement versus repair of the triangular fibrocartilage complex. Dr. Garst indicated that if the procedure made Petitioner better, it would probably be all he needed. However, if Petitioner still had symptoms, he might need to address the ulnar impaction problem with an ulnar shortening osteotomy. Dr. Garst's July 5, 2013 office visit note also indicates Petitioner asked the doctor about causal relationship. Dr. Garst noted that Petitioner told him he does a lot of pushing, pulling, lifting, hitting with sledge hammers, and

part where the welder needs to have it. Mr. Elliott testified that a porta power weighs 10 pounds. Mr. Elliott testified that the welding gun weighing approximately 3 pounds. Mr. Elliott testified that Petitioner would have used equipment other than a welding gun no more than 45 minutes to an hour out of the 8 hour work shift on the alleged date of accident. Mr. Elliott also testified he would not expect Petitioner to be performing any heavy pushing or lifting during the work shift on the alleged date of accident as cranes were used to perform those duties. Mr. Elliott testified that the heaviest item that Petitioner would have lifted during the work shift would be no more than 8 pounds.

With Respect to (C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The evidence reveals that Petitioner did not have a specific event causing an acute injury. Petitioner testified that nothing in particular happened to him on the alleged date of accident at work only that his left wrist began to ache sometime during his work shift. Petitioner testified only that, on the alleged date of accident, he used a porta power, impact wrench, pry bar, and sledge hammer. Mr. Elliott, a safety master for Respondent, testified that the porta power only weighed 10 pounds and pieces were moved hydraulically with a porta power. Mr. Elliot also testified that sledge hammers would be used to tap pieces and that he would not expect Petitioner to use a pry bar more than two times during his shift or an impact wrench more than four times during his shift. This testimony is unrebutted.

There is a difference of medical opinions. Both Dr. Hauter and Dr. Crandall testified that a TFCC tear requires an acute injury. Dr. Crandall testified that an acute TFCC tear is an event that a person would know about right away due to the amount of pain associated with it. The testimony of the treating surgeon, Dr. Garst, was equivocal, in that, he testified that an acute tear could be an event which causes significant symptoms right away or the symptoms associated with the tear might not appear for a number of days after the tear. Dr. Garst's opinion does not apply to Petitioner's condition as Petitioner did not experience pain after performing a specific event and the symptoms did not occur a number of days later. Petitioner testified that he developed pain in his wrist which gradually got worse sometime during the shift but could not attribute the pain to any specific event. Dr. Garst's opinion does not adequately explain how Petitioner's job duties, as reflected by the evidence, could have caused a tear in the TFCC. On the other hand, Dr. Crandall specifically testified that there would have to be 200-250 pounds of force applied to the wrist to cause a TFCC tear.

Petitioner claims that he had pain in his left wrist during his work shift. In this case, to find a compensable accident without evidence of a specific/particular event causing the "significant" TFCC tear, is pure speculation and the Arbitrator cannot do so. As such, the Arbitrator finds Petitioner failed to prove he sustained an accident that arose out of and in the course of his employment with Respondent on June 5, 2013.

All remaining issues are rendered moot.

using impact wrenches. Dr. Garst was of the opinion that the ulnar impaction and cyst in the lunate was chronic and probably took years to develop. However, Dr. Garst thought the TFCC tear was probably new indicating that's why Petitioner was symptomatic. As such, he felt the TFCC tear was work related. (PX 3)

Dr. Garst's evidence deposition took place on October 1, 2014. (PX 4) When asked about causation during this deposition, Dr. Garst testified, "I think the chronology of symptoms would support an acute event. It's possible the TFCC tear was pre-existing that it was asymptomatic and he just made it worse with that day of work. It's possible he didn't have a tear or he was pre-disposed of it because of his ulnar impaction and it happened during that day. I would think something happened that day when he was overdoing it and either had a tear and made it worse or had a tear come up for his work that day." (PX 4, pp. 23-24) Dr. Garst went on to testify that his causal relationship opinion was not impacted because Petitioner did not know the exact moment when the tear occurred. (PX 4, p.25) Dr. Garst testified that acute tears are sudden events that a person knows right away when it happens "for the most part." He also provided that there are patients that engage in stressful activity causing a tear who might not have symptoms until a few days afterwards. Dr. Garst testified that Petitioner's TFCC tear was significant. Also on cross-examination, Dr. Garst noted he based his causation opinion on Petitioner having a "particular tough shift that he was working..." (PX 4, pp. 30-36)

Respondent obtained a record review from Dr. Crandall, a board certified plastic surgeon who performs repairs of TFCC tears. (RX 1, pp.7-9) Dr. Crandall testified on direct examination that he was given a job description listing the physical demands of Petitioner's job position. (RX 1, p.10) Dr. Crandall also testified there was no documentation that Petitioner had an event where there was an acute tear. Dr. Crandall went on to testify that TFCC tears do not occur from repetitive work. Dr. Crandall testified that TFCC tears occur from injuries and patients know that they suffered this injury when it occurs. Dr. Crandall also testified that repetitive activity does not aggravate TFCC tears. (RX 1, pp. 11-13) On cross-examination, Dr. Crandall testified that Petitioner's job duties could not aggravate a pre-existing TFCC tear as there is no biomechanical explanation of why his regular job activities that he has done for years would then be an aggravating factor and causative factor of a TFCC tear. Also, Dr. Crandall testified that it takes 200-250 pounds of force to tear triangular fibrocartilage off the bone and that only occurs when a person runs, falls, and lands on their wrist. Dr. Crandall testified that the use of a sledge hammer does not create the type of force necessary to cause a TFCC tear. (RX 1, pp. 15-16) Dr. Crandall testified that Petitioner either had a degenerative tear or an acute tear from an activity outside of work that he has not disclosed. (RX 1, p. 21)

Respondent called Robert Elliott as a witness. Mr. Elliott testified he is employed as a safety master for Respondent. Mr. Elliott testified he is a certified welder and, prior to becoming a safety master, he worked for Respondent as a supervisor in the weld shop. Mr. Elliott testified he is familiar with Petitioner's job position and the job duties Petitioner was performing on the alleged date of accident, June 5, 2013. Mr. Elliott testified that he performed the same duties as Petitioner did when he worked as a welder for Respondent. Mr. Elliott also testified he has observed Petitioner performing his job duties in the past, but could not say if he observed Petitioner performing his job duties on the alleged date of accident. He testified that he had an understanding of what job duties Petitioner was performing on the alleged date of accident, June 5, 2013, based upon his investigation of the alleged work accident. Mr. Elliott testified that, based on his knowledge of the work and job duties, he would not expect Petitioner to use a pry bar more than two times during his work shift on the alleged date of accident. The pry bar would have been used to position an upright tube which weighs somewhere between 750-1000 pounds. Mr. Elliott also testified that he would expect Petitioner to use a sledgehammer no more than two times during the work shift on the alleged date of accident. Mr. Elliott testified that he would expect Petitioner to tap rails with a sledge hammer. Mr. Elliott also testified that he would expect Petitioner to use an impact wrench up to four times during the work shift on the alleged date of accident. Mr. Elliott testified that the impact wrench used by Petitioner would be similar to the wrench used by an auto mechanic to remove tires from a car. Mr. Elliott also testified that a porta power is placed by hand into the position to move the parts and then a hydraulically controlled ram expands the equipment and pushes the

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Underwood,

Petitioner,

vs. NO. 13WC023900

Bodine Services,

15IWCC0590

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses, causal connection, and prospective medical and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 18, 2014 is hereby affirmed and adopted.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,100.00. 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: JUL 29 2015
SJM/sj
o-7/9/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

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

UNDERWOOD, JAMES
Employee/Petitioner

Case# **13WC023900**

15IWCC0590

BODINE SERVICES
Employer/Respondent

On 11/18/2014, 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 0.07% 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:

1658 SAUNDERS CONDON & KENNY PC
GREGORY J SAUNDERS
111 W WASHINGTON ST SUITE 1001
CHICAGO, IL 60602

2623 McANDREWS & NORGLE LLC
BRYAN D McCARTY
53 W JACKSON BLVD SUITE 315
CHICAGO, IL 60604

STATE OF ILLINOIS)
COUNTY OF SANGAMON) 15IWCC0590

☐ 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
19(b)

JAMES UNDERWOOD
Employee/Petitioner

Case # **13** WC **23900**

v.

BODINE SERVICES
Employer/Respondent

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 **Molly Dearing**, Arbitrator of the Commission, in the city of **Springfield**, on **September 11, 2014**. 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, **July 16, 2013**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **$21,840.00**; the average weekly wage was **$420.00**.

On the date of accident, Petitioner was **29** years of age, ***single*** with **1** dependent child.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** 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 all reasonable and necessary medical services, as provided in Sections 8(a) and 8.2 of the Act, and subject to the fee schedule. Respondent shall be given a credit for any and all medical benefits previously paid.

Respondent shall pay temporary total disability benefits of $280.00/week for 10 4/7 weeks, commencing June 30, 2014 through September 11, 2014.

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

Arbitrator Molly Dearing

November 10, 2014
Date

NOV 18 2014

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

JAMES UNDERWOOD
Employee/Petitioner

v.

Case # 13 WC 23900

BODINE SERVICES
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

At the time of his accident, Petitioner was twenty nine years of age (Arb. X 1), and employed as a laborer by Respondent at the Archer Daniels Midland Plant in Decatur, Illinois. He had been employed by Respondent intermittently since approximately 2010, and he had resumed employment for Respondent again in April 2013. Petitioner worked the evening shift at Archer Daniels Midland from 6:00 p.m. to 6:00 a.m., and he testified that on July 15, 2013, he began his shift at approximately 6:00 p.m. Petitioner's job duties included cleaning tanks inside the Archer Daniels Midland facility, which he testified is not air-conditioned beyond the break room. He testified that while he was working in July, the heat index was over 90 degrees. Petitioner described his area inside the facility as being warmer than it was outside on his date of accident, and explained that running of machines increases the temperature inside the building. Petitioner is required to wear a "turtle skin" rubber suit with Kevlar, which he stated retained body heat within the suit.

At approximately 1:30 a.m. on July 16, 2013, Petitioner testified that he noticed his legs became numb, but he kept working. He eventually felt his hands go numb, as well as the roof of his mouth and his nose. Petitioner attempted to remove the straps of his protective wear, but he could not feel the straps of his suit to completely remove them. He stated that a co-worker helped him remove his clothing. Petitioner testified that he felt disoriented, and he was taken to the break room where co-workers applied cold cloths to his skin and gave him Gatorade to drink. He testified that he stayed in the break room before moving to his supervisor's air-conditioned truck until the conclusion of his shift at 6:00 a.m. Petitioner's supervisor then drove him home. Petitioner testified that he went to bed and slept until approximately 2:30 p.m. on July 16, 2013. Petitioner testified that when he awoke, he spoke to his supervisor, Bill Coleman, and reported to him that he was not feeling well and had a headache. Mr. Coleman later phoned Petitioner again and informed him that he was scheduled to report to work at 6:00 p.m. on July 16, 2013.

Petitioner testified that he worked on July 16, 2013 until about 9:00 p.m., at which time he requested to go home. Petitioner slept until approximately 4:30 a.m., and then asked his girlfriend to take him to the emergency room at Decatur Memorial Hospital.

Petitioner was examined at Decatur Memorial Hospital on July 17, 2013. Petitioner reported that while working in a hot environment at work the day prior, he began experiencing occipital pain and pressure, pain in his neck, tingling in his bilateral feet, hands, roof of his mouth, and nose. He

also reported increasing difficulty expressing himself, and understanding and comprehending since that time. He denied any similar previous episodes or new medication. Petitioner was ambulatory, but was "a little wobbly", and expressive aphasia was noted. Dr. Garrity ordered a CT of the head, MRI of the brain, MR angiography of the head, a radiograph of the chest, and EKG, and blood tests. These tests were interpreted as normal with the exception of an isolated CK elevation. Dr. Balgna noted that Petitioner spoke in a halter manner, "but is appropriate...Symptoms did not begin a [sic] work and he denies any injuries." Thereafter, Petitioner's speech remained unchanged, though his headache improved with Reglan and Benadryl. He continued to stutter, but he was able to form complete sentences. A Nursing Assessment noted that Petitioner exhibited "[m]ild to moderate aphasia; some obvious loss of fluency or facility of comprehension without significant limitation on ideas expressed or form of expression. Reduction of speech and/or comprehension, however, makes conversation about provided material difficult or impossible. For example, in conversation about provided materials, examiner can identify picture or naming card from patient's response." Petitioner was given a Medrol Dosepak and ordered to follow up with a neurologist. PX 4.

Dr. Terry Balagna authored an undated narrative letter to "Audra", in which Dr. Balagna indicated that "[a]lthough a specific etiology for his problem was not determined on this visit it did not appear to be related to heat illness". Dr. Balagna stated that the "aberrant CPK is more likely explained by his work activity", and he further opined that "the condition for which Mr. Underwood was seen was unrelated to heat illness, and does not appear work-related." PX 5, RX 2.

Petitioner returned to the emergency room at Decatur Memorial Hospital on July 19, 2013. Petitioner reported complaints of stuttering speech and left eye deviation more pronounced than on his prior visit, and continued occipital pressure sensation, persistent but not severe. Basic labs, a repeat MRI of the brain, and a MRA of the head and neck were interpreted as normal. A clinical psychologist and neurologist were consulted, and Petitioner was diagnosed with acute conversion disorder. Petitioner denied any anxiety or depression that would require any drugs or psychiatric evaluation, and he was ordered to under psychotherapy as treatment for his disorder. PX 5.

On July 30, 2013, Petitioner presented to Dr. Cecile Baker at Springfield Clinic. Petitioner reported suffering numbness in his legs, hands, and the roof of his mouth following an incident at work on July 16, 2013 in which the environment was very hot. He indicated that he did not feel well following the incident, and subsequently presented to the emergency room. "Per his girlfriend, he was having word-finding difficulties. His girlfriend describes this as an expressive aphasia. He had had stuttering since then." Petitioner complained of headaches and a shooting pain from his left eye to the back of his head. Dr. Becker reviewed Petitioner's MRI and MRA of his head, which he noted were normal, as was Petitioner's CBS, glucose, PT/INR, and CMP, with the exception of a slightly elevated chloride at 111 and CPK of 518. Dr. Becker's assessment was a mild heat stroke. He opined that the "headaches are probably related to the heat stroke, although they occur infrequently and only last about an hour each time. His supposed stuttering is not stuttering at all. The patient grunts and then speaks normally. This can be due to a conversion reaction or malingering." Dr. Becker felt that no further neurologic workup was needed at that time. PX 3.

Dr. Leroy Hall examined Petitioner for a neuropsychological assessment on July 22, 2013. After taking a history of Petitioner's condition, conducting an examination of him, and reviewing Petitioner's medical records, Dr. Hall opined that, as a result of physical distress from heatstroke or heat exhaustion, Petitioner became confused and disorientated, an the "culmination of these

symptoms and events most suggest a psychoemotional reaction to distress." Dr. Hall stated that Petitioner's "episode of overheating (heat stroke or heat exhaustion?), however, may have caused initial confusion and disorientation...The literature indicates that there may be residual effects of heat stroke that can include speech difficulties...This is a possible explanation for some of the symptoms, but at this point, the evidence is minimal. It is perhaps diagnostic that Mr. Underwood endorses significant psychoemotional distress. His endorsement of clinical significant levels of hostility (suppressed or internalized anger) with obsessive-compulsive raints may suggest that the initial diagnosis of Conversion Disorder is accurate. The episode of overheating may have been a trigger or precipitating event." Dr. Hall further explained that "the fact that all medical tests were negative further supports the probability of this being a psychoemotional issue. That being said, residual effects from a heatstroke cannot be disregarded." PX 6.

Dr. Hall testified by way of evidence deposition on June 30, 2014. Dr. Hall is a clinical psychologist with a specialty in clinical neuropsychology. He initially saw Petitioner at Decatur Memorial hospital as a consulting physician, and he thereafter began treating Petitioner in his office on July 22, 2013. Dr. Hall diagnosed Petitioner with conversion disorder, and cognitive disorder not otherwise specified. He explained that cognitive disorder is a psychoemotional situation where an individual has encountered a stressor, which has been converted into a physical symptomatology. Dr. Hall likened the condition to the relationship between excessive worry and ulcers or diverticulosis. He stated that "essentially, their brain becomes overwhelmed in terms of dealing with something that's happened." Dr. Hall opined that "whatever occurred at that time on July 16th was a significant contributing factor to the symptoms observed through my evaluation." Dr. Hall's opinion was based upon a lack of a speech impediment and memory difficulties prior to July 16, 2013, though he acknowledged that he was not aware of Petitioner's baseline condition, as he did not treat him prior to the work incident. PX 6.

Dr. Hall performed three tests on Petitioner to ascertain efforts made during testing and for malingering, which revealed that Petitioner was giving adequate effort to complete a task and that he was not malingering in terms of his reported symptomatology. Dr. Hall testified that Petitioner had been undergoing speech therapy, and had been responsive to that treatment, though there had been no improvement in Petitioner's speech difficulties. Based upon Petitioner's treatment with Dr. Hall and Petitioner's continued difficulties, Dr. Hall performed a second round of testing, and found a decline in Petitioner's immediate memory compared to his first round of testing, and a severely deficient delayed memory consistent with the first administration of examinations. Dr. Hall modified Petitioner's diagnosis following the second administration of testing to include an anoxic event. Dr. Hall explained that Petitioner's test results are consistent with an anoxic event, which occurs when the brain is deprived of oxygen and suffers damage to those parts of the brain involved in memory storage and function. Dr. Hall opined that Petitioner's work accident was a precipitating factor in Petitioner's brain injury consistent with an anoxic event. Dr. Hall stated that Petitioner should not return to work given his ongoing speech impediment, and he opined that Petitioner's anoxia was permanent in nature. PX 6.

Petitioner was examined by Dr. David Peeples on December 3, 2013 pursuant to Section 12 of the Act. Dr. Peeples, after taking a history from Petitioner, conducting a neurologic examination, and reviewing Petitioner's medical records, stated that "[i]t is simply not reasonable to attributes [sic] his status to an acquired neurologic injury." Dr. Peeples opined that Petitioner had a primary psychiatric etiology with regards to his non-physiological speech/language disorder. He found Petitioner's subjective complaints of memory and cognitive problems were disproportionate to his

objective findings. Dr. Peeples believed that a conversion disorder was the most reasonable diagnosis, which he opined would not have been caused by the July 16, 2013 occupational exposure. "At most he may have had an element of heat exhaustion however even this is speculation. There is no evidence that he had heat stroke." Dr. Peeples believed that Petitioner would return to work without restrictions from a neurologic standpoint, and that he was at maximum medical improvement with respect to his July 16, 2013 work accident. RX 1, 3.

Dr. Peeples testified by way of evidence deposition on August 6, 2014. He is a board-certified neurologist with a specialty in neurology and neuromuscular medicine. Dr. Peeples documented the relevant history, and opined that Petitioner exhibited a non-physiologic, functional speech pattern "in which he would grunt before expressing himself in a stuttering, inconsistent speech pattern". Dr. Peeples stated that Petitioner was able to relate his history in an appropriate manner with no evidence of memory or concentration problems. Dr. Peeples testified that there was no evidence of kidney failure, heart disease, or other neurologic symptoms that would support a finding that Petitioner suffered a heat stroke. Dr. Peeples testified that Petitioner's speech pattern did not fit the pattern of an organic acquired language disorder, and that it was not reasonable to attribute his status to an acquired neurologic injury given his normal examination, normal diagnostic studies, and nonfunctional speech pattern. RX 1.

Dr. Peeples opined that Petitioner suffered a somatization or conversion disorder. Dr. Peeples explained that this condition is resultant from "the brain fooling itself and the person believes that they have symptoms, but there is no organic explanation for it. Usually it's due to emotional or psychiatric stress." Dr. Peeples stated that somatic disorder is not malingering, and he specifically noted that he "did not get the impression this man was faking or malingering. I think - - you know, I think a conversion disorder, same thing as a somatization disorder, was the most likely. He may have had at most some heat exhaustion, but that's even speculation based on the objective evidence." Dr. Peeples did not find anything in Petitioner's medical records or the examination he performed of Petitioner indicative of an anoxic event, in which there is not sufficient blood flow in the brain for a certain period of time. While Dr. Peeples acknowledged that Petitioner had subjective symptoms of an anoxic event, he stated that Petitioner's overall presentation was not consistent with an anoxic injury, and he did not have radiographic abnormalities in the hippocampus and thalamus areas suggestive of such an injury. RX 1.

Dr. Peeples found tendencies during his examination that he opined predisposed Petitioner to somatization. Dr. Peeples acknowledged that Petitioner's work incident of July 16, 2013 in which he was carried into an air-conditioned room, stripped of his clothing, and cold rags applied to him was a stressor incident, but stated that "[i]f you're trying to say did that precipitate - - the incident precipitate the development of this conversion reaction, I can't help you there, okay? That's a legal issue that you guys are going to have to hash out. Personally, my overview of this is that he probably - - and, again, I'm not a psychiatrist...That he probably had a tendency, which were documented by the psychologist, to be predisposed to conversion reactors under situations of stress....The disagreement is on what - - you know, how much emphasis legally can you - - are you going to place on whether this was a precipitating event or not...So then it potentially falls down to more of the person's own personality construct, which there was question that he may have had some that would predispose him. That's all I can say for you." RX 1.

At Arbitration, Petitioner testified that he presently has difficulty communicating with others and in recalling certain information, especially conversations. He does not currently drive a vehicle

due to Dr. Hall's recommendation, and he stated that Dr. Hall has excused him from work. Petitioner denied experiencing any difficulties with his speech or memory prior to the work accident. He stated that his present condition is emotionally tolling because he has a four year old son who must experience his challenges.

Ashley Lindamood testified on behalf of Petitioner at Arbitration. Ms. Lindamood is Petitioner's girlfriend, and has been so intermittently for five years. She was in a relationship with him on July 15, 2013 and is presently. Ms. Lindamood testified that Petitioner currently has difficulties with his memory, concentration, and simple conversation, which were not present prior to his work accident. She indicated that is also very sad and under emotional distress. Ms. Lindamood stated that Petitioner feels he cannot be the father he should be to his four year old son, and she explained that he is unable to read to his son due to his speech challenges, which upsets Petitioner greatly.

CONCLUSIONS OF LAW

The Arbitrator finds Petitioner and Ashley Lindamood to be credible witnesses, as they each presented in an open and honest manner at Arbitration, even on cross-examination.

The Arbitrator notes that the transcript does not reflect the significance or intricacies of Petitioner's speech impairment. Petitioner's communication abilities are significantly hindered by his speech challenges. He speaks in short, staccato words, which are interrupted by periods of a stammered hum of approximately two to five seconds. Oftentimes, Petitioner was only able to produce a single syllable of a multi-syllable word at a given time while testifying at Arbitration, and most of his words are incompletely formed at either the beginning or the end. For example, Petitioner's production of the word "accident" was divided into two separate words interrupted by seconds of stammering, and his speech impediment eliminated the second syllable of the word altogether. Petitioner's speech pattern remained consistent throughout the duration of his testimony.

In regard to disputed issue (C), the Arbitrator finds that Petitioner suffered an accidental injury while performing his assigned duties for Respondent at Archer Daniels Midland, i.e. spraying tanks, in a hot environment. In so concluding, the Arbitrator notes that Petitioner's accident occurred in July while working in an area without air-conditioning and wearing protective gear comprised of a rubber suit with Kevlar, which retains heat. Petitioner described the facility on his date of accident as being warmer inside than out, given that the running of machines increases the temperature in the building and the lack of air-conditioning. Petitioner's testimony regarding the history of the accident was credible, unrebutted at Arbitration, and well-documented in the medical records. Based upon the foregoing, the Arbitrator concludes that Petitioner sustained an accident that arose out of and in the course of his employment with Respondent on July 16, 2013.

In regard to disputed issue (F), the Arbitrator concludes that Petitioner's current condition of ill-being is causally related to his work accident of July 16, 2013. In so concluding, the Arbitrator finds the chain of events significant. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982).

In this case, the preponderance of the evidence indicates that Petitioner's symptomatology of speech and cognitive impairments began contemporaneously with the work accident. Petitioner denied suffering difficulties with his speech or memory prior to July 16, 2013, and the record indicates that Petitioner was working full duty as a laborer until his work accident. No testimony or evidence was presented to indicate otherwise. Following the accident, Dr. Hall opined on June 30, 2014 that Petitioner could not return to work (PX 6), and Petitioner has persistently demonstrated difficulties to his treating physicians concerning his speech and cognitive function. PX 3, 4, 5, 6. Petitioner's speech challenges were observed by the Arbitrator, as more fully set forth above, and his testimony regarding his cognitive limitations following the accident are documented in the medical evidence.

Moreover, in finding causation, the Arbitrator finds the opinions of Dr. Hall to be more persuasive than those of Dr. Peeples. Although Dr. Peeples opined in his report of December 13, 2013 that Petitioner's conversion disorder was not caused by his work accident, he refused to opine during his deposition whether the work accident aggravated or exacerbated Petitioner's conversation reaction. He stated, "[i]f you're trying to say did that precipitate - - the incident precipitate the development of this conversion reaction, I can't help you there, okay? That's a legal issue that you guys are going to have to hash out." He acknowledged that Petitioner's work accident was a stressor incident, and he also conceded that his conversion disorder could result in the manifestation of symptoms in situations of stress. While Dr. Peeples seemed to minimize any relationship between Petitioner's symptomatology, his conversion disorder, and the work accident by noting that Petitioner was predisposed to developing a conversion disorder, the Arbitrator notes that it is well-settled that employers take their employees as they find them. *Sisbro v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). An employee will not be denied recovery simply because of the presence of a pre-existing condition so long as it can be shown that the employment was also a causative factor. *Id.* In this case, based upon the foregoing, the Arbitrator finds Dr. Peeples' opinion that Petitioner's conversion disorder was not caused by his work accident convoluted and contradicted by his own evidence testimony, and unpersuasive in that it ignores the change in Petitioner's previous condition of good health immediately following the work accident.

The opinions of Dr. Hall, on the other hand, that Petitioner's work accident was causative in the development of his conversion disorder and anoxic event is well-founded upon his extensive neuropsychological testing and Petitioner's history of a lack of a speech impediment and memory difficulties prior to July 16, 2013. The Arbitrator finds that Dr. Hall's opinions convincing, in that they were thoroughly explained and supported, and appreciate the lack of speech difficulties and cognitive impairment prior to the work accident, and a contemporaneous onset of symptomatology with the work accident. Based upon the foregoing, the Arbitrator places greater weight on the opinions of Dr. Hall than those of Dr. Peeples.

Moreover, the Arbitrator is not persuaded by the causation opinion of Dr. Balagna, given that he treated Petitioner for a limited duration at the emergency department of Decatur Memorial Hospital on July 17, 2013, and he did not have an opportunity to review Petitioner's subsequent treating medical records or testing. Moreover, Dr. Balagna does not state a basis for his opinion that Petitioner's condition was not work related (PX 5, RX 2), and in the absence of same, the Arbitrator declines to give weight to his opinion.

Based upon the foregoing, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to his work accident of July 16, 2013.

In regard to disputed issue (J), Respondent denied liability for any medical bills based upon the issues of accident and causation. Arb. X 1. In light of the Arbitrator's findings with respect to issues (C) and (F), the Arbitrator finds that Respondent is liable for medical bills set forth in Petitioner's Exhibits 1 and 2, as said services were reasonable and necessary in Petitioner's care and treatment. Respondent shall pay all reasonable and necessary medical services, as provided in Sections 8(a) and 8.2 of the Act, and subject to the fee schedule. Respondent shall receive a credit for medical benefits previously paid.

In regard to disputed issue (K), the issues of whether a claimant is temporarily and totally disabled and the length of time for which he is entitled to temporary disability benefits are questions of fact to be resolved by the Commission. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118-119 (1990). In Illinois, it is well-settled that an employee is temporarily totally incapacitated from the time an injury incapacitates him from work until such time as he is far recovered or restored as the permanent character of his injury will permit. *Id.* at 118. In order to be eligible for temporary total disability benefits, a claimant must prove not only that he did not work, but also that he was unable to work. *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 1090 (1996). The claimant bears the responsibility of proffering evidence to support his off work status. *Eileen Paule v. Schnucks*, 14 IWCC 485 (June 19, 2014).

In this case, Respondent denied liability for any temporary total disability benefits based upon the issues of accident and causation. Arb. X 1. Despite the Arbitrator's findings with respect to issues (C) and (F), the Arbitrator does not find any notations or work slips removing Petitioner from work or restricting his capacity. While Dr. Hall testified on June 30, 2014 that Petitioner should not return to work "[a]t this point" due to his difficulties in communicating with others, the Arbitrator notes that Dr. Hall did not recommend work restrictions or remove him from work following his examination of July 22, 2013, even though Dr. Hall enumerated numerous recommendations for Petitioner in his report of September 3, 2013. PX 6.

Based upon the foregoing, the Arbitrator concludes that Petitioner has failed to proffer evidence to support an off work status from July 17, 2013 through June 29, 2014, and the Arbitrator accordingly denies temporary total disability for that time period. The Arbitrator further concludes that Respondent shall pay temporary total disability for 10 4/7 weeks, commencing June 30, 2014, the date in which Dr. Hall opined Petitioner is unable to return to work, through September 11, 2014, the date of Arbitration.

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

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rose Watson,
Petitioner,

vs. NO: 13 WC 00866

Vermilion Manor Nursing Home,
Respondent.

15IWCC0581

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, medical expenses, prospective medical expenses and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2014, is hereby affirmed and adopted.

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.

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.

15IWCC0581

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $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: JUL 24 2015

Joshua D. Luskin

Ruth W. White

Charles J. DeVriendt

o-07/15/15
jdl/wj
68

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

WATSON, ROSE
Employee/Petitioner

Case# **13WC000866**

VERMILION MANOR NURSING HOME
Employer/Respondent

15IWCC0581

On 4/3/2014, 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 0.06% 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:

0465 SCHEELE CORNELIUS & HARRISON
DAVID C HARRISON
7223 S ROUTE 83 PMB 228
WILLOWBROOK, IL 60527

0522 THOMAS MAMER & HAUGHEY LLP
BRUCE E WARREN
30 MAIN ST SUITE 500
CHAMPAIGN, IL 61820

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

☐ 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
19(b)

Rose Watson
Employee/Petitioner

Case # 13 WC 00866

v.

Consolidated cases: _____

Vermilion Manor Nursing Home
Employer/Respondent

15IWCC0581

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 **Molly Dearing**, Arbitrator of the Commission, in the city of **Urbana**, on **January 30, 2014**. 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 **Prospective medical treatment**

FINDINGS

On the date of accident, 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 **$18,200.00**; the average weekly wage was **$350.00**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** children under 18.

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

Respondent shall be given a credit of **$1,518.00** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$1,518.00**.

Respondent is entitled to a credit of **$29,926.61** under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove that the conditions in both her left and right knee are causally related to the accident of August 23, 2012. Temporary total disability benefits are denied with respect to the right and left knees. All medical services related to Petitioner's right knee are denied. With regard to the left knee, Respondent shall pay all reasonable and necessary medical services for dates of service prior to October 29, 2012, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. All medical services rendered on and after October 29, 2012 regarding Petitioner's left knee are denied. Respondent shall be given a credit for any medical payments that have been paid by group health insurance pursuant to Section 8(j) of the Act, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. Respondent is entitled to a credit for any medical payments made by Respondent. Prospective medical treatment is denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for 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

March 28, 2014
Date

APR 3 - 2014

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Rose Watson,
Employee/Petitioner

v. Case # 13 WC 00866

Vermilion Manor Nursing Home,
Employer/Respondent.

15IWCC0581

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

At the time of her accident, Petitioner was fifty seven years of age (Arb. X 1), and employed by Respondent as an activities assistant. PX 1. Her job duties included gathering residents for activities and helping them with those activities.

In September 2011, Petitioner sustained a fall at home for which she suffered a left knee injury. She treated for her left knee injury with Dr. Ivan Santiago, who then referred her to Dr. Denis Williams, an orthopedic surgeon. Petitioner underwent injections to her left knee, and eventually underwent a partial medial meniscectomy on April 25, 2012. In July 2012, Petitioner followed-up with Dr. Santiago with persistent complaints of pain in her left knee. On July 23, 2012, Dr. Santiago advised her to follow up with Dr. Williams again about possible surgery, and ordered her to continue her activity modification and to utilize a cane to offload her knee. PX 2. Petitioner testified that Dr. Williams released her to return to work without restrictions in July 2012, and she acknowledged ongoing left knee pain from that time and until her work accident on August 23, 2012.

On August 23, 2012, Petitioner testified that she was transferring a resident down a hallway when she slipped on a wet surface, striking the inside of her right knee on the floor. Petitioner testified that she immediately noticed pain in her left and right knees, but the pain was greater in her left knee. Petitioner notified her supervisor and completed an accident report.

On August 31, 2012, Petitioner presented to Dr. Santiago, who noted that "Pt states she twisted her knee 8 days ago toward the left when she caught herself on a railing. She had a great deal of swelling she states which has calmed down some but her pain is greater than it was previously. Her pain is constant and she feels like she needs to take a tablet every 4 hours." Dr. Santiago performed a physical examination, which revealed mild to moderate discomfort, pain with left knee flexion, medial joint line tenderness, some crepitus of the left knee, and facet loading testing bilaterally. Dr. Santiago's impression was a history of left meniscus repair with

ongoing left knee pain, and he recommended around the clock analgesia medication in addition to Percocet for breakthrough pain. PX 2, RX 5.

Petitioner saw Dr. Williams on September 4, 2012. The treatment record of that date indicates that Petitioner has been followed for her left knee. Dr. Williams noted that "[s]he is certainly painful", but he stated that he believed "her pain is exacerbated by her fibromyalgia." He released her to return to him on an as needed basis. PX 2, RX 5. Petitioner testified that Dr. Williams did not write anything down during her visit, and was more concerned with her left knee than her right.

On September 19, 2012, Petitioner contacted Dr. Williams' office requesting a refill of her pain medication. Petitioner reported that she "fell a couple of weeks ago and since that time is having more pain. Actually both knees are bothering her recently". Petitioner contacted Dr. Santiago's office on September 21, requesting an appointment for "terrible pain in her good knee and wants different medication." PX 2, RX 5.

On September 26, 2012, Petitioner presented to Dr. Santiago with complaints of right knee pain. Dr. Santiago's note states that "Pt states she has noticed her right knee hurts now as well. Her left knee is still more severe and she has pain in her low back and actually all over her body." Dr. Santiago's impression was a history of left meniscus repair with ongoing left knee pain, osteoporosis, a history of vitamin D deficiency, chronic low back pain, fibromyalgia, and suspicion of possible opioid induced hyperalgesia. Petitioner was eventually referred to Dr. James Kohlmann for further medical management. PX 2, RX 5.

Petitioner presented to Dr. Kohlmann on October 29, 2012 complaining of "excruciating pain" since sustaining a fall at work on August 23, 2012. PX 8. Dr. Kohlmann performed a left total knee arthroplasty on July 9, 2013. PX 4. Petitioner's surgery had been delayed for a period of months due to intervening, unrelated medical problems including kidney stones, thyroid malfunction, and multiple urinary tract infections. PX 2. Dr. Kohlmann released her to return to work without restrictions on September 5, 2013, and Petitioner was released from Dr. Kohlmann's care on September 19, 2013. PX 8.

Dr. Kohlmann authored a report dated September 27, 2013 regarding his opinions concerning any relationship between the work accident of August 23, 2012 and Petitioner's left and right knee conditions. Dr. Kohlmann notes that he reviewed records, report, x-rays and MRI studies, which led him to the conclusion that Petitioner developed an osteonecrosis in the medial femoral condyle of the right knee as a result of the fall. He also stated that Petitioner has fairly advanced left knee osteoarthritis in the left knee at that time, and "it looked as though it too could have been due to osteonecrosis." Dr. Kohlmann opined that Petitioner's fall likely resulted in rapid progression of right knee osteoarthritis, but indicated that "the left knee osteoarthritis that I treated recently with a knee replacement does not have any significant relationship due to work injury that hurt the right knee." PX 10.

Dr. Richard Lehman, an orthopedic surgeon (RX 3), authored two reports dated December 18, 2012 (RX 1) and February 26, 2013 (RX 2) pursuant to Section 12 of the Act. Dr. Lehman opined that Petitioner has degenerative processes in both her left and right knees. He

did not believe that Petitioner's right knee complaints were related to her work accident because "if she in fact had a traumatic injury to the right knee at the time of the injury, she would have had significant symptoms that would have started long before September 26th." Dr. Lehman noted that Petitioner's right knee MRI failed to reflect any acute process, but instead reflected bone marrow edema with a subchondral fracture compatible with an osteochondral injury and a lack of any evidence of fluid fracture cleft to suggest instability of the osteochondral injury. RX 1. With regard to Petitioner's left knee, Dr. Lehman opined that the work accident did not aggravate or exacerbate her pre-existing pathology. He noted that Petitioner had documented degenerative changes and a severe break down in the joint in her left knee in the four months prior to her injury. Dr. Lehman opined that the degeneration of her left knee continued to progress post-accident at the normal expected rate, and noted that Petitioner has no acute fracture or evidence of any acute trauma to the left knee from the incident. RX 2.

An Employee Incident Report dated August 29, 2012 was admitted into evidence as Petitioner's Exhibit 1 and Respondent's Exhibit 4. Petitioner testified that she completed the Report and signed it. The Report indicates that Petitioner hurt her left knee, that her "left knee totally went out", and that "my left knee went out trying to stop myself from falling". The report contained a diagram upon which Petitioner marked her left knee as the affected body part, and reflects that Petitioner had injured the same part of the body prior to this accident for which she had surgery in May 2012. PX 1, RX 4. Petitioner acknowledged on cross examination that the Incident Report of August 29, 2012 made no mention of the any injury to the right leg or knee.

Petitioner completed an addendum to the Incident Report dated November 6, 2012, which states that "[o]n August 23, 2012 I fell on wet floor going to get a resident for a [sic] activity[.] When I fell I landed on my right knee, which gives me great pain." PX 1, RX 4. Petitioner's supervisor completed a Supervisor's Investigation Report on August 27, 2012, which documented Petitioner's left knee as being the affected body part. RX 4.

At trial, Petitioner testified that she experienced significant pain in her right knee beginning on the date of the accident, but acknowledged that her left knee was initially worse than the right. Petitioner testified that she advised her physicians at each treatment visit following her work accident that her right knee was her most significant problem. Currently, Petitioner takes Percocet three times per day, and continues to suffer pain in both knees. She has looked for work since September 2013, and has submitted twenty five applications. Petitioner testified that she has difficulty moving, walking, and sleeping due to the pain in both of her knees. Petitioner also experiences pain in both knees when driving for extended periods of time. Petitioner stated that she requires the use of a cane, but forgot to bring it with her to Arbitration.

Linda Rollins testified on behalf of Petitioner. Ms. Rollins worked for Respondent for fifteen years before retiring. She was a volunteer at Respondent's nursing home at the time of the accident. She testified that she was walking behind Petitioner down the corridor when she fell and went down on her right knee. Ms. Rollins testified Petitioner said she was glad she had fallen on her good knee and complained of both knees within the weeks following the accident.

Judith Ann Makenson testified on behalf of Petitioner. Ms. Makenson was a volunteer at Respondent's nursing home on August 23, 2012 and witnessed Petitioner's accident. Ms.

Makenson testified that Petitioner slipped and twisted her leg, but did not fall all the way to the ground. Ms. Makenson was unsure as to which knee Petitioner had twisted, but stated that Petitioner complained of pain in both knees, right greater than the left, over the next few weeks.

CONCLUSIONS OF LAW

In regard to disputed issue (F), the Arbitrator finds that Petitioner failed to prove that her right knee condition is causally related to her work accident of August 23, 2012. In so finding, the Arbitrator finds it probative that that in the Incident Report of August 29, 2012, a mere six days after the accident, Petitioner makes no mention of striking or injuring her right knee, which is inconsistent with her testimony at Arbitration that she fell onto her right knee. Rather, Petitioner only indicates an injury to her left knee in the Report. Similarly, Petitioner made no indication on the pain diagram that she felt any sensation in her right knee following the work accident, but instead, marked only the left knee as being affected. PX 1.

In the two treatment visits subsequent to the work accident, only a history of an injury to her left knee is noted. Although Petitioner testified that she repeatedly reported a history to her treating physicians of injuring her right knee as well as her left, Petitioner proffered no explanation as to why the records lacked complaints to her right knee. The Arbitrator finds the lack of any indication of any right knee injury in Petitioner's medical records to be significant, as the Arbitrator finds the same to be more credible than Petitioner's testimony, and corroborated by the lack of any report of a right knee injury in the Incident Report of August 29, 2012.

Further, in concluding that Petitioner has failed to prove the relatedness of her right knee condition to the work accident, the Arbitrator finds the opinions of Dr. Lehman to be more credible than that of Dr. Kohlmann. Dr. Kohlmann's causation opinion appears to be based upon Petitioner's history of falling on August 23, 2012 and striking her right knee (PX 10), which is inconsistent with the history of accident Petitioner reported in the Incident Report of August 29, 2012. PX 1. Although Dr. Kohlmann states that he reviewed "records, reports, x-rays, MRI studies" (PX 10), he fails to document exactly what he reviewed in order to ascertain whether his opinion is formulated upon complete information present in the record before the Arbitrator. Without more, the Arbitrator declines to assume that Dr. Kohlmann reviewed the Incident Report and/or medical records immediately following the accident, which bear great significance pertinent to the issue of causation given the lack of complaints to the right knee in same.

Dr. Lehman, on the other hand, clearly indicates the records he reviewed in formulating his opinions. After completing his review, Dr. Lehman opined that Petitioner did not injure her right knee in the work accident, based upon the lack of any diagnostic evidence of an acute injury in the right knee, and the lack of any report of a right knee injury to her physicians and Petitioner's failure to seek medical care for any such injury until September 26, 2012, thirty four days after the incident. Dr. Lehman reasoned that if Petitioner had suffered an injury in the accident and had suffered with "excruciating pain" since that date as she indicated (PX 2), then she would have sought medical care and reported the injury to her physicians immediately following the accident. RX 1. The Arbitrator finds Dr. Lehman's rationale and his opinions to be sound, and based upon more complete information than that of Dr. Kohlmann. Therefore, the Arbitrator gives the opinions of Dr. Lehman greater weight.

Although Petitioner offered witnesses to testify as to her post-accident complaints in her right knee, the witnesses gave inconsistent testimony. Ms. Rollins stated that she saw Petitioner go down on her right knee, but Ms. Makenson stated that Petitioner did not fall to the floor, but instead twisted her leg, though she was unsure of which one. Neither of the witnesses were able to state with certainty the time period in which Petitioner complained of pain in her knees, but rather testified that Petitioner complained of pain in the following weeks, which is consistent with reports of pain contained in the treatment record of September 26, 2010 with Dr. Santiago.

The Arbitrator notes that while Petitioner repeatedly asked to explain issues raised with regard to Petitioner's accident report and post-accident medical records on cross examination, Petitioner made no attempt to reconcile the material on redirect examination. As the burden of proof rests with Petitioner, and in light of the absence of any reference to injuring her right knee in the accident reports or medical records immediately following the accident, and considering the bases of opinions of Dr. Kohlmann and Dr. Lehmann, the Arbitrator concludes that Petitioner has failed to sustain her burden of proof. Therefore, the Arbitrator finds that Petitioner's right knee condition is not causally related to her work accident of August 23, 2012.

Turning to Petitioner's left knee condition, the evidence indicates that Petitioner had a condition for which she required surgery during the year prior to her accident, and for which she was still having pain and seeking treatment for at the time of her accident. PX 2, RX 5. More significantly, Dr. Lehman and Dr. Kohlmann agreed that Petitioner's left knee condition was not related to her work injury, and Dr. Williams, who treated Petitioner's left knee after the incident, stated that he believed her left knee pain was "exacerbated by her fibromyalgia." RX 2, PX 10, RX 5. The Arbitrator declines to find causation where even Petitioner's treating physicians fail to find any causal relationship to the work accident. Therefore, the Arbitrator finds that Petitioner's left knee condition is not causally related to her work accident of August 23, 2012.

With regard to disputed issue (L), based upon the Arbitrator's conclusions regarding disputed issue (F), temporary total disability benefits are denied with respect to both knees.

With regard to disputed issue (J), based upon the Arbitrator's conclusions regarding disputed issue (F), all medical services relative to Petitioner's right leg are denied. Regarding Petitioner's left knee, the Arbitrator awards medical bills with dates of service prior to October 29, 2012, the first date of treatment with Dr. Kohlmann who found Petitioner's left leg condition unrelated. The treatment received for Petitioner's left knee immediately following the incident is reasonable and necessary in light of Petitioner's undisputed accident. Respondent shall pay all reasonable and necessary medical services prior to October 29, 2012, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. All medical services rendered on and after October 29, 2012 regarding Petitioner's left knee are denied. Respondent shall be given a credit for any medical payments that have been paid by group health insurance pursuant to Section 8(j) of the Act, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. Respondent is entitled to a credit for any medical payments made by Respondent.

In regard to disputed issue (O), the Arbitrator denies Petitioner's request for prospective medical treatment based upon the Arbitrator's conclusions regarding disputed issue (F).

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ 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

Daniel Mobbs,

Petitioner,

vs.

NO. 14 WC012244
14 WC018469

Casting Cleaning Resources,

Respondent.

15IWCC0591

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, permanent disability, causal connection, medical expenses, prospective medical care, and notice, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 14, 2014 is hereby affirmed and adopted.

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

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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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $31,300.00. 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: JUL 29 2015
SJM/sj
o-6/25/15
44

Stephen J. Mathis

David L. Gore

Mario Basurto

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

MOBBS, DANIEL
Employee/Petitioner

Case# **14WC012244**

14WC018469

CASTING CLEANING RESOURCES
Employer/Respondent

15IWCC0591

On 10/14/2014, 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 0.04% 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:

1824 STRONG LAW OFFICES
HANIA SOHAIL
3100 N KNOXVILLE AVE
PEORIA, IL 61603

2965 KEEFE CAMPBELL BIERY & ASSOC LLC
NATHAN S BERNARD
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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STATE OF ILLINOIS)
)SS.
COUNTY OF Peoria)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Daniel Mobbs
Employee/Petitioner
v.

Casting Cleaning Resources
Employer/Respondent

Case # **14** WC **12244**
14 WC **18469**

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 **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Peoria**, on **August 13, 2014**. 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. [x] 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. [x] 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. [x] 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. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [x] Other **Determination of Workers' Compensation Fraud**

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FINDINGS

On the date of accident, **September 1, 2013 and April 1, 2014**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, the average weekly wage was $**761.53**.

On the date of accident, Petitioner was **25** years of age, ***single*** with **0** dependent children.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**507.68**/week for **18 3/7** weeks, commencing **April 7, 2014** through **August 13, 2014**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $**11,552.74,** as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay the reasonable and necessary expenses associated with the carpal tunnel surgery prescribed for the Petitioner by Dr. Blair Rhode, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay to Petitioner penalties of $**1,709.60**, as provided in Section 16 of the Act; $**4,678.01**, as provided in Section 19(k) of the Act; and $**3,870.00**, as provided in Section 19(l) of the Act.

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.

Arbitrator Anthony C. Erbacci

August 8, 2014
Date

OCT 14 2014

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FACTS:

The Petitioner has filed two Applications for Adjustment of Claim which were consolidated for hearing. Case number 14 WC 18469 alleges repetitive trauma injuries to the Petitioner's hands and arms which manifested themselves on or about September 1, 2013. Case number 14 WC 12244 alleges repetitive trauma injuries to the Petitioner's hands, arms, and whole person which manifested themselves on or about April 1, 2014.

On September 1, 2013 and April 1, 2014 the Petitioner was employed by the Respondent as a "chipper/grinder" having been so employed since December of 2011. The Petitioner testified that, prior to working for the Respondent; he did essentially the same job for OF Metals where Mark Kautz was his supervisor. The Petitioner testified that when he went to work for the Respondent, it was Mark Kautz that hired him.

The Petitioner described that his job with the Respondent as a "chipper/grinder" was to remove slag and sand from large castings that were produced in Caterpillar Inc.'s foundry. The Petitioner described that slag was various sized molten raindrop like steel droppings that formed on the castings as part of the casting process. The Petitioner testified that the sand and slag had to be removed from the castings before they would become a finished product that could be returned to Caterpillar for further assembly.

The Petitioner testified in detail regarding the nature of the chipping and grinding that he was required to do and he testified as to the tools he used to perform his job. The Petitioner testified that he used various pneumatic hand tools to remove the sand and slag and to clean the castings. The Petitioner described that he used an air hammer; a small jack hammer with a chisel at the end which weighed 15 to 20 pounds, a cup grinder; a high rpm grinder tool that weighed approximately 20 pounds, a cam grinder, a pencil grinder, an angle grinder and a short shaft grinder. The Petitioner testified that the air hammer impacted his hands and shoulders and that each of the tools was vibratory. He testified that he was required to use the tools with both hands and at various different angles and in various different positions. The Petitioner testified that he did the chipping and grinding job throughout the course of each day of his work week and that he worked between thirty and forty hours per week.

The Petitioner testified that he began to notice numbness, tingling, and loss of grip strength in both of his hands as well as popping and cracking in his shoulders when he was working. He testified that in September of 2013 he advised Mike Kearney that he was having problems with his hands and that he thought it was related to the chipping and grinding work he was doing. The Petitioner testified that an incident report was completed and he was assigned to work in the tool crib for a few days. He testified that he did not seek medical treatment because he feared he would lose his job. The Petitioner testified that after a few days of not using the tools, his symptoms resolved and he was returned to his regular job as a chipper/grinder. He testified that after he returned to his regular job, his symptoms began to

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worsen again.

The Petitioner testified that on April 1, 2014 he advised Mark Kautz of his worsening symptoms. The Petitioner testified that Mark Kautz offered to move him to a different position but the position offered required the use of the same tools as the chipper/grinder job.

On April 4, 2014, the Petitioner saw Dr. Daniel Hoffman on the recommendation of his attorney. The Petitioner gave a history of working for the Respondent for 2 and a half years doing stripping and grinding both on his knees and standing and complained of numbness in both arms and hands for the past six months and pain in the lumbar spine. Dr. Hoffman's assessment was carpal tunnel syndrome and he ordered lumbo-sacral x-rays and nerve and muscle studies of both arms. Dr. Hoffman also restricted the Petitioner to light duty work with no chipping or grinding.

The Petitioner testified that on Monday, April 7, he turned in his work restriction to the Respondent and was assigned to sweep the shop. The Petitioner testified that he was also sent to an "all employee meeting" where one of the topics was the selection of the proper medical facility for treatment of work injuries. The Petitioner testified that his employment with the Respondent was terminated that day.

On April 22, 2014, the Petitioner underwent EMG/NCV studies conducted by Dr. Edward Trudeau which were reported to demonstrate bilateral median neuropathies at the wrists, right greater than left, but no evidence of ulnar neuropathy at either elbow, and no evidence of proximal median neuropathy, other entrapment neuropathy, cervical radiculopathy, or brachial plexopathy.

The Petitioner returned to Dr. Hoffman on May 2, 2014 and Dr. Hoffman referred him to Dr. Rhode for treatment of carpal tunnel syndrome and continued the same restrictions.

On May 7, 2014 the Petitioner was seen by Dr. Blair Rhode. Dr. Rhode noted complaints of bilateral wrist pain with numbness and tingling to the thumb, index finger and long finger and bilateral shoulder pain. Dr. Rhode noted a history of working as a chipper and grinder for the past 3.5 years and symptomatology for approximately 6 months. Dr. Rhode also noted that the Petitioner was required to operate a pencil grinder, cup grinder, and an air hammer with chisels. Dr. Rhode noted the EMG/NCV studies and diagnosed the Petitioner with work related bilateral carpal tunnel syndrome and rotator cuff tendinitis. Dr. Rhode prescribed wrist splints and oral anti-inflamatories and told the Petitioner to return in two weeks.

The Petitioner followed up with Dr. Rhode on May 21, 2014 and June 4, 2014 and Dr. Rhode prescribed a right carpal tunnel release for the Petitioner. Thereafter, the Petitioner continued to follow up with Dr. Rhode on June 18, 2014, July 2, 2014, July 16, 2014 and July 30, 2014 and Dr. Rhode continued to prescribe a right carpal tunnel release for the Petitioner.

On June 5, 2014 the Petitioner underwent x-rays of his lumbar spine and shoulders

which were reported to be unremarkable. The Petitioner followed up with Dr. Hoffman on June 13, 2014 and Dr. Hoffman's assessment was lumbosacral strain and carpal tunnel syndrome.

The Petitioner testified that he currently continues to experience numbness and tingling in his hands and arms, which wakes him up at night, as well as soreness in the palms of his hands and pain in his shoulders. The Petitioner testified that he also notices a loss of grip strength in his hands and that he drops things. The Petitioner testified that he did not experience any of these symptoms or complaints prior to his employment with the Respondent and that he has not been involved in any motor vehicle accidents, that he is not diabetic and that he has no thyroid issues. The Petitioner testified that April 4, 2014 was the last day that he actually performed work for the Respondent and that he has not worked anywhere since his employment with the Respondent was terminated on April 7, 2014.

Robert "Mike" Kearney testified that he has been employed by the Respondent for three years and that, for the last year or so, he has been the Respondent's Operations Manager and was the Petitioner's supervisor. Mr. Kearney testified that he did not have a recollection of the events of September 16, 2013 but that he did prepare and sign Respondent's Exhibit 4. Mr. Kearney acknowledged that the Petitioner did advise that his hands were hurting and that he did assign the Petitioner to the tool crib. Mr. Kearney also testified that he asked the Petitioner if he wanted medical attention and the Petitioner said he did not.

Mr. Kearney testified that he did not receive any notice of an injury from the Petitioner on April 1, 2014 and he did not recall that anything unusual occurred on that day. Mr. Kearney testified that he did prepare and sign Respondent's Exhibit 6 on April 7, 2014 and that the statement does indicate that on April 4, 2014 the Petitioner asked to leave work early and advised that it would be his last day.

Mr. Kearney also testified as to the tools the Petitioner used to perform his work with the Respondent and he acknowledged that they were vibratory. Mr. Kearny's testimony in that regard corroborated the testimony of the Petitioner and he testified that using the tools described by the Petitioner can produce pain, numbness and tingling in the hands and arms.

Mark Kautz testified that he has been employed by the Respondent for three years and that he is the Respondent's General Manager. Mr. Kautz acknowledged that on April 1, 2014 the Petitioner did complain to him that he was having problems with his hands. Mr. Kautz testified that on April 3, 2014, the Petitioner came to his office regarding an issue with his pay check and advised that he was dissatisfied with his job and wanted to be laid off. Mr. Kautz identified Respondent's Exhibit 5 as a document that he typed and signed on April 7, 2014. Mr. Kautz acknowledged that he did conduct an "all employees" meeting on April 7, 2014 but that he did not recall the purpose of that meeting. Mr. Kautz also identified Respondent's Exhibit 3 as being a statement of the Petitioner's wages that was prepared by the Respondent. Mr. Kautz testified that he did not personally prepare that document.

On cross-examination, Mr. Kautz testified that the Petitioner was laid off and not

terminated. Mr. Kautz also testified that he felt that the Petitioner's claim for compensation was fraudulent because the timing of the Petitioner's claim and the circumstances surrounding the Petitioner's last days of work for the Respondent seemed "fishy" to him. When asked to identify the criminal act he felt that the Petitioner had committed that warranted alleging he committed Workers' Compensation fraud, Mr. Kautz testified that the Petitioner had previously "gouged us" for an extended period of unemployment compensation benefits that he wasn't entitled to.

The testimony of Dr. Blair Rhode was presented by the Petitioner. Dr. Rhode testified that he first saw the Petitioner on May 7, 2014 and that the Petitioner complained of bilateral shoulder and wrist pain that he related to the work he did as a chipper/grinder. Dr. Rhode testified that the Petitioner described the tools that he used to perform his job and Dr. Rhode testified that he was independently familiar with the job duties of a chipper/grinder and the tools a chipper/grinder used to perform that job. Dr. Rhode testified that he has diagnosed the Petitioner as having bilateral carpal tunnel syndrome and bilateral rotator cuff tendonitis. Dr. Rhode testified that he has prescribed bilateral carpal tunnel releases for the Petitioner and he opined that those surgeries were reasonable and necessary medical treatment which was causally related to the Petitioner's work as a chipper/grinder for the Respondent. Dr. Rhode opined that the Petitioner's bilateral carpal tunnel condition and bilateral rotator cuff tendinitis were causally related to the Petitioner's work as a chipper/grinder for the Respondent.

The Respondent produced no medical testimony or opinions to contradict or rebut the testimony of Dr. Rhode.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (C.), Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, and (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Petitioner testified as to his employment by the Respondent as a "chipper/grinder" since December of 2011 and described that his job was to remove slag and sand from large castings using various pneumatic hand tools. The Petitioner described that he used an air hammer and other high rpm grinders that all vibrated and impacted his hands and shoulders. He testified that he was required to use the tools with both hands and at various different angles and in various different positions. The Petitioner testified that he did the chipping and grinding job throughout the course of each day of his work week and that he worked between thirty and forty hours per week. The Petitioner's testimony regarding the nature of his job and the tools that he used was corroborated by the testimony of Mike Kearney, one of the Respondent's witnesses.

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The Petitioner testified that he began to notice numbness, tingling, and loss of grip strength in both of his hands as well as popping and cracking in his shoulders when he was working and that he reported his symptoms to the Respondent in September of 2013. Mike Kearney corroborated the Petitioner's testimony that he reported his symptoms at that time and that he was taken off chipping and grinding work for a few days. The Petitioner testified that his symptoms resolved but that, after he returned to chipping and grinding work, his symptoms returned and began to worsen.

On April 1, 2014 the Petitioner reported his worsening symptoms to the Respondent and on April 4, 2014, the Petitioner sought medical treatment for his complaints with Dr. Daniel Hoffman who diagnosed carpal tunnel syndrome, restricted the Petitioner to light duty work, with no chipping or grinding, and referred the Petitioner to Dr. Edward Trudeau for an EMG/NCV study. On April 22, 2014, the Petitioner underwent the prescribed EMG/NCV studies which were reported to demonstrate bilateral median neuropathies at the wrists. The Petitioner was then referred to Dr. Blair Rhode.

On May 7, 2014, the Petitioner was seen by Dr. Rhode who noted complaints of bilateral wrist pain and bilateral shoulder pain for approximately 6 months and a history of working as a chipper and grinder. Dr. Rhode also noted the type of work the Petitioner did and the tools that the Petitioner was required to operate. Dr. Rhode testified that he was familiar with the job duties of a chipper/grinder and the tools a chipper/grinder used to perform that job. Dr. Rhode noted the EMG/NCV studies and diagnosed the Petitioner with work related bilateral carpal tunnel syndrome and rotator cuff tendinitis. Dr. Rhode ultimately prescribed a carpal tunnel release for the Petitioner.

Dr. Rhode testified that he has diagnosed the Petitioner as having bilateral carpal tunnel syndrome and bilateral rotator cuff tendonitis. Dr. Rhode testified that he has prescribed bilateral carpal tunnel releases for the Petitioner and he opined that those surgeries were reasonable and necessary medical treatment which was causally related to the Petitioner's work as a chipper/grinder for the Respondent. Dr. Rhode opined that the Petitioner's bilateral carpal tunnel condition and bilateral rotator cuff tendinitis were causally related to the Petitioner's work as a chipper/grinder for the Respondent.

The Respondent produced no medical testimony or opinions to contradict or rebut the testimony of Dr. Rhode.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner did sustain repetitive trauma injuries to his hands and shoulders that arose out of and in the course of his employment with the Respondent. The Arbitrator further finds that the Petitioner's current condition of ill-being with respect to his hands and shoulders is causally related to the Petitioner's work activities for the Respondent.

In Support of the Arbitrator's Decision relating to (G.), What were Petitioner's earnings, the Arbitrator finds and concludes as follows:

In the Request for Hearing submitted by the parties and admitted into the record as Arbitrator's Exhibit 1, the Petitioner claimed that his earnings in the year preceding the injury were $52,000.00 and that his average weekly wage was $1,000.00. The Respondent claimed that the Petitioner's average weekly wage in the year preceding the injury was $761.53.

The Petitioner testified at hearing that his earnings in the year preceding the injury were $40,000.00 and that he earned approximately $1,000.00 per week. The Petitioner offered no other evidence in support of his claimed earnings or average weekly wage.

In support of its claimed average weekly wage, the Respondent offered Respondent's Exhibit 3 which was admitted into the record over the Petitioner's hearsay objection. Mark Kautz identified Respondent's Exhibit 3 as being a statement of the Petitioner's wages that was prepared by the Respondent but he admitted that he did not prepare the document. No testimony or other evidence was offered in support of the Exhibit or the Respondent's claimed average weekly wage calculation.

The Arbitrator notes that other than his testimony, which was clearly an estimate, the Petitioner offered no evidence in support of his earnings and average weekly wage. The Arbitrator notes that while Respondent's Exhibit 3 indicates that the Petitioner's average weekly wage was calculated to be $747.16, no evidence was offered in support of the Exhibit and no explanation as to the calculation used to arrive at that number was offered. In the Request for Hearing submitted by the parties and admitted into the record as Arbitrator's Exhibit 1, the Respondent stipulated to an average weekly wage of $761.53. Therefore, the Arbitrator finds that the Petitioner's average weekly wage in the year preceding the injury was $761.53.

In Support of the Arbitrator's Decision relating to (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, and (K.), Is Petitioner entitled to any prospective medical care, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issues of accident and causal connection are adopted and incorporated herein.

The Petitioner offered, as Petitioner's Exhibit 10, evidence of charges for medical treatment rendered to him by Dr. Hoffman in the amount of $535.00, Dr. Trudeau in the amount of $3,698.00, Memorial Medical Center in the amount of $1,572.00, and Orland Park Orthopedics (Dr. Rhode) in the amount of $5,747.74. The Petitioner testified that all of the treatment and the charges reflected in Petitioner's Exhibit 10 was incurred a result of his work

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injuries.

The Arbitrator has found that the Petitioner did sustain accidental injuries arising out of and in the course of his employment with the Respondent and that his current conditions of bilateral carpal tunnel syndrome and bilateral rotator cuff tendinitis were causally related to the Petitioner's work as a chipper/grinder for the Respondent. Dr. Rhode, the Petitioner's treating physician, testified that the care and treatment rendered to the Petitioner for those conditions was reasonable, necessary and causally related to the Petitioner's work as a chipper/grinder for the Respondent and that the Petitioner is in need of additional medical treatment as a result of his work related conditions. No medical testimony, evidence, or opinions which challenged, contradicted, or rebutted the testimony of Dr. Rhode was offered into the record.

Based upon the foregoing, and having considered the totality of the evidence adduced at hearing, the Arbitrator finds that the medical care and treatment rendered to the Petitioner and the charges therefore as evidenced in Petitioner's Exhibit 10 was reasonable, necessary and causally related to the Petitioner's work injuries. The Arbitrator further finds that the carpal tunnel release surgery prescribed for the Petitioner by Dr. Rhode is reasonable, necessary, and causally related medical treatment which the Respondent is required to provide.

In Support of the Arbitrator's Decision relating to (L.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

On April 4, 2014 the Petitioner sought medical treatment for his complaints with Dr. Hoffman. Dr. Hoffman's assessment was carpal tunnel syndrome and he restricted the Petitioner to light duty work with no chipping or grinding. The Petitioner has continued under medical care and has continued to be restricted to light duty work since that time through the date of hearing. The Petitioner testified that on Monday, April 7, he turned in his work restriction to the Respondent and attended an "all employee meeting". The Petitioner testified that his employment with the Respondent was terminated that day and that he has not worked anywhere since that date. Mark Kautz testified that on April 3, 2014 the Petitioner asked to be laid off and that on April 4, 2014 the Petitioner advised him that it would be his last day of work. Mr. Kautz acknowledged that the Petitioner did turn in the light duty work slip on April 7, 2014 but indicated that the Petitioner accepted a lay off on April 4, 2014. Mr. Kautz testified that the Petitioner was laid off and not terminated.

The Arbitrator questions the reliability of all of the testimony relating to the events surrounding the last days of the Petitioner's employment with the Respondent. It is clear, however, that the Petitioner began a course of medical treatment with Dr. Hoffman on April 4, 2014 and that he was given work restrictions at that time. It is also clear that the Petitioner went to the Respondent's facility on Monday April 7, 2014 and turned in those restrictions and then attended an "all employees meeting". After the Petitioner attended the "all employees meeting", the Petitioner was either laid off or terminated. Thus, the Arbitrator concludes that

the Petitioner was still employed by the Respondent when he began a course of medical treatment and was placed on work restrictions by Dr. Hoffman on April 4, 2013. After the Petitioner presented those work restrictions to the Respondent, his employment status changed and he was not provided with work within those restrictions.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner is entitled to Temporary Total Disability benefits from April 7, 2014 through August 13, 2014, a period of 18 3/7 weeks.

In Support of the Arbitrator's Decision relating to (M.), Should penalties or fees be imposed upon Respondent, the Arbitrator finds and concludes as follows:

The Petitioner properly filed and noticed a Petitioner for Penalties and Fees, a copy of which was admitted into the record as Petitioner's Exhibit 9. The Respondent's response to the Petition was admitted into the record as Respondent's Exhibit 2.

The Petitioner has claimed repetitive trauma injuries to his hands and arms arising out of his work activities for the Respondent. The Arbitrator notes that the Petitioner's testimony regarding the nature of his work activities and the onset of his symptoms was consistent with all of the medical records introduced into evidence as well as the testimony of the Respondent's witnesses. The Respondent's witnesses acknowledged that they were aware of the Petitioner's complaints of numbness, tingling and pain in his arms, and his claim that those symptoms were related to his work activities, prior to the filing of his claim. The Respondent's operations manager also acknowledged that chipping and grinding activities can cause numbness, tingling, and pain in the hands and arms.

The Respondent did not offer any evidence to rebut the causal connection opinions of the Petitioner's treating physicians and the Respondent did not offer into evidence any other explanation for the cause of the Petitioner's complaints. The Respondent did not obtain or request an examination of the Petitioner pursuant to Section 12 of the Act. The Respondent stipulated that it had timely notice of the Petitioner's claim but did not articulate any reasonable explanation for denial of the Petitioner's claim for benefits.

The Arbitrator notes that the only evidence offered by the Respondent to explain the denial of of the Petitioner's claim for benefits was the testimony of Mike Kautz, the Respondent's general manager, that he felt that the timing of the Petitioner's claim and the circumstances surrounding the Petitioner's last days of work for the Respondent seemed "fishy" to him and that the Petitioner sought the advice of legal counsel before he sought medical treatment for his complaints. Mr. Kautz also alleged that the Petitioner had previously "gouged" the Respondent for an extended period of unemployment compensation benefits that he wasn't entitled to.

The Arbitrator does not find the above justification to be an objectively reasonable

basis and/or explanation for the denial of the Petitioner's claim. The Arbitrator also notes that even this response was not offered until the time of hearing and that there was no explanation for denial produced to the Petitioner prior to the time of hearing. Further, the Arbitrator notes that the testimony of Mike Kautz demonstrates that the denial of benefits to the Petitioner was objectively unreasonable and vexatious.

Based upon the foregoing, and having considered the totality of the evidence adduced at hearing, the Arbitrator finds that the Respondent's failure to pay benefits to the Petitioner in the instant matter was unreasonable and vexatious.

Section 19(k) of the Act provides that where there has been any unreasonable or vexatious delay of payment of compensation, the Commission may award compensation additional to that otherwise payable under the Act equal to 50% of the Amount payable at the time of such award. Section 19(l) of the Illinois workers' Compensation Act provides that where the employer, without good and just cause, fails, refuses, or unreasonably delays the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator shall allow the employee additional compensation of $30.00 per day, not to exceed $10,000.00.

The Arbitrator has found that the Respondent's failure to pay benefits to the Petitioner in the instant matter was unreasonable and vexatious. The Arbitrator has also found that the Petitioner has been off work, and entitled to Temporary Total Disability benefits from April 7, 2014 to the present, a period of 129 days. The Arbitrator has also found that the Petitioner has incurred $11,552.74 in medical expenses which are reasonable, necessary and causally related to the Petitioner's work related condition of ill-being.

The Arbitrator therefore awards penalties pursuant to Section 19(k) of the Act in the amount of $4,678.01 (50% of $9,356.03) and Section 19(l) of the Act in the amount of $3,870.00 ($30.00 x 129); and attorneys' fees of $1,709.60 ($8548.01 x 20%) as provided in Section 16 of the Act.

In Support of the Arbitrator's Decision relating to (O.), Workers' Compensation fraud, the Arbitrator finds and concludes as follows:

The Respondent has filed a Motion for Determination of Workers' Compensation Fraud alleging that the Petitioner intentionally made false and fraudulent material statements with regard to the cause and extent of his injuries, the cause and extent of his physical limitations, his alleged disability, and/or about his alleged inability to work to both Respondent and/or to physicians in order to obtain Workers' Compensation benefits. The Arbitrator finds that he is without jurisdiction to make a determination of Workers' Compensation Fraud and further finds that the Respondent has failed to prove that the Petitioner committed any act which would constitute fraud under the provisions of the Workers Compensation Act.

Section 25.5 (a) of the Illinois Workers' Compensation Act provides that it is unlawful

for any person, company, corporation, insurance carrier, healthcare provider, or other entity to intentionally present or cause to be presented any false or fraudulent claim for the payment of any workers' compensation benefit; intentionally make or cause to be made any false or fraudulent material statement or material representation for the purpose of obtaining or denying any workers' compensation benefit. Section 25.5 (c) provides that the Department of Insurance shall establish a fraud and insurance non-compliance unit responsible for investigating incidences of fraud and insurance non-compliance and that "it shall be the duty of the fraud and insurance non-compliance unit to determine the identity of insurance carriers, employers, employees, or other persons or entities who have violated the fraud and insurance non-compliance provisions of this Section" and to "report violations of the fraud and insurance non-compliance provisions of this Section to the Special Prosecutions Bureau of the Criminal Division of the Office of the Attorney General or to the State's Attorney of the county in which the offense allegedly occurred, either of whom has the authority to prosecute violations under this Section. Section 25.5 (d) provides that "Any person may report allegations of insurance non-compliance and fraud pursuant to this Section to the Department of Insurance's fraud and insurance non-compliance unit whose duty it shall be to investigate the report." 820 ILCS 305/25

The Arbitrator notes that there is nothing in the above provisions of the Illinois Workers' Compensation Act which authorizes, empowers, or directs the Commission and/or an Arbitrator to make findings or determinations of Workers Compensation fraud and that the plain language of that Section repeatedly refers to the Department of Insurance as the proper governmental unit charged with the statutory responsibility for investigating and making workers' compensation fraud determinations for possible referral to the Attorney General and/or local State's Attorney for criminal prosecution. The Arbitrator has reviewed the Workers' Compensation Act in its totality and does not find or locate any section within the Act which vests the Commission or its Arbitrators with lawful authority to either investigate or make fraud determinations. While an Arbitrator may make findings of fact which could serve as the basis for commencing an investigation or prosecution of Workers' Compensation fraud, the Arbitrator is without authority to find a claimant or an employer guilty of a criminal act.

While the Arbitrator has found that he is without jurisdiction to hear the Respondent's Motion for Determination of Workers' Compensation Fraud, the Arbitrator finds that the Respondent failed to prove that the Petitioner committed a fraudulent act.

Initially, the Arbitrator notes that that the Respondent's Motion for Determination of Workers' Compensation Fraud is devoid of any allegation of facts which would constitute fraud and that the Motion merely contains conclusory statements of law and conclusory denials of the various elements needed to support a workers' compensation claim. The Motion would, therefore, appear to be deficient on its face. When Mike Kautz, the Respondent's general manager, was given the opportunity to testify as to what specific fraudulent acts he felt the Petitioner had engaged in, he testified that he thought it was "fishy" that the Petitioner sought the advice of legal counsel before he sought medical treatment for his complaints and that the Petitioner had previously "gouged" the Respondent for an extended period of unemployment compensation benefits that he wasn't entitled to. No other

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explanation was offered by the Respondent as to any specific fraudulent acts or conduct that the Petitioner engaged in.

More significantly, however, the Arbitrator notes that the Respondent did not produce any evidence of any facts, conduct, or statements which would constitute fraud under Section 25.5 of the Act. The Respondent did not present any evidence which would support a finding that the Petitioner intentionally presented or caused to be presented a false or fraudulent claim for the payment of any workers' compensation benefit or that the Petitioner intentionally made or caused to be made any false or fraudulent material statement or material representation for the purpose of obtaining any workers' compensation benefit.

Based upon the above, the Respondent's Motion for Determination of Workers' Compensation Fraud is denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John Gebert,

Petitioner,

vs.

NO: 11 WC 48469

15IWCC0585

Parkshore Estates Nursing
and Rehab Center,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of benefit rates, permanent partial disabilityand being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, the petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 24, 2014 is hereby affirmed and adopted.

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

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

15IWCC0585

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

DATED: JUL 2 8 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:6/4/15
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GEBERT, JOHN
Employee/Petitioner

Case# **11WC048469**

15IWCC0585

PARKSHORE ESTATES NURSING AND REHAB CENTER
Employer/Respondent

On 10/24/2014, 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 0.05% 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:

1315 DWORKIN & MACIARIELLO
DAVID VanOVERLOOP
134 N LASALLE ST SUITE 1515
CHICAGO, IL 60602

4925 SEGAL McCAMBRIDGE SINGER
JOHN LEE
233 S WACKER DR SUITE 5500
CHICAGO, IL 60606

15IWCC0585

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

John Gebert
Employee/Petitioner

v.

Parkshore Estates Nursing and Rehab Center
Employer/Respondent

Case # 11 WC 48469

Consolidated cases: N/A

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 Kurt Carlson, Arbitrator of the Commission, in the city of **Chicago**, on **07-09-14**. 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 _____

John Gebert v. Parkshore Estates Nursing and Rehab Center
Case # 11 WC 48469

Petitioner's Proposed Findings of Fact and Conclusions of Law

FINDINGS OF FACT

Petitioner, John Gebert, was involved in an undisputed work accident while working for Respondent, Parkshore Estates Nursing and Rehab Center, on November 22, 2011. Petitioner testified that on that date he had been employed by Respondent for about 10 years. On the date of the accident Petitioner was employed by Respondent in the position of Maintenance Supervisor. Petitioner testified that his job duties included all forms of maintenance of the nursing center, including general repair, painting, tiling, heating and air conditioning, and other general maintenance tasks. Petitioner further testified that the maintenance department consisted of him as the head of the department, reporting directly to the Administrator of Respondent, and two other maintenance workers, all of whom performed the same types of work.

On November 22, 2011, Petitioner was painting when he attempted to lift a 5 gallon bucket of paint and twisted. He felt immediate pain in his back that caused him to drop to his knees. He immediately notified his employer then left work to go to Advocate South Suburban Medical Center's emergency room.

Following his discharge from the hospital, Petitioner presented to Dr. Anwar on November 28, 2011. Petitioner eventually underwent an MRI of his lumbar spine and Dr. Anwar recommended conservative treatment in the form of physical therapy and injections. Petitioner participated in physical therapy at ATI and received three injections. The records of Dr. Anwar indicate that the treatment failed to relieve Petitioner's symptoms. (PX 2, 5, 7)

Following the failure of conservative treatment, Dr. Anwar recommended a lumbar discogram which was performed on April 20, 2012. The post-discogram CT revealed herniated discs at L4-5 and L5-S1. Based on these findings, Dr. Anwar recommended an outpatient microdiscectomy. (PX 2, 6)

Petitioner was referred to Dr. Ronald Michael for a second opinion. On October 1, 2012, Dr. Michael confirmed Dr. Anwar's diagnosis and agreed with the recommendation for the microdiscectomy, noting that a more invasive surgery was risky given Petitioner's size. (PX 8)

between March 17, 2013 and May 13, 2014. Petitioner testified that despite these hundreds of contacts over fourteen months he did not receive a single interview. Petitioner further testified that he attempted to follow up with a number of the potential job leads, but was told on more than one occasion that they would not hire anyone with restrictions. (PX 10)

Petitioner testified at trial that before he was employed by Respondent, he had worked briefly for his father's fencing company. Prior to that he had worked in a contract position doing maintenance for various nursing and rehabilitation centers. Petitioner testified that he began this work after completing 9th grade, and he did not proceed any further in high school. Petitioner never received a GED.

At hearing Petitioner called Carl Triebold to testify. Triebold testified that he is a professional Vocational Rehabilitation Counselor and has been for 27 years, running his own Vocational Rehabilitation company for the past 24. Triebold testified that he has a Master's Degree in Rehabilitation Counseling and is licensed as a Clinical Professional Counselor as well as maintaining a certification as a Rehabilitation Counselor.

Triebold testified that he reviewed the FCE reports, as well as certain medical records of Dr. Anwar and Respondent's IME, Dr. Graf. He further testified that he met with Petitioner in person and interviewed Petitioner regarding his education and past work experience. Triebold also reviewed Petitioner's job search logs. Triebold testified that the job search logs kept by Petitioner were the same type as those he would expect a candidate undergoing formal vocational rehabilitation to maintain, and that the 14 months documented in the job search logs represented a diligent job search.

Triebold testified that based on the lifting restrictions set forth in the FCE as well as the limitations on durations of sitting, standing, walking and length of work day in general, Petitioner was not even necessarily a candidate for competitive light duty work. Moreover, Triebold testified that Petitioner's work history of almost exclusively maintenance work was all medium to heavy work, and would therefore not provide significant transferable skills to jobs in the light duty category. Likewise, the lack of a full high school education or even a GED further weighed against the likelihood of Petitioner obtaining employment. As such, Triebold concluded that based on Petitioner's age, education, training, experience and condition there is no stable and continuous work available to Petitioner.

Industrial Comm'n, 372 Ill. App. 3d 527, 544 (2007). Once the employee has initially established the unavailability of employment to a person in her circumstances, the burden then shifts to the employer to show that suitable work is regularly and continuously available to the employee. *Valley Mould & Iron Co. v. Industrial Comm'n*, 84 Ill. 2d 538, 547 (1981).

The Arbitrator finds that Petitioner met his burden in establishing the unavailability of employment to a person in his circumstances by either of the two means prescribed. Petitioner performed a job search over 14 months contacting hundreds of employers and kept track of the attempted leads. Vocational Expert Carl Triebold testified that the logs kept by Petitioner were the same type as would be expected to be kept by a candidate engaged in formal vocational rehabilitation, and that the searches documented represented a diligent search. This diligent job search performed by Petitioner proved to be unsuccessful.

Furthermore, Triebold testified that due to Petitioner's lack of transferable skills, lack of education beyond 9th grade and lack of GED, lack of experience in work outside of maintenance, and physical limitations as identified by the valid FCE, Petitioner is unable to engage in stable and continuous employment.

Petitioner has established the unavailability of employment to a person in his circumstances by both means prescribed by the Illinois Appellate Court in *Westin Hotel.* Therefore, the burden shifts to Respondent to show that suitable work is regularly and continuously available to Petitioner.

The Arbitrator notes that Respondent provided no evidence or testimony to contradict the opinions of Petitioner's Vocational Expert, Carl Triebold. Rather, the only evidence Respondent offers to rebut Petitioner's inability to work is the job offer letter of June 26, 2014. However, the Arbitrator finds this letter to represent a sham job offer.

In *Reliance Elevator Company v. Industrial Commission*, 309 Ill. App. 3d 987 (1st Dist. 1999) the Appellate Court found that a job offer made to an injured employee alleging odd-lot permanent total disability was a sham job offer and, as such, did not satisfy the employer's burden of showing that suitable work was regularly and continuously available to the injured employee. In that case, the Court noted that there was no offer made until after the initial arbitration hearing, the employer refused to offer any employment prior to that offer, and the job was offered at a rate of compensation far higher than was economically justifiable.

performing, and Respondent called no witness to testify as to what type of work or tasks were envisioned in the alleged light duty job within the maintenance department.

Based on the delivery of the job offer one week before a set hearing date, the lack of any attempt by Respondent to bring Petitioner back or assist Petitioner in finding work until that letter, the suspect offer of paying at a rate of compensation suitable for a position higher within the department, as well as Petitioner's testimony that no such position had previously existed and there was not full-time work within his restrictions in the Maintenance Department, the Arbitrator finds that the job offer made in the letter dated June 26, 2014 was a sham job offer. The job offer was not a *bona fide* offer, but rather represented a position that was fabricated shortly before a set hearing date and, as in *Reliance*, was "designed to circumvent [Respondent's] liability under the Act. To countenance such practice would severely jeopardize injured workers' abilities to obtain relief and would undermine the spirit and purpose of the Act."

Because the sham job offer was Respondent's only evidence to rebut Petitioner's establishment of the unavailability of employment to a person in his circumstances, the Arbitrator finds that Respondent has not met its burden of showing that suitable work is regularly and continuously available to Petitioner.

The Arbitrator finds Petitioner to be permanently and totally disabled, and is entitled to weekly Permanent Total Disability benefits in the amount of $755.31 beginning July 10, 2014 and continuing for the duration of his life.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Abigail Mendez,
Petitioner,

vs. No: 10 WC 10542

McDonald's,
Respondent.

15IWCC0595

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 entire record and being advised of the facts and law, affirms the Decision of the Arbitrator in denying reinstatement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. On March 18, 2010, Petitioner filed her Application for Adjustment of Claim. The Respondent moved to dismiss on August 19, 2013, and again on January 8, 2014.

2. On May 21, 2014, Arbitrator Andros issued a dismissal of this claim for want of prosecution.

3. On August 2, 2014, Petitioner filed a Petition to Reinstate. On a hearing held on August 19, 2014, Petitioner's counsel claimed that the case had been settled in principle for months; however, counsel had been unable to reach his client. Arbitrator Andros denied reinstatement, and advised that no separate written order would be generated.

4. On September 16, 2014, Petitioner filed the instant Petition for Review. Petitioner thereafter failed to file a Statement of Exceptions and Supporting Brief, in violation of Rule 7040.70.

Given the facts above, it is clear that the Arbitrator was well within his discretion to deny reinstatement. In affirming, we also take note that Arbitrator Andros observed on the record at the August 19, 2014 hearing that the case had previously been dismissed and reinstated.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator issued on August 19, 2014 is hereby affirmed. Reinstatement of this claim is denied.

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

DATED: JUL 29 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

o-07/14/15
jdl/ac
68

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kenneth Beltran,

Petitioner,

vs. NO. 07WC047883

Cintas Corp.,

15IWCC0592

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 3, 2014 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $17,000.00. The party commencing the proceedings for review in the Circuit Court shall

15IWCC0592

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

DATED: JUL 29 2015
SJM/sj
o-7/9/2015
44

Stephen J. Mathis

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BELTRAN, KENNETH
Employee/Petitioner

Case# **07WC047883**

CINTAS CORP
Employer/Respondent

15IWCC0592

On 9/3/2014, 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 0.05% 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
DAVIVD B MENCHETTI
10 S LASALLE ST SUITE 1250
CHICAGO, IL 60603

0075 POWER & CRONIN LTD
BRIAN A RUDD
900 COMMERCE DR SUITE 300
OAKBROOK, IL 60523

STATE OF ILLINOIS)
ss
COUNTY OF COOK)

151..000592

☐	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

Kenneth Beltran
Employee/Petitioner

v.

Cintas Corp.
Employer/Respondent

Case # **07** WC **47883**

Consolidated cases: **N/A**

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 **Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **7/23/2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

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FINDINGS

On **4/17/2006**, 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 $**34,552.47**; the average weekly wage was $**803.55**.

On the date of accident, Petitioner was **26** years of age, *married* with **0** 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** for TTD, $**0** for TPD, $**0** for maintenance, and $ for other benefits, for a total credit of $**1,945.20**.

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

ORDER

Causal Connection
Petitioner failed to prove, by a preponderance of the evidence, a causal relationship between his current condition of ill-being and the subject accident of April 17, 2006, therefore benefits will only accrue until December 15, 2006; when his treating physician discharged him from care with no restrictions.

Medical
Respondent shall pay reasonable and necessary medical services with a date of service from April 17, 2006 through December 15, 2006, subject to the limitations provided by the Illinois Fee Schedule, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given credit for $1,945.20 for medical benefits paid under Section 8(a) of the Act.

Nature and Extent
Respondent shall pay Petitioner permanent partial disability benefits of $482.13/week for 35 weeks, because the injuries sustained caused the 7% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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.

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FINDINGS OF FACT

The disputed issues in this matter are: 1) causal connection; 2) medical bills; and the nature and extent of Petitioner's injuries. *See,* AX1.

On April 17, 2006, Kenneth Beltran, ("Petitioner") was working for the Cintas Corporation ("Respondent") and was in the process of carrying a large box of terry cloths when he suffered an injury to his lower back. Petitioner testified that the box weighed approximately one hundred (100) pounds and that it began to slip backwards off his shoulder. He was attempting to catch it, leaning backwards, when he experienced pain in his low back.

At trial, Petitioner testified that he immediately felt pain that began in his low back and radiated into his legs. The Arbitrator notes that this testimony is contradictory to the treatment records with Dr. Khanna, at Advanced Occupational Medicine Specialists.

Petitioner began treatment with Dr. Khanna on April 18, 2006 and gave a history of an injury taking place the day prior, while unloading big boxes of terry cloths. Petitioner stated that he put one of the boxes onto his right shoulder and the box started slipping so he leaned backward. When he leaned forward, he felt pain in his low back. Petitioner's pain score on April 18, 2006 was six (6) to seven (7) out of ten (10); however, he specifically denied any complaints other than pain in the low back. Dr. Khanna also noted a history of Petitioner suffering an impact injury to his tailbone in November of December 2005, while he was snowboarding. PX1.

As of the April 18, 2006 treatment date, Petitioner stated that he still had pain from a snowboarding injury and that he was unable to sit comfortably on his tailbone. Upon physical examination, a straight leg raise test was performed and it was noted to be negative for any radiation into the lower extremities. Dr. Khanna documented complaints of pain only in the low back. The initial diagnosis was lumbago and paraspinal muscle spasm and Dr. Khanna prescribed Ibuprofen, Cyclobenzaprine and imposed a 10-pound lifting restriction. The light duty restrictions were accommodated by Respondent; and no temporary total disability benefits are at issue in this matter. PX1.

On May 9, 2006, Petitioner returned to Dr. Khanna and physical therapy had been prescribed in the interim. Dr. Khanna noted the Petitioner attended only one physical therapy appointment, noting that Petitioner complained that he lived too far from the facility and was too busy to attend Physical therapy sessions. Petitioner's pain level was four out of 10 and it was noted that the pain vacillated. The Arbitrator notes again that the petitioner denied any radiculopathy, in contrast to his testimony that he experienced pain radiating into his legs, beginning the day of the accident. Dr. Khanna also noted that the Petitioner was receiving treatment with a masseuse every other day and that Petitioner was working with a personal trainer, who was helping him with stretching. At trial, when asked if the masseuse or the personal trainer were medical professionals and whether their appointments were

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prescribed by a doctor, Petitioner denied both. The Arbitrator finds that the Petitioner chose to ignore his doctor's prescription for formal physical therapy and instead obtained massages and worked with a personal trainer.

Dr. Khanna's impression of Petitioner's injuries, as of May 9, 2006, remained the same, i.e. lumbago and paraspinal muscle spasm with mild improvement. His initial recommendation emphasized the importance of performing physical therapy. A Medrol Dose Pack was prescribed in addition to Ibuprofen and Cyclobenzaprine; and Petitioner was returned to work in a light duty capacity. The work status form, dated May 9, 2006, outlines a referral for physical therapy three times a week for two weeks; and the instructions specifically state that the patient "must attend PT appointments."

On May 18, 2006, Petitioner returned to Dr. Khanna stating that he was ready to return to work. Petitioner stated that he was fine, except when he twisted. Overall, Petitioner went to three physical therapy appointments, then stated that he was feeling better. Dr. Khanna noted that Petitioner was experiencing pain at a level of two (2) out of ten (10); that Petitioner completed the Medrol Dose Pack; and he was taking Ibuprofen only as needed; and that the Cyclobenzaprine was almost finished. Dr. Khanna noted the Petitioner was hesitant to twist to the left; and the doctor continued his diagnoses of lumbago and paraspinal muscle spasm; which was noted to be improving. Physical therapy was discontinued and a home exercise program provided. Petitioner was released to return to work, with no restrictions, and to follow-up as needed.

On November 30, 2006, Petitioner presented to Dr. Khanna complaining that he had really bad back pain, radiating down the left leg. This is the first time the medical records have indicated that Petitioner had pain radiating into a lower extremity. Petitioner reported being seen by his primary care physician a few weeks prior and that he had been prescribed Vicodin and a muscle relaxer. Petitioner noted the medication did not help and that his pain had been progressing since August 2006. Petitioner specifically denied any recent injury or trauma and that his pain level was nine (9) out of ten (10), at its worst. Physical examination included a seated straight leg raise test that was negative bilaterally. There was no evidence of lower extremity sensory loss to light touch; reflexes and strength was normal. Petitioner complained of pain during the flexion and extension portion of the examination. Dr. Khanna again diagnosed lumbago, paraspinal muscle spasm and possible lumbar neuritis. Recommendations were to take another Medrol Dose Pack, an MRI was prescribed to rule out disc herniation; and a 20-pound lifting restriction was imposed.

An MRI was performed on December 6, 2006 at Community Imaging, which was read to show focal right protrusion of the disc at L2-3, causing moderate stenosis at the entrance of the right neuroforamen. There was also mild left foraminal entrance stenosis. The Arbitrator notes that there was no indication of a pars fracture or other defects at any level on this MRI.

On December 15, 2006, Petitioner returned to Dr. Khanna stating that he felt better. MRI results

were reviewed with the patient in detail; and the diagnoses were listed as lumbar neuritis resolved and lumbago resolved. It was recommended that the Petitioner return to work in a full duty capacity and follow-up only as needed. The work status form dated December 15, 2006, releases Petitioner to regular work and notes the Petitioner suffered lumbago as well as an L2-3 disc protrusion that was asymptomatic. Dr. Khanna marked the box that stated, "patient discharged–no permanent disability anticipated."

Evidence Deposition of Dr. Nora Lim, dated April 23, 2013.

During the Petitioner's course of treatment with Dr. Khanna, he was also seen by his primary care physician, Dr. Nora Lim, on October 24, 2006. She testified that she did not hold a specific board certification; however, her concentration was in family practice and she was a primary care physician. When asked about a causal connection between the petitioner's back pain and work for the Respondent on April 17, 2006, Dr. Lim answered that there might be a causal connection; however, she never asked questions about his occupation. Upon further testimony, Dr. Lim noted that she was under the impression that Petitioner's accident took place one week prior to her October 24, 2006 visit; and that her opinions were based upon Petitioner's subjective history, as she did not have the benefit of any diagnostic testing. PX3 pgs. 15-23.

Dr. Khanna discharged Petitioner on December 15, 2006, to return to work without restrictions and he did so. Petitioner testified that his job for Cintas was physically demanding and that he was required to lift greater than fifty (50) pounds, on a consistent basis, throughout the duration of his shift. He continued working for Cintas in this capacity throughout 2007, 2008 and September 2009, when he left his employment at Cintas and began working for Five Guys Hamburgers, as a district manager.

Petitioner sought no further medical treatment until he presented to Dr. Michael Rivera, on February 19, 2009. The medical record specifically states Petitioner presents for multiple issues. He had stomach flu one week prior and had developed significant abdominal pain, which had since resolved. Secondly, Petitioner had a chronic history of low back pain that occurred at work. According to the subjective history, this happened three years prior. Petitioner claimed he was fairly stable but had been experiencing difficulty with sleep and was afraid to twist. Petitioner asked Dr. Rivera for an examination and ultimately Dr. Rivera opined Petitioner might benefit from Meloxicam and physical therapy. A follow-up visit took place on March 2, 2009 and Petitioner continued to complain of back pain, stating it continued to cause intermittent, severe, sharp pinching and pain. The assessment was chronic low back pain and Meloxicam was continued. Dr. Rivera referenced the possibility of workers' compensation; however, he characterized the situation as "dragging." The doctor noted Petitioner might benefit from a repeat MRI and that he should continue with physical therapy. PX2.

Petitioner did not return to Dr. Rivera, but instead sought medical treatment a year later, i.e. March 4, 2010, went Dr. Charles Slack. After performing a CT scan, Dr. Slack opined Petitioner suffered from a

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non-displaced pars fracture at L2 and a pars defect at L5. The diagnosis was L2 traumatic spondylosis and Dr. Fisher was consulted. PX4.

Evidence Deposition of Dr. Charles M. Slack dated November 21, 2013

Dr. Slack testified that he saw the petitioner on two occasions. Dr. Slack admitted that he made his diagnosis without the knowledge of Petitioner's snowboarding accident in 2005; and he based his opinion on the petitioner's denial of any other back injuries. Dr. Slack was asked if it was medically appropriate for a patient to disregard a doctor's instruction for formalized physical therapy and instead choose massage and personal training. Dr. Slack's answer attempts to minimize the significance of Petitioner's choice to forego formalized medical treatment in favor of non-medical, appointments. Dr. Slack's treatment was limited to two visits and no further invasive procedures took place. Petitioner continued working in a full duty capacity and has done so, to the date of trial. PX5 pgs. 22-27.

Evidence Deposition of Dr. Ryon Hennessy dated January 29, 2014

On July 15, 2011, Dr. Ryon Hennessy examined Petitioner, pursuant to Respondent's request. The doctor's deposition was subsequently taken. Dr. Hennessy reviewed the MRI report from December 6, 2006; and opined that there would have been an osseous lesion noted on the MRI, if Petitioner had truly suffered a pars fracture, at the time of the initial MRI. Dr. Hennessy went on to testify that the MRI center at Community Imaging has a 1.5 Tesla closed scanner, which produces high quality imaging. If a pars defect were present December 6, 2006, it would have appeared on the MRI.

Dr. Hennessy further testified that the pain diagram completed by the petitioner, at Dr. Slack's office, does not correlate with his L2-3 complaints. On addition, when Petitioner underwent the second MRI on May 22, 2010, the report noted that a lifting injury had taken place in 2007. The date of loss alleged by the Petitioner in the Application for Adjustment of Claim and stipulated to at trial shows a date of accident on April 17, 2006. Any lifting injury in 2007 would not be related to the accident that is the subject of this matter. Ultimately, Dr. Hennessy opined that there was no causal connection between Petitioner's work accident on April 17, 2006 and his documented pars defects; and that Petitioner had reached maximum medical improvement and there was no need of further medical treatment beyond December 15, 2006. RX2 pgs. 19-28.

At trial, Petitioner testified that he continues to have complaints with regards to his low back; however, he has been working full duty and has never lost any time from work, because of this injury. Furthermore, Petitioner's last date of medical treatment was September 2011 and despite allegedly having continuous pain complaints over the last three years, Petitioner has not returned to a doctor.

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CONCLUSIONS OF LAW

F. Is Petitioner's current condition of ill being causally related to the injury, the

It is within the province of the Commission to determine the factual issues, to decide the weight to be given to the evidence and the reasonable inferences to be drawn there from; and to assess the credibility of witnesses. *See, Marathon Oil Co. v. Industrial Comm'n*, 203 Ill. App. 3d 809, 815-16 (1990). And it is the province of the Commission to decide questions of fact and causation; to judge the credibility of witnesses and to resolve conflicting medical evidence. *See, Steve Foley Cadillac v. Industrial Comm'n,* 283 Ill. App. 3d 607, 610 (1998).

It is established law that at hearing, it is the employee's burden to establish the elements of his claim by a preponderance of credible evidence. *See, Illinois Bell Tel. Co. v. Industrial Comm'n.,* 265 Ill. App. 3d 681; 638 N.E. 2d 307 (1st Dist. 1994). This includes the issue of whether Petitioner's current state of ill-being is causally related to the alleged work accident. *Id.* A claimant must prove causal connection by evidence from which inferences can be fairly and reasonably drawn. *See, Caterpillar Tractor Co. v. Industrial Comm'n.*, 83 Ill. 2d 213; 414 N.E. 2d 740 (1980). Also, causal connection can be inferred. Proof of an employee's state of good health prior to the time of injury and the change immediately following the injury is competent as tending to establish that the impaired condition was due to the injury. *See, Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 356 N.E.2d 28 (1976). Furthermore, a causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident and inability to perform the same duties following that date. *See, Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 193 (1986).

Based upon the exhibits submitted into evidence in addition to the testimony at trial, the Arbitrator finds the Petitioner's current condition of ill-being is not causally related to the accident on April 17, 2006. On December 15, 2006, when the petitioner was discharged by Dr. Khanna, he returned to full duty with no restrictions at a very physically demanding job. The record is clear that Petitioner's job at Cintas involved heavy physical activity, including frequent lifting of weights of 50 pounds or more and occasional lifting of weights of 100 pounds. Petitioner stated to Dr. Khanna on December 15, 2006 that he felt fine and he was discharged with no anticipated disability. Petitioner returned to the heavy-duty job and worked for a period between December 15, 2006 and September 2009, when he left the employment of Cintas and began working for Five Guys.

During this period of more than two and a half years, Petitioner did not miss any time from work. Furthermore, even when Petitioner sought treatment with Dr. Rivera, he was seen on two occasions and no invasive treatment was recommended, no referral to a spine specialist took place and no restrictions were imposed. When Petitioner began treating with Dr. Slack in March 2010, almost four years had passed since the date of accident. Dr. Slack's diagnosis of traumatic L2 spondylosis was different from Dr. Khanna's diagnosis of paraspinal muscle spasm and lumbago. Dr. Slack noted the

15IWCC0592

diagnostic tests showed Petitioner suffered from a pars fracture at L2 and a pars defect at L5. An MRI was performed during the course of Dr. Khanna's treatment on December 6, 2006. The Arbitrator notes Dr. Hennessy's testimony that the MRI at Community Imaging is a closed scanner that produces high quality images; and no documentation of a pars defect was found on this MRI. Dr. Hennessy opined that if the pars defects were truly present on December 6, 2006, there would have been an osseous lesion indicating the pars defect. In that the MRI failed to note any pars findings, the Arbitrator finds it is highly unlikely that the pars defect found by Dr. Slack was present on December 6, 2006. Furthermore, if Petitioner was suffering from a pars defect in December 2006, he would not have been able to return to his heavy duty job upon his release by Dr. Khanna on December 15, 2006. Therefore, Petitioner has failed to prove, by a preponderance of the evidence, a causal connection between his current condition of ill-being and the subject accident of April 17, 2006.

J. Were the medical services provided to the Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Based upon the testimony and evidence submitted, the Arbitrator finds that medical services provided between April 17, 2006 and December 15, 2006 were reasonable and necessary. Any submitted medical bills with a date of service after December 15, 2006, are not related as the causal connection chain was broken after that date. Petitioner submitted medical bills from Illinois Bone and Joint Institute in the amount of $958.00; Pain Management Institute in the amount of $13,530.00; Frankfurt Surgical Center in the amount of $21,152.91; Illinois Physicians Network in the amount of $6,159.82; and Health Benefits Physicians Services in the amount of $1,434.55. The Arbitrator notes that the individual bills were submitted as Petitioner's Exhibit 7. The bills from Pain Management Institute include dates of service that all took place in the year 2011. The bill from the Frankfurt Surgical Center also includes dates of service that all took place in the year 2011. The dates of service at Illinois Physicians Network took place in 2010 and 2012. Additionally, the bills from the Health Benefits Physicians Services occurred in 2010 and 2012. In that the bills submitted by Petitioner include dates of service beyond December 15, 2006, the Arbitrator denies these bills as being unrelated to the Petitioner's April 17, 2006 work accident.

L. What is the nature and extent of the injury?

Based upon the evidence submitted and the testimony at trial, the Arbitrator finds that Petitioner suffered permanent partial disability in the amount of 7% loss of use of the person as a whole. The parties stipulated that an accident did take place on April 17, 2006 and the treatment records from Dr. Khanna include diagnoses of paraspinal muscle spasm and lumbago. The specificity of Dr. Khanna's diagnoses were discussed during Dr. Hennessy's deposition and the Arbitrator finds that Petitioner suffered a low back strain that required non-surgical, non-invasive treatment between April 18, 2006 and December 13, 2006. Based upon the above, the Arbitrator awards 7% loss of use of the person as a whole in permanent partial disability benefits.

15IWCC0592

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
07 WC 47883
SIGNATURE PAGE

Signature of Arbitrator

September 3, 2014
Date of Decision

SEP 3 - 2014

STATE OF ILLINOIS)
) SS.
COUNTY OF ROCK ISLAND)

☒ 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

William McCaw,

Petitioner,

vs.

NO. 11WC031610

15IWCC0596

Silvis Quick Change, ST of IL, IL State Treasurer as Custodian of the Injured Workers' Benefit Fund,

Respondents.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 3, 2014 is hereby affirmed and adopted.

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

15IWCC0596

obligations of Respondent-Employer that are paid to the Petitioner from the Injured Workers' Benefit Fund.

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

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

Bond for removal of this cause to the Circuit Court by either Respondent is hereby fixed at the sum of $33,600.00. 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: JUL 30 2015
SJM/sj
o-7/16/2015
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

McCAW, WILLIAM
Employee/Petitioner

Case# 11WC031610

SILVIS QUICK CHANGE ST OF IL IL STATE TREASURER AS CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

15IWCC0596

On 12/3/2014, 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 0.07% 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:

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4242 N KNOXVILLE AVE
PEORIA, IL 61614

0988 ASSISTANT ATTORNEY GENERAL
BRETT KOLDITZ
500 S SECOND ST
SPRINGFIELD, IL 62706

STATE OF ILLINOIS)
) SS
COUNTY OF ROCK ISLAND)

15IWCC0596

☒ 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

WILLIAM McCAW
Employee/Petitioner

v.

Case # 11 WC 31610

Consolidated cases: _____

SILVIS QUICK CHANGE,
STATE OF IL, IL STATE TREASURER AS CUSTODIAN
OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

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 **GREGORY DOLLISON**, Arbitrator of the Commission, in the city of **ROCK ISLAND, ILLINOIS**, on **10/07/2014**. 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

15IWCC0596

On **06/23/2011**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**29,120.00**; the average weekly wage was $**560.00**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **1** dependent children.

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

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

Respondent shall be given a credit of $746.67 for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**746.67**.

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 **$373.33**/week for **68-3/7** weeks, commencing **June 6, 2011** through **October 8, 2012**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$336.00**/week for **15** weeks, because the injuries sustained caused the permanent partial disability of said petitioner to the extent of **3%** thereof, as provided in Section 8(d)2 of the Act.

Respondent shall pay reasonable and necessary medical services of **$2,868.27**, pursuant to the medical fee schedule as provided in Section 8(a) and 8.2 of the Act.

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

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

12/2/14
Date

DEC 3 - 2014

15IWCC0596

FINDING OF FACTS:

The parties stipulated that on June 3, 2011 William McCaw ("Petitioner") was an employee of Silvis Quick Change ("Respondent"); that Petitioner had an average weekly wage of $560.00; and that Petitioner was 41 years old, and married with one dependent child.

Petitioner worked as a manager/tire tech and lube tech for Respondent for 12 years. Respondent operates a tire and lube shop in Silvis, Illinois.

Petitioner's job duties included managing the shop, customer relations, changing oil and tires, repairing tires, and operating the cash register. Petitioner's job required lifting tires in excess of 100 pounds, however, the workload was generally relatively light.

Petitioner testified to one prior abdominal injury, a stab wound to the abdomen in 1988. He made a full recovery within six months and began working in jobs requiring heavy lifting. Petitioner provided that he worked in heavy-duty jobs for twelve years prior to beginning work for Respondent, and worked for Respondent for an additional twelve years prior to his work injury in this matter. He testified that during that time he suffered no re-injuries or aggravations of his abdominal injury, and sought no medical care related to his abdomen. Petitioner indicated that he was working full duty for Respondent and arrived at work in good health.

Petitioner testified that on the afternoon of June 3, 2011, a Ford truck arrived at Respondent's facility with a large 17" mudding tire in need of repair. Petitioner stated that he took the tire, weighing in excess of 100 pounds, off the truck, let the air out and lifted the tire to put it on the tire machine in Respondent's shop to make a repair. Petitioner testified that while lifting the tire, he felt a pulling sensation in his stomach. He continued to work the rest of his shift that afternoon and did not report the incident to anyone at Respondent's shop.

Petitioner stated that the following day, he noticed a great deal of pain in his stomach when he bumped the painful area against a shopping cart while shopping for groceries. Petitioner indicated that he lifted up his shirt and noticed a bulge in his belly. He pushed the bulge in and it retreated into his stomach, alleviating the increased pain.

Petitioner testified that he advised Sharon Sullivan, Respondent's bookkeeper and owner of the shop property, on Monday, June 6, 2011, that he had injured his abdomen while lifting a heavy mudding tire to make a repair. He testified that he was unable to notify Ms. Sullivan sooner as she had been out of town for the weekend.

Petitioner initially sought treatment on June 6, 2011 when he saw his family physician, Dr. David Marcowicz. A "New Patients" form completed show Petitioner's main complaint was "scrotum pain, protruding muscle through umbilicus." Also noted was that he complained of "nausea especially when pushing muscle back into umbilicus." On page three (3) of the form indicates "since [Saturday] 6/4/11." The "Progress Notes" from that visit show Petitioner "c/o pulling in the gut when he bumps it, it is very painful and a constant burning sensation...Onset 3 days...the more he lifts at work the pain is worse." (PX 2) Also, records from the doctor's office of that day show Petitioner's chief complaint was "hurt at work; possible hernia; [questionable] workmens comp." (PX 7) Petitioner was diagnosed with umbilical hernia. Petitioner was given a work restriction of no lifting over twenty pounds and referred to Dr. Melinda Hass for surgical repair. (PX 2) Petitioner testified that Respondent was not able to accommodate his restrictions.

Petitioner reported to Dr. Hass on June 20, 2011. The doctor's records show Petitioner conveyed that "...while at work two weeks ago, lifted a semi tire and felt significant pain. Later that day, when he touched his abdomen to a shopping cart, he developed worsening pain and pushed something in the site of the pain, and then had relief..." Upon examination, Dr. Hass noted tenderness at a 2x2 cm hernia defect in the mid abdomen at the umbilical region. Dr. Hass assessed "incisional hernia which occurred at work..." She recommended a CT scan and surgical hernia repair. (PX 1)

Records submitted show Dr. Hass' office received an initial payment of $150.00 for the June 20, 2011, office visit. (PX1) Office notes show that on June 21, 2011, Dr. Hass' office "[r]eceived a a call from the patients wife wanting to know if I contacted Sharon about payment for her husband visit yesterday and possible surgery. Informed her that I have not received anything but I will check with the nurse. " A note from June 22, 2011 indicates "...to call Sharon Sullivan his employer regarding payment, called her...and she states that the matter has been turned over to her attorney..." Dr. Hass" office contacted Ms. Sullivan again on June 24, 2011for further payment. Notes show Ms. Sullivan advised "...that the patients wife Tammy went and got a lawyer after she said she would pay for services so she is out of it now and will not give me any information..." Dr. Hass' office advised Petitioner that until payment was agreed to, with a minimum of half down for surgery, treatment would not proceed. (PX 1)

On June 20, 2011, Dr. Hass authored a letter to Dr. Marcowitz indicating that his patient, Petitioner, was seen for an incisional hernia. Dr. Hass informed the doctor that "[a]s this occurred at work, the patient will obtain a settlement prior to surgery being scheduled. (PX 2)

On September 12, 2011, Dr. Hass advised that Petitioner should adhere to a lifting restriction of 10 to 15 pounds maximum while he continues to have pain, and that surgical repair was still recommended. (PX 1)

On October 5, 2011, Dr. Marcowitz authored correspondence stating "[Petitioner] first presented to [his] office on June 7, 2011 with complaints of a pulling sensation time three days in the lower abdomen which started as he was lifting a tire at his place of employment. Upon exam, umbilical hernia was palpable. Surgical referral was done at that time." (PX 1)

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Robert Ayers on April 18, 2012. Dr. Ayers recorded a history that Petitioner had lifted a 17" tire from a Ford truck onto a tire machine when he felt a pull in his umbilicus and had increased pain the following day when he bumped his abdomen into a shopping cart. He lifted his shirt and saw something that looked a little bluish by his umbilicus. He pushed it in and the pain went away. He had advised his employer of the work injury and was paid two weeks of work comp wages; however, once he hired a lawyer to protect his rights under the Act, he no longer was paid any benefits. Petitioner reported continued discomfort at the injury site, especially during bowel movements. He was not working as he had restrictions prescribed by Dr. Hass that were not being accommodated. After performing an examination and reviewing Petitioner's medical records, Dr. Ayers diagnosed incisional hernia. Dr. Ayers felt that a laparoscopic surgical hernia repair was indicated given Petitioner's discomfort. He opined that Petitioner's 20 pound lifting restriction, and 10 to 15 pound lifting restrictions while he was in pain was reasonable. (RX 3)

In his report, Dr. Ayers noted that Respondent's counsel advised in a cover letter that there was a statement from a co-worker indicating Petitioner did not lift tires on June 3, 2011 (Dr. Ayers noted the statement was not made available for review). Dr. Ayers noted that the sudden heavy lifting of tires could cause incisional hernia; however, this would be called into question if Petitioner did not in fact lift tires as part of his job duties. Dr. Ayers opined that if Petitioner was not lifting a heavy tire at work on June 3, 2011, then the hernia repair treatment would not be related. Dr. Ayers found that the medical records most closely related to the incident of June 3, 2011, the June 6, 2011 note of Dr. Marcowicz, would be the most accurate, and as the records he reviewed did not relate any history of a work injury, he questioned whether a work

injury occurred. Dr. Ayers noted that he assumed the information provided to him was correct, and if new information was made available it could alter his opinions. (RX 3)

On June 11, 2012, in response to an inquiry from Respondent's attorneys, Dr. Ayers provided an addendum opining that Petitioner's hernia could have occurred without a traumatic event due to his obesity and prior surgical scar. (RX 4)

Petitioner testified that while he was unable to work, his wife also lost her job, thus qualifying them for state assisted medical care under Medicaid. Petitioner testified that having insurance allowed him to seek necessary medical care to cure and relieve his ongoing complaints of pain in his abdomen. Dr. Marcowitz then referred Petitioner to surgeon Dr. Sara Glasgow for care.

On July 31, 2012, Petitioner reported to Dr. Glasgow, who recommended surgical repair of the ventral incisional hernia. (PX 3) On August 24, 2012, Dr. Glasgow performed a repair of the ventral incisional hernia with mesh. Dr. Glasgow noted in the addendum to her operative report that the bulging and discomfort in Petitioner's abdomen had persisted since lifting a heavy truck tire a couple of years prior to the operation. (PX 4)

Petitioner returned to Dr. Glasgow on September 10, 2012 and was advised to avoid heavy lifting and strenuous activity. The doctor noted that Petitioner could return to full duty work effective October 8, 2012. (PX 3) Petitioner testified that he contacted Respondent requesting a return to work and was advised that no work was available for him. After a prolonged job search, he found employment with Wal-Mart on November 13, 2013.

Sharon Sullivan testified that she owns the property where Respondent's shop is located and that Respondent's owner, Gary Sullivan, pays rent to her. She testified that Petitioner advised her on June 6, 2011, that he injured himself while bumping his stomach into a grocery cart. Ms. Sullivan indicated that she informed Petitioner that he should seek medical treatment.

Ms. Sullivan was asked to identity Respondent's Exhibit 5. Ms. Sullivan testified that this exhibit consisted of the receipts which the business kept for jobs it did on a daily basis. The first receipt in Exhibit 5 is numbered 291319 and it is the last receipt from June 2, 2011. Page 2 of Respondent's Exhibit 5 is receipt number 291321, the first receipt from the day of the alleged accident. Receipt number 291356 is the last receipt from the day of business, June 3, 2011. Finally, receipt number 291357 is the first receipt from Saturday, June 4, 2011. Ms. Sullivan testified that these records were kept in the ordinary course of business and she was able to identify them as accurate for the day in question. . Ms. Sullivan provided that the employees prepare and sign the receipts. She provided that typically, Petitioner does not initial his receipts.

Ms. Sullivan testified that Petitioner was a good employee with no disciplinary record in the 12 years he was employed by Respondent. Ms. Sullivan testified that she paid Petitioner two weeks of full salary post alleged accident. She also stated that she paid for Petitioner's initial visit to Dr. Hass.

Respondent called Luke Sullivan to testify on their behalf. Mr. Sullivan testified that he was working on June 3, 2011. He confirmed that he was working with two other individuals, Petitioner and Larry Yuknos, that day. Mr. Sullivan testified that at no point during Friday, June 3, 2011 did he see Petitioner injure himself. He further testified that Petitioner did not tell him about any injury nor did Petitioner ask him for any assistance that day. Mr. Sullivan also testified that he was working on Monday, June 6, 2011, and was present when Petitioner informed Sharon Sullivan that he had been injured on Saturday, June 4, 2011 while pushing a shopping cart.

Mr. Sullivan was asked to examine Respondent's Exhibit number 5. Mr. Sullivan identified his initials on each of the work slips as well as the work that was done by Larry Yuknos on June 3, 2011. He also provided that typically, Petitioner did not initial his receipts. Lastly, Mr. Sullivan testified that he had a prior conviction for burglary and served prison time in 2001.

Petitioner testified that he currently has no "big problems." He noted that maybe once or twice a day he experiences a "nauseated feeling like a bowel movement."

With respect to Issue "C": Did an accident occur that arose out of and in the course of Petitioner's employment, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner has proven by a preponderance of the evidence that he was injured in an accident that arose out of and in the course of his employment by Respondent on June 3, 2011.

The Arbitrator has weighed the testimony of Petitioner and judged him to be consistent and credible. Petitioner worked as a manager/tire and lube tech for Respondent for twelve years. His job required him to lift heavy tires. This is unrebutted. Petitioner was an employee in good standing with Respondent with no disciplinary record prior to his accident date of June 3, 2011.

Petitioner injured his abdomen while lifting a heavy tire for a tire repair. He related this history to Ms. Sullivan, his treating physicians and Respondent's examiner.

The Arbitrator notes the medical records in evidence show Petitioner gave a consistent history of a work related injury to his treating physicians and Respondent's Section 12 examiner. His work duties and mechanism of injury are consistent with the injuries described by his treating physicians. Dr. Marcowitz's records from June 6, 2011 show Petitioner's chief complaint was "hurt at work; possible hernia; [questionable] workmens comp." Dr. Hass' June 20, 2011 records show Petitioner conveyed that "...while at work two weeks ago, lifted a semi tire and felt significant pain. Later that day, when he touched his abdomen to a shopping cart, he developed worsening pain and pushed something in the site of the pain, and then had relief..." Dr. Hass assessed "incisional hernia which occurred at work..." On June 20, 2011, Dr. Hass authored a letter to Dr. Marcowitz indicating that Petitioner was seen for an incisional hernia. Dr. Hass informed the doctor that "[a]s this occurred at work, the patient will obtain a settlement prior to surgery being scheduled." On October 5, 2011, Dr. Marcowitz authored correspondence stating "[Petitioner] first presented to [his] office on June 7, 2011 with complaints of a pulling sensation time three days in the lower abdomen which started as he was lifting a tire at his place of employment...."

Respondent's Section 12 examiner was not provided with a critical medical record dated June 6, 2011, reporting a work injury. As noted above, Dr. Marcowitz's records from June 6, 2011 show Petitioner's chief complaint was "hurt at work; possible hernia; [questionable] workmens comp." This omission is critical and Respondent's examiner indicated his opinions would change if presented with new information. Given this, the Arbitrator relies on the treating medical records of Dr. Hass and June 6th record of Dr. Markowicz, which history indicates "hurt at work..."

The Arbitrator is not persuaded by the testimony of Sharon and Luke Sullivan. Sharon Sullivan testified that Petitioner reported a non-work-related accident at a grocery store over the weekend, yet she still paid him two weeks at full salary. It appears that she also offered to pay his medical bills, up until he retained counsel, at which point all workers compensation benefits immediately ceased.

As the Arbitrator finds Petitioner and the treating medical records persuasive, the Arbitrator finds Petitioner sustained an accidental injury arising out of and in the course of his employment with Respondent on June 3, 2011.

With respect to Issue "E": Was timely notice of the accident given to the Respondent, the Arbitrator finds as follows:

Section 6(c) of the Act requires Petitioner to provide notice of the injury as soon as practicable and no later than 45 days from the accident. Petitioner testified that he advised Respondent of a work injury on June 6, 2011. While Respondent disputes this, the record reveals that Respondent was placed on notice that Petitioner was seeking workers' compensation benefits for a work related injury by June 22, 2011 at the latest, on the date of the first call from Dr. Hass' office. This is well within the 45-day requirement of the Act.

The Arbitrator therefore finds that timely notice was given under the Act.

With respect to Issue "F": Is the Petitioner's current condition of ill-being causally related to his work injuries, the Arbitrator finds as follows:

Having found a work accident occurred on June 3, 2011, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to that accident. In support of this conclusion the Arbitrator notes the following:

A causal connection between a work injury and a medical condition at the date of hearing may be established by a chain of events, including a person's ability to do their job before a date of the accident, and a decreased ability to perform the same job duties after the accident date, as well as other circumstantial evidence, including the medical record. *Union Starch & Refining Co. v. Industrial Comm'n*, 37 Ill. 2d 139, at 143-144 (1967).

In this matter, Petitioner credibly testified that he was working full duty on June 3, 2011, and was performing his duties as a manager/tire and lube tech for Respondent. On that date, Petitioner injured his abdomen while lifting a heavy tire at work for a repair at work.

Petitioner had previously injured his abdomen in the late 1980's when he was stabbed, over twenty years prior to the accident in question. Petitioner testified that he had fully recuperated from his prior abdominal injury, and worked in a heavy duty capacity for twelve years after the accident and prior to beginning to work for Respondent. Petitioner testified that on the morning of his work accident, before reporting to work, he was in good health, and was not under the care of any physician. Petitioner's testimony is corroborated by the medical evidence.

Petitioner's treating physicians, Dr. Marcowicz, Dr. Hass, and Dr. Glasgow, diagnosed him with an incisional hernia and prescribed surgery following his injury at work. Respondent's examiner, Dr. Ayers, agreed that lifting a heavy tire could cause an incisional hernia, and felt surgery was reasonable given Petitioner's complaints.

Petitioner had a work injury, incisional hernia, consistent with his reported mechanism of injury. His abdominal pain complaints began after lifting a heavy tire at work on June 3, 2011. This chain of events is a natural consequence flowing from the original work injury, prior to which Petitioner was asymptomatic and not under the care of any physician for his abdomen. As such Petitioner's hernia is causally related to his work injury of June 3, 2011.

With respect to Issue "J": Were the medical services provided to the Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all the reasonable and necessary medical services, the Arbitrator finds as follows:

Having found Petitioner's current condition of ill-being to be causally related to the accident, the Arbitrator finds further that Respondent is liable under Section 8(a) for all the necessary and related medical bills incurred after the June 3, 2011, work accident.

Based on the medical treatment records submitted, the Arbitrator finds that all treatment was incurred to cure and relieve Petitioner of the effects of ill-being related to his work injury of June 3, 2011. The resulting

medical bills presented in Petitioner's Exhibit 6 are thus Respondent's liability, subject to the limitations of the fee schedule as set out in the Act. The following outstanding bills and payments not made by Respondent, totaling $2,868.27.

The Illinois Injured Workers' Benefit Fund is entitled to a credit for all medical expenses paid by the Department of Public Aid.

With respect to Issue "K": What temporary benefits are due to the Petitioner, the Arbitrator finds as follows:

Having found accident and causation for the work injury occurring on June 3, 2011, the Arbitrator finds further that Respondent is liable for the following periods of temporary total disability (TTD) for the periods Petitioner was off work or on restricted duty per his treating physicians. Respondent provided no evidence that it offered Petitioner any work within his restrictions during this period. The Arbitrator orders Respondent to pay Petitioner TTD for the period from June 6, 2011 through October 8, 2012, or 68-3/7 weeks. The testimony at hearing and the record reveal that Respondent paid two weeks of full salary. Respondent is given a credit only to the extent of what would have been paid during the period covered by such payments.

With respect to Issue Issue "L": What is the nature and extent of the injury, the Arbitrator finds as follows:

Based on Petitioner's credible testimony as to his injuries, the supporting medical records and the credible opinion of Petitioner's treating physicians, the Arbitrator finds that the Petitioner has suffered a 3% loss of use to his person as a whole as a consequence of his work-related injury.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lonnie Twigg,

Petitioner,

vs.

NO. 09WC003725

Safety-Kleen Corp.,

15IWCC0589

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 19, 2014 is hereby affirmed and adopted.

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

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

15IWCC0589

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

DATED: JUL 29 2015
SJM/sj
o-6/25/15
44

Stephen J. Mathis

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

TWIGG, LONNIE
Employee/Petitioner

Case# **09WC003725**

SAFETY-KLEEN CORP
Employer/Respondent

15IWCC0589

On 5/19/2014, 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 0.05% 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:

1367 HOPKINS & HUEBNER PC
PAUL SALABERT JR
100 E KIMBERLY RD SUITE 704
DAVENPORT, IA 52806

2506 BETTY NEUMAN & MCMAHON PLC
MARK A WOOLUMS
1900 E 54TH ST
DAVENPORT, IA 52807

STATE OF ILLINOIS)
)SS.
COUNTY OF Rock Isand)

☐ 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

Lonnie Twigg
Employee/Petitioner

v.

Safety-Kleen Corp.
Employer/Respondent

Case # 09 WC 03725

15IWCC0589

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Rock Island, Illinois**, on **April 3, 2014**. 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

15IWCC0589

On **10/25/2007**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**64,315.16**; the average weekly wage was $**1,236.83**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **3** dependent children.

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

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

Respondent shall be given a credit of $**19,324.39** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $**19,324.39**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits, commencing 01/06/2012, of $373.40/week for the duration of the disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

Respondent shall pay reasonable and necessary medical services in the amount of $59,538.90, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall 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 Section 8(j) of the Act.

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

5/16/14
Date

MAY 19 2014

FINDINGS OF FACT

15IWCC0589

Petitioner testified that he began working for Respondent on September 4, 1990. On October 25, 2007, Petitioner was a vacuum sales and service representative for Respondent. He worked full time handling the disposal of hazardous waste including parts washer fluid, paint, and oil.

Petitioner testified that on October 25, 2007, he was working at a car rental facility in Milan Illinois where he was pumping waste. He was using a crowbar to remove a 50 to 100lbs. manhole cover. As he was bending down lifting it, he slipped and fell on his rear. Petitioner felt immediate pain in his low back on the left side and shooting left leg pain. He crawled to his truck to rest and then completed the job. Thereafter, he notified his manager Chris Jeyvek of the accident and his injury.

Petitioner was seen by American Family Chiropractic on November 6, 2007. (Px I, 1) The record from American Family Chiropractic notes that he presented with lower back pain that was shooting down his legs and that he could not sleep lying down. Petitioner underwent chiropractic manipulation at that visit.

At the referral of Respondent, Petitioner was seen at Trinity Work Fitness on November 9, 2007. (Px I, 2, Rx 2) Trinity Work Fitness records show that he presented with low back discomfort with the left side greater than the right and had shooting pain down both legs down to his toes. He also reported having numbness and tingling. Petitioner was diagnosed with a lumbar strain with bilateral radicular symptoms. He was prescribed muscle relaxers, pain medication, and referred to physical therapy. At that time, Petitioner was restricted to alternate duties of 20 pound lifting limit, 40 pounds push-pull, sit/walk/stand as tolerated, occasional bending, twisting, climbing stairs, squatting, kneeling, and no climbing ladders. Petitioner was seen by a physical therapist on November 12, 2007, at Trinity Work Fitness.

On November 28, 2007, Petitioner returned to Trinity Work Fitness with increased complaints. Petitioner's restrictions and medication were continued. He was also prescribed a TENS unit. (Px I, 2, Rx 2)

On November 30, 2007, Michael Staker, M.D., at Trinity Work Fitness, ordered a lumbar MRI, and aquatic therapy. (Px I, 2, Rx 2) Petitioner had an MRI of the lumbar spine on December 18, 2007. (Px I, 5) The MRI revealed minimal annular bulge at the L4-5 disc level with some mild facet hypertrophy causing some minimal early central stenosis.

On December 20, 2007, Petitioner returned to Trinity Work Fitness where he saw Dr. Chrisitine Deignan. At that visit, the doctor discussed the results of the MRI advising Petitioner that he did not have a surgically correctable problem and that his treatment would be conservative. Dr. Deignan noted Petitioner seemed resistant to the treatment plan stating Petitioner repeatedly stated, "you do not know what is wrong with me". Petitioner was referred to Michael Dolphin, D.O. for a surgical consult. (Px I, 2, Rx 2)

Petitioner was seen by Dr. Dolphin on January 15, 2008. (Px I, 7, Rx 4) After examining Petitioner and reviewing diagnostic studies, Dr. Dolphin opined that there was no clear indication of neural impingement that would result in his lower extremity numbness and tingling. The doctor felt that Petitioner's symptoms were related to a lumbar strain and should improve over time. He also noted that if Petitioner did not achieve remarkable improvement, he may not. Dr. Dolphin stated that if Petitioner's numbness and tingling in his lower

extremities continues he should consult a neurologist. Dr. Dolphin discharged Petitioner from his care.

On February 1, 2008, Petitioner was then seen by Rhea Allen, M.D., at Trinity Work Fitness. Petitioner continued to complain of back pain and numbness and tingling in his legs. Dr. Allen recommended bilateral lower extremity EMG/NCV studies. (Px I, 2, Rx 2) The studies were performed on February 2, 2008 by Robert Chesser, M.D.. (Px I, 4) Dr. Chesser noted the study was normal indicating he did not find underlying peripheral neuropathy nor entrapment through the tarsal tunnel.

Petitioner was again seen by Dr. Allen on February 15, 2008. At that time, Dr. Allen noted Petitioner complained of increased pain in his back and that he had been working within his restrictions. Dr. Allen felt Petitioner had reached a plateau with treatment, placed him at MMI and referred him for an FCE to establish functional capability/need for permanent restrictions. Physical therapy was also discontinued. (Px I, 2, Rx 2)

Petitioner underwent an FCE on February 20 and 21, 2008 at Work Well Systems Inc.. (Rx 6) The FCE results demonstrated that Petitioner could lift 35lbs. maximum waist to floor, 35lbs. maximum waist to crown, and 60lbs. maximum front carry. He was also limited in forward bending-standing. The FCE report indicated there was a large discrepancy between Petitioner's abilities and job demands indicating limited success of rehabilitation to prior level of function. It further noted that Petitioner's physical abilities did not match his job requirements.

Petitioner was last seen at Trinity Work Fitness by Dr. Allen on February 26, 2008. At that time, Dr. Allen noted Petitioner's back pain remained at a 5 on a constant basis. He further noted that the FCE made him even sorer. Dr. Allen reported that while he had some inconsistencies in the testing, he gave a consistent effort of lifting. Petitioner was released with permanent restrictions of 35 pound lift limit, 50 pound front carry, 90 pound push pull, and occasional forward bending. (Px I, 2, Rx 2)

Petitioner testified that Respondent accommodated his restrictions through March 2008 when he was advised that light duty work was no longer available. Thereafter, he began receiving TTD benefits.

Due to ongoing back pain, Petitioner saw his family physician, Michael Schreck, M.D., on April 8, 2008. (Px I, 3) Dr. Schreck noted Petitioner's history of accident and treatment. Upon examination, Dr. Schreck found that he had guarding with straight leg raising on the right, he was uncomfortable with straight leg raising on the left, and he had some proximal left leg weakness. Dr. Schreck's impression was low back pain with persisting sciatic symptoms and paraesthesia involving the toes. Dr. Schreck ordered a repeat MRI scan.

Petitioner had an MRI done on May 14, 2008 which demonstrated an unchanged broad-based disc bulging at L4-5. (Px I, 5) On May 20, 2008, Dr. Schreck noted that more than likely the scan does not suggest any nerve root or spinal cord compression. The doctor was uncertain as to why Petitioner was having paraesthesias within his feet and left side sciatica. Petitioner was then referred to Anthony Maioriello, M.D.. (Px I, 3)

Petitioner was seen by Dr. Maioriello on July 21, 2008. (Px I, 8) Petitioner complained of a dull aching pain in his lower back as well as leg numbness. After evaluating Petitioner, Dr. Maioriello assessed radiculitis, lower limbs and ordered a discogram.

Petitioner underwent a discogram on July 23, 2008 with Timothy Miller, M.D.. (Px I, 10) Dr. Miller indicated the test was negative with no tears. A CT scan performed showed normal discogram at L3-4, L4-5 and L5-S1 with no radial tears or epidural extravasation. Also noted was mild broad based disc bulging at L4-5. (Px

I, 5) The doctor's diagnosis was degenerative disc disease at L3-4, L4-5 and L5-S1 (Px I, 10) 15IWCC0589

On July 28, 2008, Dr. Maioriello reviewed Petitioner's discogram. The doctor noted same revealed Petitioner had pain at all levels with no tears and firm end points. Dr. Maioriello ordered an epidural steroid injection and noted that if Petitioner failed conservative treatment he would then offer a L4-5 laminectomy with a nucleoplasty to decompress the nerve root. (PX I, 8) Petitioner underwent epidural steroid injections on July 29, 2008 and August 26, 2008 with Dr. Miller. (Px I, 10) Dr. Maioriello also recommended that Petitioner undergo further physical therapy and referred Petitioner to Quad City Physical Therapy & Spine. Petitioner underwent physical therapy from May 22, 2008 through October 27, 2008. (Px I, 9)

At Respondent's request, Petitioner underwent a Section 12 examination with Andrew Zelby, M.D. on July 30, 2008. (Rx 9) Dr. Zelby noted in his report that he reviewed Petitioner's medical records and diagnostic studies. According to Dr. Zelby, Petitioner has a structurally normal spine, a normal spinal exam, and normal neurologic exam. Dr. Zelby opined that Petitioner sustained a lumbar strain that would have healed no later than 8-12 weeks after the initial injury and that he requires no additional diagnostic studies or directed treatment. He felt that Petitioner could pursue all of his usual vocational and non-vocational activities without restrictions.

Petitioner was next seen by Dr. Maioriello on October 6, 2008. Dr. Maioriello noted that Petitioner reported that his symptoms were getting worse with physical therapy. Petitioner presented with radiating pain aggravated by sitting. He also had pain in his foot and calf. At that time, Dr. Maioriello ordered an upright MRI. (Px I, 8) The MRI was done on October 16, 2008 which revealed an annular disc bulge at L4-L5 with neuroforaminal narrowing. (Px I, 6)

Petitioner was last seen by Dr. Maioriello on October 20, 2008. The doctor noted the MRI was normal. Dr. Maioriello noted that Petitioner had tingling in his legs and that the leg pain was persistent. He assessed chronic radiculitis lower limbs. At that time, Dr. Maioriello released Petitioner to return to work without restrictions. (Px I, 8) Petitioner testified that due to a lack of income and workers' compensation benefits, he begged Dr. Maioriello for a release to return to work without restrictions. Petitioner testified that Dr. Maioriello left the State sometime thereafter.

Petitioner testified that he gave his return to work note to his lawyer who notified Respondent of his return to work status. Petitioner provided that subsequent thereto he received correspondence from Respondent that he was terminated. The letter dated November 19, 2008, authored by Bob Kammer, notifies Petitioner that effective November 17, 2008, he was terminated under the company's policy regarding being continually absent more than seven (7) months. The notification also provided that Respondent had been notified that he was released to return to work on October 20, 2008 and since that release, he had not communicated with his branch manager regarding his ability to return to work. (Rx 18)

Petitioner testified that he continued with complaints. He provided that because Dr. Maioriello was no longer practicing in the State, he returned to Dr. Schreck. Records show he presented to the doctor on April 29, 2009. (Px I, 3) Dr. Schreck noted that Petitioner was finding it difficult to stand for long periods of time, but that the numbness in his lower extremities was better at that time. Dr. Schrenk also noted Petitioner reported that he was working in management at a local supermarket. An examination showed Petitioner was able to sit, stand was fairly comfortable. Dr. Schreck felt Petitioner had recurring back pain which by history had a fairly benign MRI scan. The doctor recommended an additional FCE.

Petitioner underwent an FCE at Genesis Physical Therapy on May 12, 2009. (Px I, 14) The therapist noted that Petitioner demonstrated cooperative behavior with all tasks. The FCE determined that Petition could on a rare occasion lift 45lbs. waist to floor, 35lbs. waist to crown, and 60lbs. front carry. Petitioner could frequently lift 20lbs. waist to floor, 15lbs. waist to crown, and 30lbs. front carry. Additionally, the FCE results demonstrated that Petitioner could forward bend-stand occasionally, crouch occasionally, and take stairs occasionally.

Pursuant to Dr. Schreck referral, Petitioner saw Rodney Kafiluddi, M.D. on June 17, 2009. (Px I, 12A & 12 B) Dr. Kafiluddi noted that Petitioner's symptoms were consistent with symptomatic facet arthropathy, myofascial pain, and possible SI joint arthropathy. Dr. Kafiluddi recommended a diagnostic facet nerve block and an intraarticular SI joint injection. On June 23, 2009, Dr. Kafiluddi performed bilateral lumbar median nerve branch block of L2,3; L3,4; L4,5 and L5,S1. On July 15, 2009, Dr. Kafiluddi noted that Petitioner received 80% improvement for 2hrs. with the nerve blocks. As a result, the doctor recommended treating the facet with a radiofrequency neurotomy to obtain long term relief.

Petitioner underwent radiofrequency neurotomies of the median nerve branches of the posterior rami of L2,3; L3,4; L4,5 and L5, S1 on the left side on July 23, 2009. (Px I, 12A & 12 B) On August 7, 2009, Petitioner underwent radiofrequency neurotomies of the median nerve branches of the posterior rami of L2,3; L3,4; L4,5 and L5, S1 on the right side.

Petitioner returned to Dr. Kafiluddi on September 2, 2009. The doctor noted that "[h]e returned today and reports complete resolution of his low back pain...indicative of the correct diagnosis, It is therefore more likely than not that his symptoms are the result of the whiplash type injury he suffered...lifting the manhole from the ground." (Px I, 12 A & 12B) At that time, Dr. Kafiluddi opined that Petitioner would need repeat radiofrequency neurotomies approximately every 12 months for the rest of his life with bi-yearly vists. Dr. Kafiluddi restricted Petitioner to no front carry, waist to crown lifting, and ground to waist lifting of over 25lbs., and occasionally forward bending.

Petitioner underwent further radiofrequency neurotomies on June 10, 2010 and July 22, 2010. On November 1, 2010, Dr. Kafiluddi noted that the back pain improved such that Petitioner could handle the pain with the radiofrequency neurotomies. Petitioner still presented with lower extremity pain with tingling. Dr. Kafiluddi noted that on exam, Petitioner had a slight loss of sensation on the left lateral foot and mild weakness of the left peroneus longus suggestive of left S1 radiculopathy. Petitioner was referred to have another MRI. (Px I, 12 A & 12B)

Petitioner underwent the MRI on November 10, 2010 which was suggestive of a small focus of annular tear at L4-5. (Px I, 5) On December 6, 2010, Dr. Kafiluddi noted the MRI confirmed his suspicion of an annular tear. The doctor felt that discogenic back pain with radicular symptoms could be the cause of Petitioner's symptoms. To further assess this, Dr. Kafiluddi recommended a provocative discographic study. (Px I, 12A & 12 B)

On December 16, 2010, Dr. Kafiluddi performed a discography. Petitioner also had a CT scan on the same date. (Px I, 5 & 12B) The CT scan revealed a grade IV annular tear at L4-5. Dr. Kafiluddi referred Petitioner to Srinivasan Purighalla, M.D. for a surgical consult.

Petitioner was seen by Dr. Purighalla on January 12, 2011. (Px I, 13) Dr. Purighalla noted that Petitioner had discograms by Dr. Kafiluddi that showed evidence of tears at different levels. (Px I, 13) After examining Petitioner, Dr. Purighalla's diagnosis was that of pain in the limb and low back pain. Dr. Purighalla

recommended more conservative therapy and possibly epidural steroid injections or selective nerve blocks. Petitioner was told that he would not benefit from a multilevel fusion operation.

Petitioner was last seen by Dr. Kafiluddi on January 31, 2011. (Petitioner testified that Dr. Kafiluddi moved out of state.) At that visit, Dr. Kafiluddi referred Petitioner to Kern Singh, M.D. for a second opinion. (Px I, 12B)

Petitioner was seen by Dr. Singh on April 6, 2011. (Px I, 14) Petitioner presented with continued axial low back pain and pain shooting down the left buttock to just below the knee following an accident in October 2007. Petitioner told Dr. Singh he was able to sit for 20 minutes, stand for 40 minutes and walk for 25 minutes without resting. Dr. Singh's diagnosis was that of a lumbar muscular strain. Petitioner was referred back to Dr. Kafiluddi as he was not an operative candidate at that time.

Dr. Miller authored a report dated September 14, 2011. (Px I, 10) Dr. Miller noted that he reviewed his own notes and those of Dr. Kafiluddi. In Dr. Miller's opinion, Petitioner's symptoms were more consistent with irritation of the nerve root rather than mechanical back pain. Dr. Miller further stated that Dr. Kafiluddi's discography results are not indicative of mechanical back pain that would respond to surgery as Dr. Purighalla had also stated. Dr. Miller indicated that he was not certain Petitioner has an annular tear, but he did have a broad based disc bulge. Dr. Miller further opined that he would limit Petitioner to 40-50lbs. lift occasionally and 25lbs. frequent. In conclusion, Dr. Miller stated that it was his belief that Petitioner has a disc bulge at L4-5 that is symptomatic but more for radicular symptoms than mechanical. He believed that ongoing treatment could include injection, medication management stability and strength within the spine.

At Respondent's request, Petitioner underwent a second Section 12 examination with Dr. Zelby on April 6, 2011. (Rx 9) Dr. Zelby performed an examination and reviewed additional medical records and diagnostic studies. The doctor noted Petitioner had been given numerous diagnoses including facet arthropathy and discogenic pain. He felt that none of the diagnoses could be supported by objective findings. The doctor opined that Petitioner had no evidence of disc disease, facet disease, or SI joint disease. The doctor noted Petitioner had a structurally normal spine, a normal spinal exam and normal neurologic exam. Dr. Zelby further states that Petitioner neither required nor requires further treatment nor restrictions. The doctor felt that the treatment Petitioner received had been unreasonable and unnecessary. Lastly, Dr. Zelby opined that Petitioner had reached maximum medical improvement by January 2008.

Mr. Robert Kammer, Jr. testified on behalf of Respondent. Mr. Kammer testified that he was employed by Respondent as the Human Resource Director. Mr. Kammer testified that Respondent initially accommodated Petitioner's restrictions by assigning him office type work. He indicated that Respondent was able to shuffle some work around to allow Petitioner to return to work in a light duty work. He provided that at some point it became an undue burden as the day-to-day work was not there for that level of light duty. As a result, Petitioner was placed back on temporary total disability. Mr. Kammer stated that it then became Petitioner's responsibility to keep Respondent abreast of any changes in his work restrictions. Mr. Kammer testified that consistent with the company's policy, employees are terminated after seven (7) consecutive months of absence. On November 19, 2009, Mr. Kammer authored a letter informing Petitioner he was terminated citing the company's consecutive seven (7) month absence policy. Mr. Kammer stated that Respondent was never notified that Dr. Maioriello had released Petitioner to return to work without restrictions within the seven month period. He indicated that had they been notified, Petitioner would have gone back to his original job. Lastly, Mr. Kammer provided that he has had no contact with Petitioner since the letter outlining the termination.

In support of the Arbitrator's decision relating to Disputed Issue (F) Is the petitioner's present condition

of ill-being causally related to the injury the Arbitrator finds the following:

Petitioner sustained an accident on October 25, 2007 when he slipped and fell on his rear while using a crowbar to remove a 50 to 100lbs. manhole cover. Accident is not in dispute.

Petitioner was initially seen at American Family Chiropractic on November 6, 2007 with complaints of lower back pain that was shooting down his legs. Petitioner underwent chiropractic manipulation at that visit.

At the referral of Respondent, Petitioner was next seen at Trinity Work Fitness on November 9, 2007. Records show he presented with low back discomfort with the left side greater than the right and had shooting pain down both legs down to his toes. He also reported having numbness and tingling. Petitioner was diagnosed with a lumbar strain with bilateral radicular symptoms. He was prescribed muscle relaxers, pain medication, referred to physical therapy and placed on restricted duties. At a subsequent visit, he was also prescribed a TENS unit.

Due to continual complaints, Dr. Michael Staker, at Trinity Work Fitness, ordered a lumbar MRI. The MRI when completed on December 18, 2007 revealed minimal annular bulge at the L4-5 disc level with some mild facet hypertrophy causing some minimal early central stenosis. Based on the MRI findings, Dr. Chrisitine Deignan of Trinity Work of Trinity Work Fitness felt Petitioner did not have a surgically correctable problem and that his treatment would be conservative. Thereafter, Dr. Deignan referred Petitioner to Dr. Michael Dolphin for a surgical consult. After examining Petitioner and reviewing diagnostic studies, Dr. Dolphin opined that there was no clear indication of neural impingement that would result in his lower extremity numbness and tingling. The doctor felt that Petitioner's symptoms were related to a lumbar strain and should improve over time. He also noted that if Petitioner did not achieve remarkable improvement, he may not. Dr. Dolphin stated that if Petitioner's numbness and tingling in his lower extremities continues he should consult a neurologist.

On February 1, 2008, Petitioner was then seen by Rhea Allen, M.D., at Trinity Work Fitness. Petitioner continued to complain of back pain and numbness and tingling in his legs. Dr. Allen recommended bilateral lower extremity EMG/NCV studies which when performed was normal. On February 15, 2008, Dr. Allen noted Petitioner complained of increased pain in his back and that he had been working within his restrictions. Dr. Allen felt Petitioner had reached a plateau with treatment, placed him at MMI and referred him for an FCE to establish functional capability/need for permanent restrictions. Petitioner underwent an FCE on February 20 and 21, 2008 at Work Well Systems Inc.. The FCE results demonstrated that Petitioner could lift 35lbs. maximum waist to floor, 35lbs. maximum waist to crown, and 60lbs. maximum front carry. He was also limited in forward bending-standing. The FCE report indicated that there was a large discrepancy between Petitioner's abilities and job demands indicating limited success of rehabilitation to prior level of function. It further noted that Petitioner's physical abilities did not match his job requirements. On February 26, 2008, Dr. Allen released Petitioner with permanent restrictions of 35 pound lift limit, 50 pound front carry, 90 pound push pull, and occasional forward bending.

Respondent accommodated Petitioner's restrictions through March 2008 when he was advised that light duty work was no longer available. Thereafter, he began receiving TTD benefits.

Due to ongoing back pain, Petitioner saw his family physician, Dr. Michael Schreck. At that visit on April 8, 2008, Dr. Schreck found that he had guarding with straight leg raising on the right, he was uncomfortable with straight leg raising on the left, and he had some proximal left leg weakness. Dr. Schreck's impression was low back pain with persisting sciatic symptoms and paraesthesia involving the toes. Dr. Schreck ordered a repeat MRI scan. The MRI done on May 14, 2008 demonstrated an unchanged broad-based disc

bulging at L4-5. On May 20, 2008, Dr. Schreck noted that more than likely the scan does not suggest any nerve root or spinal cord compression. The doctor was uncertain as to why Petitioner was having paraesthesias within his feet and left side sciatica. Petitioner was then referred to Dr. Anthony Maioriello.

Petitioner saw Dr. Maioriello on July 21, 2008. Dr. Maioriello assessed radiculitis, lower limbs and ordered a discogram. Petitioner underwent a discogram and a CT scan on July 23, 2008 with Dr. Timothy Miller. The discogram was negative with no tears. The CT scan showed normal discogram at L3-4, L4-5 and L5-S1 with no radial tears or epidural extravasation. Also noted was mild broad based disc bulging at L4-5. The doctor's diagnosis was degenerative disc disease at L3-4, L4-5 and L5-S1. Thereafter, Dr. Maioriello ordered an epidural steroid injection. Petitioner underwent epidural steroid injections on July 29, 2008 and August 26, 2008 with Dr. Miller. (Px I, 10)

When Petitioner was next seen by Dr. Maioriello on October 6, 2008, Petitioner reported that his symptoms were getting worse. Dr. Maioriello ordered an upright MRI which revealed an annular disc bulge at L4-L5 with neuroforaminal narrowing. Petitioner was last seen by Dr. Maioriello on October 20, 2008. Petitioner testified that due to a lack of income and workers' compensation benefits, he begged Dr. Maioriello for a release to return to work without restrictions. At the last visit, Maioriello noted Petitioner had tingling in his legs and that the leg pain was persistent. He assessed chronic radiculitis lower limbs. Dr. Maioriello released Petitioner to return to work without restrictions.

Petitioner did not return to work for Respondent. In a letter dated November 19, 2008, Respondent notified Petitioner that effective November 17, 2008, he was terminated under the company's policy regarding being continually absent more than seven (7) months.

Petitioner testified that he continued with complaints. He provided that because Dr. Maioriello was no longer practicing in the State, he returned to Dr. Schreck. Records show he presented to the doctor on April 29, 2009. Dr. Schreck felt Petitioner had recurring back pain which by history had a fairly benign MRI scan. The doctor recommended an additional FCE.

Petitioner underwent an FCE at Genesis Physical Therapy on May 18, 2009 which determined that Petition could on a rare occasion lift 45lbs. waist to floor, 35lbs. waist to crown, and 60lbs. front carry. Petitioner could frequently lift 20lbs. waist to floor, 15lbs. waist to crown, and 30lbs. front carry. Additionally, the FCE results demonstrated that Petitioner could forward bend-stand occasionally, crouch occasionally, and take stairs occasionally.

At the referral of Dr. Schreck, Petitioner next saw Dr. Rodney Kafiluddi. On June 17, 2009, Dr. Kafiluddi felt Petitioner's symptoms were consistent with symptomatic facet arthropathy, myofascial pain, and possible SI joint arthropathy. Dr. Kafiluddi recommended a diagnostic facet nerve block and an intraarticular SI joint injection. On June 23, 2009, Dr. Kafiluddi performed bilateral lumbar median nerve branch block of L2,3; L3,4; L4,5 and L5,S1. On July 15, 2009, Dr. Kafiluddi noted that Petitioner received 80% improvement for 2hrs. with the nerve blocks. As a result, the doctor recommended treating the facet with a radiofrequency neurotomy to obtain long term relief. Petitioner underwent radiofrequency neurotomies of the median nerve branches of the posterior rami of L2,3; L3,4; L4,5 and L5, S1 on the left side on July 23, 2009. On August 7, 2009, Petitioner underwent radiofrequency neurotomies of the median nerve branches of the posterior rami of L2,3; L3,4; L4,5 and L5, S1 on the right side.

On September 2, 2009, Dr. Kafiluddi wrote "[Petitioner]e returned today and reports complete resolution of his low back pain...indicative of the correct diagnosis, It is therefore more likely than not that his

symptoms are the result of the whiplash type injury he suffered...lifting the manhole from the ground." Dr. Kafiluddi opined that Petitioner would require repeat radiofrequency neurotomies approximately every 12 months for the rest of his life with bi-yearly visits. Dr. Kafiluddi restricted Petitioner to no front carry, waist to crown lifting, and ground to waist lifting of over 25lbs., and occasionally forward bending.

Petitioner underwent further radiofrequency neurotomies on June 10, 2010 and July 22, 2010. On November 1, 2010, Dr. Kafiluddi noted that the back pain improved such that Petitioner could handle the pain with the radiofrequency neurotomies. Petitioner still presented with lower extremity pain with tingling. Dr. Kafiluddi noted that on exam, Petitioner had a slight loss of sensation on the left lateral foot and mild weakness of the left peroneus longus suggestive of left S1 radiculopathy. Petitioner was referred to have another MRI. The MRI performed on November 10, 2010 was suggestive of a small focus of annular tear at L4-5. Dr. Kafiluddi noted the MRI confirmed his suspicion of an annular tear. The doctor felt that discogenic back pain with radicular symptoms could be the cause of Petitioner's symptoms. Dr. Kafiluddi recommended a provocative discographic study. The study was performed on December 16, 2010. Petitioner also had a CT scan on the same date. The CT scan revealed a grade IV annular tear at L4-5. Dr. Kafiluddi referred Petitioner to Srinivasan Purighalla, M.D. for a surgical consult.

Petitioner presented to Dr. Purighalla on January 12, 2011. Dr. Purighalla noted the discograms by Dr. Kafiluddi showed evidence of tears at different levels. Dr. Purighalla diagnosed pain in the limb and low back pain. Dr. Purighalla recommended more conservative therapy and possibly epidural steroid injections or selective nerve blocks. Petitioner was told that he would not benefit from a multilevel fusion operation. Petitioner was last seen by Dr. Kafiluddi on January 31, 2011. According to Petitioner, Dr. Kafiluddi subsequently moved out of State. At that last visit, Dr. Kafiluddi referred Petitioner to Dr. Kern Singh for a second opinion.

Petitioner saw Dr. Singh on April 6, 2011. Dr. Singh diagnosed lumbar muscular strain and referred Petitioner back to Dr. Kafiluddi indicating he was not an operative candidate at that time.

Dr. Miller authored a report dated September 14, 2011. After reviewing his own notes and those of Dr. Kafiluddi, Dr. Miller opined that Petitioner's symptoms were more consistent with irritation of the nerve root rather than mechanical back pain. Dr. Miller further stated that Dr. Kafiluddi's discography results are not indicative of mechanical back pain that would respond to surgery as Dr. Purighalla had also stated. Dr. Miller indicated that he was not certain Petitioner has an annular tear, but he did have a broad based disc bulge. Dr. Miller further opined that he would limit Petitioner to 40-50lbs. lift occasionally and 25lbs. frequent. In conclusion, Dr. Miller stated that it was his belief that Petitioner has a disc bulge at L4-5 that is symptomatic but more for radicular symptoms than mechanical. He believed that ongoing treatment could include injection, medication management stability and strength within the spine.

At Respondent's request, Petitioner underwent a two separate Section 12 examinations with Dr. Andrew Zelby on July 30, 2008 and April 6, 2011. According to Dr. Zelby, Petitioner had a structurally normal spine, a normal spinal exam, and normal neurologic exam. Dr. Zelby opined that Petitioner sustained a lumbar strain that would have healed no later than 8-12 weeks after the initial injury and that he requires no additional diagnostic studies or directed treatment. The doctor noted Petitioner had been given numerous diagnoses including facet arthropathy and discogenic pain. He felt that none of the diagnoses could be supported by objective findings. The doctor opined that Petitioner had no evidence of disc disease, facet disease, or SI joint disease. The doctor felt that the treatment Petitioner received had been unreasonable and unnecessary. Dr. Zelby opined that Petitioner had reached maximum medical improvement by January 2008.

It is undisputed that Petitioner suffered an injury that arose out of and in the course of his employment on October 25, 2007. Having considered the totality of the evidence adduced at hearing, the Arbitrator finds that that Petitioner's conditions of ill-being are causally related to the October 25, 2007 accident. The Arbitrator notes that Dr. Zelby's opinions are contrary to all of Petitioner's treating physicians and diagnostic studies. While Petitioner may not require surgical intervention, Dr. Zelby is the only physician to conclude Petitioner's condition is "normal" and provides no basis for his opinion.

In support of the Arbitrator's decision relating to Disputed Issue (J) Were the medical services that were provided to petitioner reasonable and necessary, the Arbitrator finds the following facts:

The findings and conclusions of the Arbitrator relating to the issue of causal relation are adopted and incorporated herein.

The charges of American Family Chiropractic in the amount of $1,637.00, Michael Schreck, M.D. in the amount of $467.00, Robert Chesser, M.D. in the amount of $812.00, Radiology Group in the amount of $3,949.00, Upright MRI of Deerfield LLC in the amount of $3,000.00, Michael Dolphin, D.O. in the amount of $304.00, Anthony Maioriello, M.D. at Midwest Brain & Spine in the amount of $1,637.00, Quad City Physical Therapy and Spine in the amount of $5,030.00, Mississippi Valley Surgery in the amount of $10,419.00, Rodney Kafiluddi, M.D. at Advanced Pain Control in the amount of $31,395.00, Srinivasan Purighalla, M.D. at Purighalla Neuroscience & Spine in the amount of $284.00, and Kern Singh, M.D. in the amount of $604.90, were incurred by Petitioner during the course of his treatment for his injuries, were necessary and reasonable and were causally related to his injuries. Therefore, Respondent is responsible for payment of these bills.

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

The findings and conclusions of the Arbitrator relating to the issue of causal relation are adopted and incorporated herein.

Petitioner seeks a wage differential award under Section 8(d)1 of the Act. In order to be entitled to a wage differential, Petitioner must prove that the disability has caused (1) a partial incapacity that prevents him from pursuing his usual and customary line of employment and (2) impairment of earnings. Albrect v. Industrial Commission, 271 Ill.App.3d 756, 648 N.E.2d, 925, 208 Ill.Dec. 1 (1st Dist. 1995).

As a result of the accident of October 25, 2007, Petitioner sustained injuries which resulted in lumbar radiculopathy, nerve root irritation, and a broad based L4-5 disc bulge. Petitioner required and underwent extensive physical therapy, epidural steroid injections on July 29, 2008 and August 26, 2008, radiofrequency neurotomies of the median nerve branches of the posterior rami of L2,3; L3,4; L4,5 and L5, S1 on the left and right sides on July 23 and August 7, 2009 and June 2010 and July 22, 2010. Petitioner underwent two FCE evaluations in 2008 and 2009 with almost identical results. Further, Petitioner's treating physician, Dr. Kafiluddi opined that Petitioner should be limited to no front carry, waist to crown lifting and ground to waist lofting of over 25lbs. and occasionally forward bending.

Petitioner presented the evidence deposition of Kent Jayne, a certified rehabilitation counselor, a vocational evaluator, and economist. (Px III) Mr. Jayne testified as to his extensive certifications. He testified that he evaluated, interviewed, and tested Petitioner on January 31, 2012. (Px III p. 10) Mr. Jayne also reviewed all of Petitioner's medical records and the deposition transcript of Petitioner. (Px III p.9, and Dep. Ex. 2) Mr. Jayne testified that it is his opinion within a reasonable degree of vocational certainty that Petitioner is

precluded from the line of employment of a hazard waste worker which was his usual and customary job that he had at Safety-Kleen. (Px III, p.28) Mr. Jayne further testified that after consulting with Petitioner after January 31, 2012, it is his opinion within a reasonable degree of vocational certainty that his current job with Actually Clean is suitable employment for Petitioner. (Px III, p. 32) This testimony was uncontroverted by Respondent.

At the time of trial, Petitioner was 44 years old. Petitioner testified that he graduated from high school in 1988 and only completed one full semester of community college. Petitioner was employed by Respondent on September 4, 1990. He held various positions while employed with Respondent consisting of warehouse work, sales, and service of hazardous waste. Petitioner's job at the time of his accident required him to handle the disposal of hazardous waste from many different businesses. He was required to lift 4 inch hoses attached to a vacuum truck, which were 120 feet in length, and suck up sludge. He was also required to lift grates and manhole covers to access the areas that he needed to vacuum. It was uncontroverted that with the restrictions Petitioner has he could not meet the physical demands of his former job with Respondent.

Respondent was not able to accommodate Petitioner's restrictions and he was terminated from employment with Respondent in November 2008. Respondent did not offer Petitioner any other position nor offer to retrain Petitioner. After being terminated, Petitioner testified that he sought employment at several car dealers, but was not successful in obtaining employment. He then was offered a night manager job with North Scott Foods in December 2008. Petitioner worked 24 to 30 hours per week at a rate of $12.00 per hour. Petitioner worked at North Scott Foods until October of 2009. Petitioner testified that he then worked 4 to 5 months at Route 61 Bar & Grill. He worked 20 to 30 hours per and was paid $8.25 plus tips. Petitioner subsequently was employed for about 6 months as a manger of Taco John. He worked 35 to 40 hours per week for $10.00 per hour. Next, Petitioner worked 3 months for Gottschalk Lawn Care. He worked 35 to 40 hours per week for $12.00 per hour. After that, Petitioner worked for Grasshopper lawn care for 6 month. He worked 40 hours per week for $12.00 per hour. Finally, Petitioner testified that he secured employment with Actually Clean on January 6, 2012, which is his current employer. Petitioner works 40 to 70 hours per week and makes $39,000.00 per year or $750.00 per week. His job consists of commercial and residential carpet cleaning and sales. He uses a 2 inch hose, which is 50 feet long, to clean carpets and has assistance moving the hose. The cleaning wand weighs 10 to 15lbs..

Petitioner testified that he continues to experience left leg and back pain. Petitioner testified that due to the pain, he only sleeps 4 to 5 hours per night. Petitioner can't sit for more than 30 minutes due to his pain. Petitioner testified that has difficulty leaning forward. Petitioner has difficulty lifting more than 15lbs.. Finally, Petitioner testified that he continues to be active and work out of necessity.

Having reviewed the evidence presented at trial, the Arbitrator finds that Petitioner proved that he sustained a partial incapacity that prevented him from pursuing his usual and customary line of employment. Petitioner has also proved that he has an impairment of earnings and has found suitable employment. At the time of the accident, it was stipulated that Petitioner earned $1,236.83 per week while working for Respondent. Petitioner's certified vocational expert, Kent Jayne, testified that Petitioner's earnings would be $68,125.00 annually or $1,310.10 per week with Respondent if he were in full performance of his duties. (Px III, p.32) Petitioner testified that he began his employment with Actually Clean on January 6, 2012, at a rate of pay of $18.75 per hour for forty hours per week or $750.00 per week. This testimony was uncontroverted by Respondent.

Based on the above, the Arbitrator finds that commencing January 6, 2012, Petitioner is entitled to a wage differential in the amount of $373.40 [$1,310.10 - $750.00 x 2/3] per week under Section 8(d)(1) of the Act. Respondent is given credit for temporary total disability payments made.

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

☒ 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

Kevin Shaffer,

Petitioner,

vs. NO. 11WC030497

SOI/IYC-Harrisburg,

Respondent.

15IWCC0597

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 accident, temporary total disability, causal connection, medical expenses, notice, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 19, 2014 is hereby affirmed and adopted.

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.

Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

DATED: JUL 30 2015
SJM/sj
o-7/16/15
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SHAFFER, KEVIN
Employee/Petitioner

Case# 11WC030497

15IWCC0597

SOI/IYC-HARRISBURG
Employer/Respondent

On 8/19/2014, 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 0.05% 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:

5236 CULLEY FEIST KUPPART & TAYLOR
KREIG B TAYLOR
617 E CHURCH ST SUITE 1
HARRISBURG, IL 62946

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
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SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

AUG 19 2014

RONALD A. RARDIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0597

STATE OF ILLINOIS)
)SS.
COUNTY OF St. Clair)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Kevin Shaffer
Employee/Petitioner

v.

SOI/IYC Harrisburg
Employer/Respondent

Case # **11 WC 30497**

Consolidated cases: **N/A**

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Belleville**, on **June 17th, 2014**. 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. [x] 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. [x] Was timely notice of the accident given to Respondent?
F. [x] 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. [x] 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 **5/23/2011**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was not* 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 $**56,531**; the average weekly wage was $**1,087.14**.

On the date of accident, Petitioner was **54** years of age, *married* with **0** 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 $- for TTD, $- for TPD, $- for maintenance, and $- for other benefits, for a total credit of $-.

Respondent is entitled to a credit of **any medical benefits paid through its group carrier** under Section 8(j) of the Act.

ORDER

Petitioner has failed to meet his burden of proof and thus shall be barred from recovery. Petitioner is not credible in his testimony. His figures for the amount of times turning keys is so widely divergent as to be unbelievable. Additionally, the Petitioner's testimony regarding his job duties is not consistent with other evidence produced and Petitioner relies heavily on job duties that are attenuated from the date of accident. Moreover, the Respondent's section 12 examiner credibly testified the Petitioner's condition was not caused by his work duties.

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.

Edward Lee

Signature of Arbitrator

8/13/14

Date

AUG 19 2014

FINDINGS OF FACT

A full hearing was held in this matter. The issues at trial were accident, notice, causal relationship, liability for medical costs and the nature and extent of the injury.

Petitioner testified that he works as a Juvenile Justice Specialist at the Illinois Youth Center-Harrisburg and at the time of his trial had worked there for approximately eleven [11] years. He works the second shift from 2:00 in the afternoon until 10:00 at night. Petitioner's testimony concerning his job duties at various times was a bit difficult to follow. His testimony was at times he would turn keys upwards of four to five hundred times [400-500] a day for opening and closing doors. But yet, in his written job description included in the Petitioner's evidence the number is, "...it is fair to say we secured approximately 260-300 doors a day." [Pet. Ex. 9]. In other words, the Petitioner almost DOUBLED the amount of keys turned and doors opened when questioned on the witness stand under oath. He also testified he performed shakedowns of the youth but admitted of his own cognizance, "we never did those like we should."

During trial during direct examination, Mr. Shaffer testified, "In the years leading up to the surgery, it became considerably more pronounced. I began to be symptomatic **at home** even more." [emphasis added]. When questioned about this during cross examination Mr. Shaffer said, ...I began to notice it at home as much as I did work, because certain activities increased that and brought it to my recollection more.... I would say the symptoms became most prominent **two years prior**." [Emphasis added]. He further went on to say, **"it's easier to remember how it affected me at home..."** [Emphasis added]. In another novel bit of testimony the Petitioner stated his duties and redundancy of keys had changed under cross examination but yet during cross examination, Mr. Shaffer testified that his hand written document exhibit #9 was consistent with his work duties during the duration of his employment at IYC Harrisburg. However, this document does not in any way comport with his testimony during cross examination.

The initial diagnostic testing conducted on Mr. Shaffer was done while he was off for another injury and was not actually working at the time. Dr. Alam conducted the testing on May 9th, 2011. Mr. Shaffer was found to be positive for bilateral carpal tunnel syndrome and negative for cubital tunnel syndrome. This is the date the Petitioner used on for his date of accident on his application of claim. What is interesting to note is the Employee's notice of Injury was not filled out by the Petitioner on August 4th, 2011 almost ninety [90] days after his EMG and well beyond the forty five [45] notice requirement contained within the Act. When questioned about this by his counsel during direct examination; he stated that he had told the Work Comp Coordinator and she informed him this was a technicality. However, upon a closer examination of the document entitled Employee's notice of injury contained within Respondent's exhibit # 4, there is a specific question, "If not reported on date of incident, explain." Petitioner did not answer the question and indeed left it blank.

There is NO mention of his actual job duties contained within his initial note. Mr. Shaffer initially presented to Dr. Steve Young on January 31, 2012, almost nine months after his original EMG, for complaints about bilateral hand numbness and tingling. Mr. Shaffer returned to see Dr. Young on July 30th, 2012 at which time a job description was provided to Dr. Young and after Dr. Young was informed Petitioner had retained an attorney for a Workers' Compensation claim. Dr. Young then conducted both a right carpal tunnel release early in August of 2012 and then a left carpal tunnel release two weeks later. At no point in the records does Dr. Young ever attribute the Petitioner's symptoms to his work duties.

Dr. Young's evidence deposition was taken on August 28th, 2012. Dr. Young testified that Mr. Shaffer's habit of smoking one to two packs of cigarettes a day for thirty plus years would contribute to his carpal tunnel

syndrome by diminishing the blood flow to the nerve. He also testified that Mr. Shaffer's age would be a contributing factor to the development of Carpal tunnel syndrome. Dr. Young also testified he had no memory of the Petititioner telling him anything about his job duties at his initial visit other than the fact he was a correctional officer for the IYC at Harrisburg. Additionally he testified he had only reviewed documents sent to him by the Petitioner's attorney regarding his job duties **the day of** the deposition. [Emphasis added]

Respondent had the Petitioner undergo a section 12 exam by Dr. Anthony Sudekum, a board certified surgeon of the upper extremities, on August 13th, 2012. Additionally, Dr. Sudekum testified by Deposition on March 4th 2013. He had a detailed analysis of the job description as well as, other documents from the state of Illinois regarding the job duties of the Petitioner. He also examined the Petitioner individually. The report of Dr. Sudekum is worth reading in its entirety for its thoroughness in handling the Petitioners findings and the documentation. He opined the Petitioners condition was not caused by his job duties.

CONCLUSIONS OF LAW

Petitioner has failed to meet his burden of proof and thus shall be barred from recovery. Petitioner is not credible in his testimony. His figures for the amount of times turning keys is so widely divergent as to be unbelievable. Additionally, the Petitioner's testimony regarding his job duties is not consistent with other evidence produced and Petitioner relies heavily on job duties that are attenuated from the date of accident. . Moreover, the Respondent's section 12 examiner credibly testified the Petitioner's condition was not caused by his work duties.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mary Mitchell,

Petitioner,

vs. NO. 11WC008571

Construction Cleaning Company,

15IWCC0598

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 25, 2014 is hereby affirmed and adopted.

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

DATED: JUL 30 2015
SJM/sj
o-7/9/2015
44

Stephen J. Mathis

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MITCHELL, MARY
Employee/Petitioner

Case# 11WC008571

CONSTRUCTION CLEANING COMPANY
Employer/Respondent

15IWCC0598

On 8/25/2014, 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 0.05% 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:

4220 LULAY LAW OFFICES
EMILY VINYARD
2323 NAPERVILLE RD SUITE 220
NAPERVILLE, IL 60563

4412 ACCIDENT FUND HOLDINGS INC
NICOLE BUBAN HANLON ESQ
200 W MADISON ST SUITE 3850
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Mary Mitchell
Employee/Petitioner

v.

Construction Cleaning Company
Employer/Respondent

Case # 11WC 08571

15IWCC0598

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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **July 16, 2014**. 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. X 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. X Was timely notice of the accident given to Respondent?
F. X 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. X 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. X What temporary benefits are in dispute?
☐ TPD ☐ Maintenance X TTD
L. X What is the nature and extent of the injury?
M. X Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

15IWCC0598

FINDINGS

On **July 19, 2010**, 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 not*** sustain an accident that arose out of and in the course of employment.

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

No finding is made as to whether Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$1,408.00**; the average weekly wage was **$1,408.00.**

On the date of accident, Petitioner was **47** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$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

CLAIM FOR COMPENSATION DENIED. PETITIONER FAILED TO PROVE THAT SHE SUSTAINED ACCIDENTAL INJURIES WHICH AROSE OUT OF AND IN THE COURSE OF HER EMPLOYMENT BY RESPONDENT ON JANUARY 28, 2011.

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

August 22, 2014
Date

AUG 25 2014

15IWCC0598

FINDINGS OF FACT

The matter was tried on July 16, 2014 and the issues in dispute were: Did Petitioner sustain accidental injuries which arose out of and in the course of her employment by Respondent on January 28, 2011?; Notice; Causal Connection; Medical Expenses; TTD; PPD and Penalties. Proofs were closed at the conclusion of the July 16th hearing. Petitioner filed a Motion to Re-open Proofs and a hearing was held on that motion on August 14, 2014. The motion was denied and an Order regarding the disposition of the motion is being entered concurrently with this Decision.

Petitioner worked for Respondent for four days in January of 2011. Prior to January 25, 2011, Petitioner had never worked for Respondent. Her job involved post construction cleaning, readying units for occupancy. She was involved in cleaning kitchens and bathrooms. She was hired through Local 4 and she was the Union Steward on the job. Petitioner testified that her supervisor on the job was "Trish". Petitioner said that she was told by Respondent to talk to Trish regarding job assignments and problems. The job site had several buildings on a cul-de-sac. Respondent was cleaning one of the buildings.

Petitioner testified that after lunch on January 28, 2011, a Friday, she received a call from John Joe, the Union BA and Joe advised her that there were non-union people working on the job next door and he asked her to check this out. Petitioner said that she told Trish about this and received permission to go next door and take a look. Petitioner thought that her actions would benefit both the Union and Respondent. Petitioner would not have gone next door without permission. She met with John Joe and they verified that the workers were in the Union.

As Petitioner returned to Respondent's job site, she slipped on ice and injured her left knee. Her knee hit the pavement. Petitioner needed help to get up and she sat on a bench for a while. She told Trish about the union status of the workers and about the fall. Petitioner left early with Trish's permission, as it was near the end of the day. Petitioner reported the injury to Walsh Construction on the following Monday. Walsh was the General Contractor on the job. Petitioner had continued pain in her left knee. She denied prior injuries or treatment regarding her left knee.

Because the knee was not getting better, Petitioner sought treatment at Rush Medical Center in the E.R. on February 1, 2011. At that time, Petitioner was moving slowly. She could not walk long distances and had problems with stairs and squatting. She was examined and had an x-ray and a CT. She was given crutches and medication. (PetEx. 2 and 3)

The next medical treatment was at Stroger Hospital on March 15, 2011. Petitioner had treatment at this facility through February 17, 2012, which included exercises and steroid injections. At the last visit, she had improved with exercise and the injection. (PetEx. 6) Petitioner had no treatment after February 17, 2012.

Petitioner also received treatment from Dr. Boone Brackett and Dr. Calveras at Westgate Orthopedics from May 16, 2011 through July 29, 2011. A knee MRI of June 14, 2011 showed osteophytes and edema that might be consistent with a bone contusion. (PetEx. 7 and 8)

Petitioner testified that she did not work as a laborer after the accident. She has difficulty squatting and with stairs. She now works at a school in food service. She has difficulty with stairs and standing. She feels an aching and pulling in her knee. She can't squat. She doesn't wear heals. She takes Tylenol and Aleve for pain. Her pain is less than at the time of the accident, but is about the same as at the time of the last Drs' visit of February 17, 2012.

On Cross-Examination, Petitioner confirmed that no doctor had restricted her from doing construction clean up. No restrictions were given at the last Drs' visit.

Petitioner said that she knew John Joe for 7 years. She did not know Trish's last name. She did not recall what Trish looked like. She did not know Trish's union affiliation. Petitioner was a Steward for a year. She was not paid by the Union for this position and did not receive any benefits, either. It was not common to leave a job site to check on another job.

The job for Respondent was a small one with 2 or 3 other employees. They had one building to clean. The project was a large one. Petitioner did not recall morning meetings at Respondent. She got her job assignments from Trish.

Beatra Bobowski testified for Respondent. She is the President of Respondent. She knew John Joe. Lukasz Siemiemkiewicz was the foreman on the job in question. Injuries are to be reported to the foreman and the foreman would report to Ms. Bobowki. There was no injury reported to her. Respondent did not have an employee or foreman named Trish.

Lukasz Siemiemkiewicz testified that he was the foreman on the job. He speaks English and Polish. He gave the job assignments and equipment to the workers every morning and usually would see them at the end of the day, when they put their supplies away. He remembered Petitioner. He knew John Joe. Lukasz was the only foreman or supervisor on the site. Respondent did not have an employee named Tasha, or Trisha. There was no Trish or Tasha on the job site. Lukasz did not give Petitioner permission to leave the job site. Petitioner did not report any accident or injury to him. The other employees on the job were: Jola, Leszak, Evana, and Katarlzyna.

The employees usually leave the job site together. Lukasz did not recall Petitioner leaving early and thought that he would recall it if she did.

No rebuttal testimony to that of Ms. Bobowski and Mr. Siemiemkiewicz was offered. The CBA was not placed in evidence. John Joe did not testify.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

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

The Arbitrator finds that petitioner failed to prove that she sustained accidental injuries, arising out of and in the course of her employment by Respondent on January 28, 2011.

Petitioner's job duties were to clean up construction sites. She was a Union Steward. She went with her BA, who was not working on Respondent's site, to check the credentials of workers on another site. Petitioner

thought that her actions benefited both the Union and Respondent, in that Respondent could possibly bid on the job that she went to if non-union employees were removed. Petitioner testified that she had the permission of her supervisor "Trish" to check the job site. She could not describe "Trish" and did not know Trish's union affiliation. It is troubling that a steward would leave her job site to check on the credentials of workers on another job site, but not know if the fellow employee/supervisor that she worked with and received job instructions from was a member of her union, or any union.

The testimony of Respondent's witnesses, Bobowski and Siemiemkiewicz establishes that Siemiemkiewicz was the foreman on the job and Respondent did not have an employee named Trish, Trisha or Tasha. The Arbitrator finds the testimony of Bobowski and Siemiemkiewicz to be credible.

In order to obtain compensation under the Act, Petitioner must prove that she sustained accidental injuries which arose out of and in the course of her employment. Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193, 203 (2003) An injury arises out of the employment if it originates with a risk connected with, or incidental to the employment so as to create a causal connection between the employment and the injury. Baggett v. Industrial Commission, 201 Ill.2d 187 (2002) Here, the risk of injury was connected with union business, not that of Respondent. Perhaps the CBA allows stewards to leave a job site to check credentials of workers on other job sites, but there was no proof on this. Further, while Petitioner testified that she slipped and fell on ice on a sidewalk, there was no further testimony regarding the details of the ice or the walk, such that a defect on Respondent's premises could be found. The injury did not arise out of petitioner's employment.

"In the course of employment refers to the time, place and circumstances surrounding the injury..." Sisbro, 207 Ill.2d at 203 Here, Petitioner was on the clock for Respondent, but the fall occurred on a sidewalk while she was returning to her work area after conducting union business. The injury did not occur in the course of Petitioner's employment by Respondent.

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

Petitioner's Exhibit 3, the Accident Report, is dated February 22, 2011. Thus, Respondent had notice of the accident within the 45 day period required by Section 6 of the Act.

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

As the Arbitrator has found that Petitioner failed to prove that she sustained accidental injuries, which arose out of and in the course of her employment by Respondent, the Arbitrator needs not decide this issue.

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

As the Arbitrator has found that Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent, the Arbitrator needs not decide this issue.

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

As the Arbitrator has found that Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent, the Arbitrator needs not decide this issue.

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

As the Arbitrator has found that Petitioner failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent, the Arbitrator needs not decide this issue.

WITH RESPECT TO ISSUE (M), SHOULD PENALTIES BE IMPOSED UPON THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

As the claim for compensation was denied, the Arbitrator needs not decide this issue. Further, the Arbitrator finds that Respondent's disputes in this case were reasonable and not vexatious and not without just cause.

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

☐ 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

Guillermo Alfaro,

Petitioner,

vs.

NO: 13 WC 10099
(consol.) 12 WC 21434

Panera Bread,

Respondent,

15IWCC0583

DECISION AND OPINION ON REVIEW

Having reviewed the above referenced case in its entirety, the Commission notes that Petitioner and Respondent Steak 'N Shake did not file Petitions for Review in this matter. Further, the Commission finds that as Respondent Panera Bread was not a party to consolidated claim of 12WC21434, Respondent Steak 'N Shake could not file a review on behalf of Respondent Panera Bread. As such, the Commission hereby dismisses the review for case number 13WC10099, *sua sponte.*

IT IS THEREFORE ORDERED BY THE COMMISSION that the review of case number 13WC10099 is hereby dismissed.

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: JUL 28 2015
MJB:ell
o-06/22/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

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

ALFARO, GUILLERMO
Employee/Petitioner

Case# 12WC021434

13WC010099

STEAK 'N SHAKE INC AND PANERA BREAD
Employer/Respondent

15IWCC0583

On 10/3/2014, 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 0.04% 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:

0564 WILLIAMS & SWEE LTD
DIRK A MAY
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

1832 KLAUKE LAW GROUP LLC
GEORGE F KLAUKE JR
10 MARTINGALE RD SUITE 400
SCHAUMBURG, IL 60173

0180 EVANS & DIXON LLC
ROBERT HENDERSHOT
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

☐ 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
19(b)

Guillermo Alfaro
Employee/Petitioner

Case # 12 WC 021434

v.

Consolidated cases: 13 WC 10099

Steak 'n Shake, Inc. and Panera Bread
Employer/Respondent

15IWCC0583

Applications for Adjustment of Claim were filed in these matters, and *Notices of Hearing* were mailed to each party. The matters was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Bloomington, Illinois**, on **August 29, 2014**. 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 Respondents?

D. ☐ What was the date of the accident?

E. ☒ Was timely notice of the accident given to Respondents?

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 Respondents 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, **May 7, 2012**, Respondents *were* operating under and subject to the provisions of the Act.

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

On this date, Petitioner **did** sustain an accident that arose out of and in the course of employment with Respondent **Steak n' Shake (12 WC 21434)**; Petitioner *did not* sustain an accident that arose out of and in the course of employment with **Panera Bread (13 WC 10099)**.

Timely notice of this accident was given to Respondents.

Petitioner's current condition of ill-being *is* causally related to the accident with respect to Respondent **Steak n' Shake (12 WC 21434)**; Petitioner's current condition of ill-being *is not* causally related to his employment with Respondent **Panera Bread (13 WC 10099)**.

In the year preceding the injury, Petitioner earned **$35,763 (combined)**; the average weekly wage was **$625.60**.

On the date of accident, Petitioner was **36** years of age, **married** with **4** dependent children.

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services as Respondent is found to have no liability for any medical services provided Petitioner.

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 **Steak n' Shake (12 WC 21434)** shall pay reasonable and necessary medical services of **$2,563.00**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent **Steak n' Shake (12 WC 21434)** shall authorize and pay for medical treatment as directed by Dr. Oakey.

Petitioner has failed to meet his burden of proof with respect to the issues of accident and medical causation as against Respondent **Panera Bread (13 WC 10099)**; therefore, no benefits for past medical treatment expenses or future medical treatment are awarded as against Respondent **Panera Bread (13 WC 10099)**.

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 **(12 WC 31434)**.

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

Date 9/30/14

ICArbDec19(b)

OCT 3 - 2014

STATEMENT OF FACTS:

Petitioner filed Applications for Adjustment of Claim alleging he sustained injuries to his upper extremities on or about May 7, 2012 while working for both Steak n' Shake and Panera Bread. Petitioner testified each employer was aware of the other prior to May 2012, as Petitioner had to advise them he would work at Panera's morning shift and work the evening shift at Steak n' Shake.

Petitioner testified he began working for Steak n' Shake in April 2004, performing duties including working on the grill, preparing shakes, and scooping ice cream. Petitioner explained he flipped "thousands" of burgers, and was required to push down hard with a spatula on each burger in order to flatten it out on the grill. Petitioner testified he also scooped several hundred ice creams on each shift, and explained scooping ice cream was difficult because the ice cream was frozen and hard. Petitioner stated when his right hand would become tired from trying to scoop ice cream he would use his left hand. Petitioner testified he worked at Steak n' Shake approximately forty hours per week until June 2014, when his hours were reduced to thirty to thirty-two hours a week. Petitioner testified at the same time his hours were reduced, Steak n' Shake also modified his job duties, taking him off grill work and ice cream scooping due to his hand complaints.

Petitioner testified he first started working for Panera in July 2009. Petitioner explained his duties at Panera were different from those at Steak n' Shake, and included grilling and cooking chicken, cutting items with a knife, making soups and sandwiches, and working the salad station.

Petitioner testified he initially developed pain and tingling in his right hand while working for Steak n' Shake. Petitioner testified he reported his hand symptoms to his supervisor at Steak n' Shake five to six years prior to the hearing, or 2008 to 2009, and would occasionally go to see a doctor for his hand symptoms. The medical records indicate Petitioner first reported hand symptoms to a doctor on February 9, 2009, when he presented to Community Health Center [*hereinafter* "CHC"] with complaints of "needle like pain" at night, numbness, and inability to feel cold water. (Resp. Ex. A1) It was noted Petitioner "works grill @ Steak n Shake." (*Id.*) The assessment was "R[ight] hand neuropathy/pain", and Petitioner was provided with a cock-up wrist splint for use at night. (*Id.*) Petitioner reported wearing his wrist splint when he returned to CHC on June 16, 2009, and further reported his hand pain was "gone". (*Id.*)

At a March 15, 2010 visit to CHC, Petitioner again reported using the wrist brace at night; however, he had complaints of right hand and finger tingling "worse on work days". Petitioner advised he "flips burgers @ Steak n Shake", and the CHC physician assessed probable carpal tunnel syndrome, advised Petitioner he "needs to go thru W[ork] C[omp]", and recommended a large handled spatula. (Resp. Ex. A1) On April 22, 2010, Petitioner advised the CHC physician he was seeing "WC doctor for CT – he is working on neck." (*Id.*) The Arbitrator notes that no records for that treatment were submitted into evidence.

On January 31, 2011 Petitioner was evaluated by Dr. Jerome Oakey for complaints of "right hand tingling and numbness" which had "bothered him for a couple of years." (Pet. Ex. 2) Petitioner told Dr. Oakey he had worked at Steak n' Shake for six years, always "back in the kitchen as a cook." (*Id.*) Dr. Oakey noted Petitioner's use of the wrist splint, home exercises, and medications had been unsuccessful in treating his symptoms, and he recommended an EMG. Dr. Oakey opined that "the work he has done at Steak and Shake for 6 years is causally related to the carpal tunnel". (*Id.*)

On March 7, 2011, Petitioner was seen at CHC. The CHC physician indicated Petitioner was "now at standstill", and recommended Petitioner follow up with workers' compensation for his complaints of right wrist pain. (Resp. Ex. A1) Petitioner had filed a workers' compensation claim against Steak n' Shake on February 3, 2011; however, that case was later dismissed. (Resp. Ex. B2)

Petitioner was not again seen for right wrist symptoms until February 13, 2012, when he presented to CHC with complaints of "numbness/burning to R[igh]t hand all fingers for 4-5 years. Has worked grill @ fast food for 8 years." The assessment was "probable right carpal tunnel", and an EMG nerve conduction study was again recommended. (Resp. Ex. A1)

The EMG was performed by Dr. Nenita Tudtud, who noted Petitioner's complaints of right sided symptoms as well as "occasional numbness on the left hand but no [pain]", as well as Petitioner's history of working at Steak 'n Shake and doing "a lot of grilling". (Pet. Ex. 3) Dr. Tudtud interpreted the study as indicative of "very severe right carpal tunnel syndrome" and "mild left carpal tunnel syndrome", and she recommended surgical consultation for a right carpal tunnel release. (*Id.*)

Petitioner returned to Dr. Oakey on May 7, 2012 advising that physician his job at Steak n' Shake involved "repetitive gripping and grasping activities, more so with the right than the left". (Pet. Ex. 2) Dr. Oakey discussed with Petitioner the need for a right carpal tunnel release and reiterated his opinion the carpal tunnel was causally related to his work at Steak n' Shake over the preceding nine years. (*Id.*)

Petitioner testified by the time he saw Dr. Oakey on May 7, 2012, he had noticed an increase in his symptoms of tingling and numbness and pain, with the right-sided symptoms more significant than those on the left. Petitioner testified he would be bothered by his symptoms at both Steak n' Shake and Panera. Petitioner filed his second, present, claim against Steak n' Shake on June 19, 2102. (Resp. Ex. B3) Petitioner testified he discussed his hand complaints with his supervisor at Panera, Brian, approximately two years prior to trial, or roughly late 2012, and filed the present claim against that employer in March 2013.

Dr. Joseph Newcomer, a board-certified orthopedic surgeon, testified by way of deposition. (Pet. Ex. 1, 5) Dr. Newcomer evaluated Petitioner at the request of Steak n' Shake on October 12, 2012. (Pet. Ex. 1, 6) Dr. Newcomer received a history from Petitioner of his job duties at both Steak n' Shake and Panera, as well as a history of Petitioner's symptoms of numbness and tingling beginning around 2008. (Pet. Ex. 1, 7) Dr. Newcomer testified he reviewed Petitioner's medical treatment records and performed an examination limited to the right hand. (Pet. Ex. 1, 7-8, 9) Dr. Newcomer testified his diagnosis was "severe carpal tunnel syndrome", and he felt a carpal tunnel release was necessary. (Pet. Ex. 1, 10) Dr. Newcomer opined Petitioner's work at Steak n' Shake was "certainly an aggravation of" Petitioner's carpal tunnel syndrome, explaining Petitioner's activities of "grasping, gripping" at Steak n' Shake would aggravate the condition. (Pet. Ex. 1, 11) Dr. Newcomer added "I know those guys have to pound those patties out, and I know that could be an aggravation with the direct pressure in the hand." (*Id.*) Although Dr. Newcomer acknowledged he was aware of Petitioner's work at Panera when he completed his report, the doctor also acknowledged he did not make any mention of any causation opinion with respect to Panera in his report. (Pet. Ex. 1, 17)

At trial, Petitioner testified he experiences tingling and numbness in his right hand, and stated it feels as though his hand is on fire. Petitioner reported similar but less intense symptoms in his left hand.

With respect to (C.) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent; and, (F.)Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

The key to the determination of compensability of repetitive trauma injuries is the fixing of a manifestation date – the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 529-30 (1987) In considering the questions of repetitive trauma cases, the Supreme Court has cautioned "[t]he facts must be closely examined" so as "to ensure a fair result for both the faithful employee and the employer's insurance carrier." *Durand v. Industrial Comm'n*, 244 Ill.2d 53, 64 (2006). It is nearly axiomatic that a claimant for benefits has the burden of proving all elements of the claim; however, "[i]n cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Williams v. Industrial Comm'n*, 244 Ill.App.3d 209 (1993) (*citing Nunn v. Industrial Comm'n*, 157 Ill.App.3d 470, 477 (1987)).

In this case, the medical evidence and testimony establishes a clear connection between Petitioner's work at Steak n' Shake and his carpal tunnel condition. Petitioner's complaints date as far back as 2009, prior to his employment at Panera, when he presented to CHC with carpal tunnel symptoms and advised he "works grill @ Steak n Shake". (Resp. Ex. A1) Petitioner's association of his symptoms with his work at Steak n' Shake continues throughout the medical records; the CHC records in 2010 and 2011 not only describe Petitioner's continued symptoms, but reference the claim against Steak n' Shake Petitioner had filed on February 3, 2011. Specifically, Petitioner advised the CHC physician on March 15, 2010 he had complaints in his right hand "worse on work days" and indicated his job was "flips burgers @ Steak n Shake". (*Id.*) Similarly, on January 31, 2011, Petitioner reported his symptoms to Dr. Oakey, advising he had worked at Steak n' Shake for six years "back in the kitchen as a cook". (Pet. Ex. 2) Petitioner even advised Dr. Newcomer his symptoms were related to his work at Steak n' Shake. (Pet. Ex. 1, 8)

Dr. Oakey opined on two separate occasions, January 31, 2011 and May 7, 2012, that Petitioner's carpal tunnel syndrome was causally related to his work at Steak n' Shake. This opinion was echoed by Dr. Newcomer, who testified Petitioner's work at Steak n' Shake was "certainly an aggravation of" Petitioner's condition. (Pet. Ex. 1, 10) Dr. Newcomer explained the basis for this opinion, referencing Petitioner's need to grasp and grip as well as specifically explaining flattening of the burgers as an aggravating factor in the carpal tunnel condition. Not only does the evidence show the relationship between his symptoms and his work at Steak n' Shake was plainly apparent to Petitioner, but the evidence shows this relationship was apparent to the doctors considering the issue of causation. This evidence, as well as Petitioner's credible testimony, demonstrates Petitioner not only sustained an accident arising out of and in the course of his employment with Steak n' Shake, but also proved by a preponderance of the evidence the causative link between his employment at Steak n' Shake and his condition of ill-being.

At the same time, Petitioner has not met his burden on the issues of accident and causation with respect to Respondent Panera. Petitioner specifically testified he reported his hand symptoms to his Steak n' Shake supervisor in roughly 2008 or 2009, before he had even started starting at Panera. This demonstrates Petitioner already believed there was a connection between his symptoms and his work at Steak n' Shake before starting at Panera. While Petitioner's records repeatedly mention Petitioner's employment at Steak n' Shake, none of those same records ever reference Petitioner's employment at Panera, further reinforcing Petitioner's belief it was the Steak n' Shake work which was causing his symptoms. Petitioner credibly testified as to the forces used and his difficulties with this Steak n' Shake duties, compared to the relatively simpler duties at Panera. Even Dr. Newcomer, who was aware of Petitioner's duties at both Panera and Steak n' Shake, linked Petitioner's symptoms only to Steak n' Shake and did not reference Panera in his report when considering causation. Even if Dr. Newcomer had testified Petitioner's duties at Panera played a causative role in his carpal tunnel syndrome, unlike his testimony about Steak n' Shake, there was no explanation of how the Panera duties played that causative role. Given the lack of sufficient evidence upon which to base a manifestation date and

the lack of medical testimony establishing a causative relationship, Petitioner has failed to meet his burden of proof on the issues of accident and causation with respect to Respondent Panera.

With respect to (E.) Was timely notice of the accident given to Respondent, the Arbitrator finds as follows:

Given the above findings, the only pertinent issue is whether proper notice was provided to Respondent Steak n' Shake. Petitioner's testified he reported his hand symptoms to his supervisor at Steak n' Shake in 2008 or 2009; this testimony was unrebutted by Steak n' Shake. Further, the May 7, 2012 accident date was not Petitioner's first attempt to allege he had suffered a work related injury to his hands; he had previously filed a claim against Steak n' Shake for an August 2010 manifestation date in February 2011. Additionally, Petitioner continued to perform the same job duties for Steak n' Shake until June 2014, when his hours and duties were altered. Steak n' Shake is not in a position to claim it was unaware of Petitioner's complaints, nor is Steak n' Shake in a position to allege prejudice when it continued to have Petitioner in its employ performing the same tasks he always had. For these reasons, the Arbitrator finds that Petitioner has met his burden of proof on the issue of notice with respect to Respondent Steak n' Shake.

While the above findings render the issue of notice provided to Respondent Panera moot, for the sake of completeness, the Arbitrator notes Petitioner's unrebutted testimony that he told supervisors at Steak N' Shake and Panera, respectively, in May, 2012 about problems with pain and numbness in his hands at work. The Arbitrator finds Petitioner met his burden of proof on the issue of notice with respect to Respondent Panera.

With respect to (G.) What were Petitioner's earnings, the Arbitrator finds as follows:

Petitioner alleges an average weekly wage based upon his concurrent employment at Respondents Steak n' Shake and Panera. Petitioner's testimony, unrebutted by either Respondent, was that both employers were aware of each other prior to the May 7, 2012 date of injury, as Petitioner had to advise each as to his schedule. Specifically, Petitioner had to advise them he was working the morning shift at Panera and the evening shift at Steak n' Shake.

Based upon this evidence, Petitioner is found to have a combined average weekly wage of $625.60.

With respect to (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; and (K.) Is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

Given the above findings, Respondent Steak n' Shake is ordered to pay the following reasonable and necessary medical expenses listed in Petitioner's Exhibit 4, pursuant to the Fee Schedule:

McLean County Orthopedics	$ 161.00
Reimburse Petitioner	96.00
Reimburse IDPA	2,306.00

The Arbitrator further finds that Respondent Steak n' Shake is ordered to authorize and pay for medical treatment as directed by Dr. Oakey.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARY BEAL,

Petitioner,

15IWCC0603

vs.

NO: 08 WC 12278

ROCKFORD MASS TRANSIT DISTRICT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, temporary total disability, maintenance, and the nature and extent of Petitioner's permanent partial disability and being advised of the facts and law, reverses the Decision of the Arbitrator, finds that Petitioner did not sustain her burden of proving compensable accident or causation to a current condition of ill being, and denies compensation.

Findings of Fact and Conclusions of Law

1. Petitioner testified she has worked for Respondent as a bus driver since 1992 and continued to work in that capacity until 2008. In November or December of 2007 she began experiencing "real bad low back and left side pain." She called dispatch and reported she wouldn't be in from "pain from the buses and stuff irritating" her hip. She had made an appointment with her general practitioner for February 14, 2008, his first available opening, got some Aleve, and hoped it would go away. In 2003 and 2004 she had some minor pain for which she was treated, "but not like this." She returned to work in around September 2004. She started back in light duty, but then returned to full duty as a bus driver in 2005 and continued to work in that capacity until 2008.

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2. Petitioner also testified sometimes she worked 12-16 hours a day. "It's board work," they "have a mandatory 12; but normally" they did 16, whatever Respondent needed. Petitioner also testified she was off work in 2007 for bunion surgery on her foot, but she did not lose time from work for her lumbar/hip condition, despite her increasing pain. Sometime in 2007, she could not remember the date; Petitioner went to a risk manager, Terrell Jackson, to complain that she was only driving old buses with no lumbar support, which was aggravating her "back terrible." He suggested that she "start writing it up." She "started writing it up," but she "started getting the same bus the next day. Nothing was fixed." So she stopped "writing it up because there were other issues with the buses that [she] was writing it up for," such as fumes and lack of heat.

3. Petitioner explained "it was basically the 95, 99 series." "The seats supports were broke. So when I said broken, that's what I'm meaning. The 95 series, those seats you couldn't move them period. You couldn't push it up to lean you up. You couldn't bring it back. And I did carry a cushion with me to try to help; but some days, that wouldn't even help. I would have to put my purse behind me, because it was so much room back there." "It was just stressful and painful."

4. In addition, "at times the buses would break down." "The buses would air up on both sides" on bellows. "All of a sudden, the bus would just drop – boom. So once I had no air – so you're leaning and when you let dispatch know. At the time, he would say okay, bring the bus in. The mechanics are busy. They can't get to you. Will the door close? So if the door closes we got to bring it in. So I know several times I brought the bus in, and the bus just" shook. "You could not go more than 10 miles per hour because if you went faster you would bounce faster." Something would go wrong with the bellows occasionally, maybe once or twice a month. The 99 series buses still bounced a lot. The seats on the newer buses have back support and are comfortable.

5. When she saw her general practitioner he ordered an MRI. Thereafter, he referred her to Dr. Chenelle, a surgeon. He took Petitioner off work the day he saw her. He performed surgery on May 2, 2008. She has never returned to work for Respondent as a bus driver since Dr. Chenelle initially took her off work. In November of 2008, Dr. Chenelle wanted a Functional Capacity Evaluation ("FCE") before Petitioner returned to work. She did not have one at that time.

6. On February 16, 2009, Petitioner was seen by Dr. Tomacruz for an examination to reinstate her CDL. Initially, he indicated Petitioner would return to work. However, Respondent wanted Petitioner to be re-evaluated. About two weeks later they said she could not return to work. Petitioner then went back to her general practitioner, Dr. DeGuzman, who indicated she could return to work. She filed a grievance regarding her return to work. She was sent to Dr. Hennessy in December of 2010, who indicated she needed an FCE, which was performed on February 8, 2011. She was told that she could not return to work because of the FCE results. She understood that she was required to be able to push a 600-lb person to be able to return to work. She has never had to push a 600-lb person in her job.

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7. Petitioner further testified she still treats with Dr. DeGuzman; she "did some" physical therapy and needs "to see pain management." She was "having a problem with that." She has not seen them yet. She takes medication, but at this point no additional surgery or injections have been recommended.

8. Petitioner also testified currently she can't stand for a long period of time. She can walk a little, but if she walks too much she had to take medication at the end of the day, "and sometimes through the day." However, she does not like taking them through the day, "because it kind of messes with your memory and your head gets all fogged up and stuff." The pain in her low back and hip are "sort of" better than prior to the surgery, but she can't say its better. She then testified that the surgery helped her and after physical therapy and work hardening she felt she could return to work. Basically all she does "is drive" and she "never had a passenger weighing 600 pounds come on" her bus. Such a person "couldn't get on the bus."

9. On cross examination, Petitioner testified she got her assignment each day at 4 pm for the next day. All the drivers pick up their buses at the same place. When she got there in the morning she was the first to drive the bus that day, but another driver drove it the previous day. Drivers basically drive any bus that is put in their spot. In 2007 she drove the 95 and 99 buses "a lot." The 95s were the ones that basically had no back support and could not be moved forward or back.

10. Petitioner testified that the onset of back pain around November of 2007 was associated with an instance when the air went out of the bellows. Her "back was already irritated, and it made it worse." She had to bring the bus in. Petitioner did not remember whether she was driving a 95 or a 99 at the time. She called in the next day and did not go to work. She did not get the same bus every day, but basically she got the same series of buses. In 2005, or earlier, she complained to Mr. Hendricks that those buses should be rotated more, but nothing was done.

11. Petitioner agreed that when she took a bus out, she filled out a pre-trip report, which included a section about the driver's seat. If there was a problem she should check off that box. She agreed that there were mechanics and a safety committee on site. She did not fill out an accident report after the air went out in November 2007 because she did not know she had any "severe damage." When she found out she had damage she called her lawyer who told her she would fill out the report. She had previous accidents while working for Respondent for which she filled out accident reports. However, at the times of those times she did not have a lawyer. Petitioner agreed that she did not fill out an accident report in November or December of 2007.

12. Petitioner had an accident in 2003 in which she struck a deer and injured her low back. She reported her back pain radiated down her left leg. She treated with Dr. Chenelle at that time. She did not remember "telling them" that she still had pain and had difficulty sitting for more than 2½ hours. She was also having a lot of back and left leg pain after a fall getting out of a company van in 2004. She filed accident reports and settled claims after these accidents. Petitioner testified she wrote up buses because of the seats.

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13. Petitioner agreed that she did not file a grievance regarding the bus seats. However, she had filed a grievance because another driver had flirted with a passenger, apparently gave him Petitioner's name, and came up Petitioner's bus and "getting aggressive." She also filed a grievance because there was no return date when she was to return to work after a back injury. She also filed a grievance because there was some notation that she was off work without indicating she was off work because her CDL was expiring. She also filed another grievance for being off work, and filed a charge of discrimination. She did not bring up retaliation or the buses in her various grievances or her EEOC claim.

14. On redirect examination, Petitioner testified she had pain prior to the incident with the bellows in November or December of 2007. She stopped writing up the seats because if "they would not fix the seat, they were not going to fix the seats." She did not mention the seats in the grievances because they did not deal with the condition of the buses.

15. Mike Amams was called to testify by Respondent for which he has worked for 27 years. He was currently safety supervisor, and was also in 2006-2007. Previous to that he was a "just plain supervisor" and he started as a dispatcher. He was one of Petitioner's supervisors in 2007. He would see her at least once a day. They would have conversations about work-related matters. The complaints she made were generally about routes and money. There was no way he would remember whether she ever complained about seats. However, if she did he "would have made out a report – normally anything like that [Petitioner] would have made out a report." Generally, these issues would come up in monthly or bimonthly safety committee meetings.

16. Mr. Amamns also testified the rotation of buses is random. It was possible for a driver to get "the same bus a couple of days in a row if they kind of came in the same way." However, if a bus breaks down, "which happens all the time, than that randomness changes; so, you know, how they came into the garage changes."

17. On cross examination, Mr. Amams testified Petitioner had additional supervisors other than him. It was possible that Petitioner made complaints to other supervisors. He reiterated that the assignment of buses was "strictly random."

18. Dan Engelkes was also called by Respondent and testified he worked for Respondent since May of 1987. He was currently risk manager, but from 2004 to 2014 he was maintenance manager. He was a mechanic for three years prior to that. As maintenance manager he oversaw the operation of the maintenance department and documented repairs.

19. Mr. Engelkes also testified that routine maintenance is performed every 6,000 miles, which comes to about every six weeks. During this maintenance the interior of the bus is inspected, including driver controls, wipers, headlights, radios, and driver seats. Regarding the seats their overall condition of the seat and cover of the seat would be inspected as well as the controls and cushion.

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20. Mr. Engelkes stated that in the year 2007, Respondent operated 1995, 1999, 2000, and some 2007 model buses. The 1995 buses were taken out of service in around June of 2007 when they got the 2007 buses. The seats on all the 1999, 2000, ad 2007 buses had three-chamber pneumatically inflatable lumbar support. The seats are fully adjustable and are on bellows that absorb bouncing.

21. Mr. Engelkes further testified that seats would be repaired based on the routine inspection or pre-trip reports required of all drivers. Generally, Mr. Engelkes would review the pre-trips reports on a daily basis. If there was a report of a broken seat he would ensure that it was repaired before it went back on the road. Two or three drivers would drive each bus every day. If a seat were broken he would get reports from each driver. He did not recall Petitioner filling out any report of a broken seat. Each driver is required to inspect the bus as part of their pre-trip reporting procedure. Drivers can make complaints about equipment, including seats, to their supervisor, the safety committee, on their pre-trip card, and to their union rep. Mr. Engelkes also testified that the assignment of buses was random.

22. On cross examination, Mr. Engelkes testified that they started taking the 1995 buses out of service in May of 2007. When they got a 2007 bus they would take a 1995 bus out. They would get two of the 2007 buses per week. In 2006 to 2008 Respondent's fleet included 13 1999 buses, eight 2000 buses, and 20 2007 buses. The 1995 buses were completely out of use by June of 2008. The witness did not personally inspect the buses before they went out. His testimony about fixing the buses was based on his reliance on his mechanics, but he personally observed their work.

23. Dennis Hendricks was also called by Respondent and testified he worked for Respondent for 29 years. He was currently operations manager a position he also held in 2007-2008. Mr. Terrell Jackson last worked for Respondent in the beginning of October of 2007. He developed cancer, left employment, and died about seven years ago. Before his departure, Mr. Jackson took time off work.

24. Mr. Hendricks also testified he was safety chairman and assumed some of Mr. Jackson's duties of risk manager. In addition, as safety chairman he attended all safety committee meetings and had all of Mr. Jackson's safety records. Committee members would bring up complaints from drivers. Records of the meetings were kept. There was no indication whatsoever, that Mr. Jackson discussed any complaints regarding broken seats from Petitioner. No union representative brought up the issue regarding Petitioner reporting broken seats. The witness reviewed Mr. Jackson's safety records. There was no indication in those records of any complaint from Petitioner that she was getting the same broken down bus. A driver can file a grievance for a broken seat. If there was a pre-trip card indicating a problem with a seat, maintenance would be called.

25. Relevant medical records reveal on May 13, 2003, Petitioner presented to Dr. DeGuzman reporting a back injury after her bus was struck by a deer. She went to an emergency room and was given prescriptions. Petitioner had persistent low back pain and had an MRI which showed lumbar degenerative disc disease with mild disc bulging at L3-5.

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26. On June 13, 2003, Petitioner returned to Dr. DeGuzman. He tried to explain that her degenerative disc disease could arise even without the motor vehicle accident and it may not really be related to the accident even though she reported she had no problem prior to the accident. He referred her to an orthopedic surgeon for evaluation.

27. On July 10, 2003, Petitioner presented to Dr. Chenelle reporting the motor vehicle of May 6, 2003. She complained of 7/10 pain in the lower back and in the left hip and calf. The accident was reported to workers' compensation and there was pending litigation. Dr. Chenelle's neurological exam appears to be normal except for "***hypoesthesia*** in a stocking distribution." He diagnosed lumbago. There were no surgical findings in the films and he prescribed physical therapy.

28. On March 7, 2008, Petitioner returned to Dr. Chenelle on referral from her workers' compensation lawyer. She was seen in 2003 and improved with physical therapy. In 2005 she had more physical therapy and was diagnosed with "frequent falling problems." Her chief complaint over the past two years was left hip and low back pain. She reported her condition got worse in January of 2008 with increased left hip pain. She also had tingling in the entire left leg. She related her condition to the motor vehicle accident in which she hit a deer in 2003. Sitting exacerbates her pain and she works as a bus driver for 8-hour shifts without a break. Dr. Chenelle noted a February 23, 2008 MRI showed significant left-sided disc herniations at L2-3, annular tear with narrowing of the foramen at L3-4, and a central disc bulge at L4-5. Dr. Chenelle recommended partial hemilaminectomy and foraminotomy and discectomy at L2-3, L3-4, and possibly at L5-6. Based on Petitioner's job Dr. Chenelle took her off work until surgery.

29. On May 2, 2008, Dr. Chenelle performed partial hemilaminectomy and foraminotomy and discectomy at L2-3 and L3-4 for large left foraminal disc herniation at L2-3 and large left disc protrusion at L3-4.

30. By October 22, 2008, Petitioner had attended 48 out of 58 total physical therapy sessions in post surgery rehabilitation. She worked hard throughout and could resume activities of daily living. The therapist indicated Petitioner would request a gradual return to full work from her doctor. She was discharged to a home exercise program.

31. On January 12, 2009, Dr. Chenelle indicated he thought it was safe for Petitioner to return to work and she would increase her work time gradually until she reached an 8-hour day in about a month. The accompanying note had her at full duty as of February 9th.

32. Also on January 12, 2009, Dr. Chenelle noted that Petitioner brought to his attention a problem with workers' compensation. While the initial history related her condition to the 2003 motor vehicle accident, subsequent "imaging shows that there is a chronic degenerative condition in her back which she and [he] attributed to chronic bouncing in an old non supportive bus seat." He opined that her condition and need for surgery was both the result of the initial incident in 2003 and "exacerbation of this condition in her

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role as a bus driver chronic bouncing on unpadded bus seats with degenerative arthritis."

33. Dr. Hennessy was retained by agreement of the parties to opine on Petitioner's ability to return to work. On February 23, 2011, he informed the parties that a valid FCE was performed on 2/8/11. "In short, [Petitioner] was able to obtain levels of dynamically pushing 107 lbs. and statically pulling 109 lbs., nothing close to the 175 lbs. which would be necessary to manipulate a 600 lb. person in a wheelchair." Based on the calculation from the testing facility, Petitioner demonstrated the ability to manipulate a person weighing about 325 lbs. Therefore, he felt that Petitioner was "capable of only 50% work and not capable of full duty work without restriction."

34. On January 5, 2012, Dr. Fisher testified by deposition that he examined Petitioner at the request of her lawyer. He also reviewed her medical records from 2003 to her FCE in 2011. Dr. Fisher noted that Petitioner reported the 2003 accident in which the bus she was driving hit a deer, after which she began "experiencing new onset of low back pain." She stated that she was diagnosed with a bulging disc. She had physical therapy and began feeling better after six months. She was working full duty but had increased pain in 2007 and was treated with medication in October of 2007. She suffered a significant increase in her symptoms in 2/08 and it became "very bad." She went to Dr. Chenelle who recommended surgery. She had surgery in May of 2008, tried to return to work in November of 2008, but was not allowed to return and was terminated.

35. Petitioner reported to Dr. Fisher that despite improvement after surgery she still had 3/10 to 9/10 low back pain with recurrent left leg symptoms. The symptoms increased with activity and prolonged sitting. She had difficulty sleeping and had to change positions frequently. On examination she showed tenderness over the paraspinal muscles from L3-S1 and sciatic notch. She also had exacerbation of pain with any range of motion testing.

36. Dr. Fisher opined that Petitioner had preexisting degenerative disc disease which was exacerbated and made symptomatic by the 2003 motor vehicle and which was "continued to be aggravated by the repetitive bouncing in the bus seat while working. This constitutes an aggravation or acceleration of her preexisting condition." He recommended a continued exercise program, anti-inflammatories as needed, and work restrictions as outlined in the FCE. He also opined that Petitioner could return to work as a bus driver, however, her pushing and pulling would have to be limited below that identified in her job description.

37. On cross examination, Dr. Fisher testified he believed that Petitioner only complained of low back pain and did not report leg symptoms after the 2003 motor vehicle accident. He then agreed that here was an indication in the medical records about left hip and leg numbness in 2005, which probably identified radiculopathy. Dr. Fisher agreed that in Dr. Chenelle's note on March 7, 2008, Petitioner attributed her symptoms to the 2003 accident, which he found significant. Dr. Fisher agreed that she did have some radicular symptoms since 2003, but he was not sure whether Petitioner had "consistent symptoms" of radiculopathy since 2003; "it seemed like her symptoms improved and got worse."

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38. Dr. Fisher also agreed that Petitioner had degenerative disc disease in 2003 which continued to 2008. However, it would be hard to predict whether it was "normal" for her condition to worsen over the years, but he agreed that "it would not be out of the ordinary."

39. Dr. Fisher further testified in formulating his causation opinion, he relied on Petitioner's history, her imaging studies, and Dr. Chenelle's treatment notes. He did not recall any mention of any broken or seat bouncing prior to Dr. Chenelle's note on January 12, 2009. He did not find significant Petitioner not reporting the bouncing seats causing the onset of pain until her January 12, 2009 visit to Dr. Chenelle, while "with her attorney." Any "dearth of information regarding any causality in Dr. Chenelle's note, [was] most likely because of the late dictation of the notes."

40. Dr. Fisher also testified he understood Petitioner sat on "an old unsupported seat." He had personal knowledge of bus seats from "personal observation and speaking to bus drivers." He lived in Rockford for two to three years. He was sure he saw a Rockford bus but had "no direct recollection of it." He had not seen the interior of a Rockford bus. It would have been helpful to see a Rockford bus seat, but he "most likely could form an opinion without that information assuming the normal job of a bus driver."

41. Dr. Fisher noted that the MRI reports in 2004 and 2008 appear to show evidence of change in "her condition from something that was relatively mild to something that was not mild, and based on her changes in symptoms and her requirements for surgical intervention, most likely something has changed." It would be better to look at the films side by side, but that was his conclusion based on the reports of the MRI radiologists. He would have preferred to actually view the films.

42. On redirect examination, Dr. Fisher testified that Petitioner's medical records indicate that no surgery was recommended until 2008. He quoted the operative report in which Dr. Chenelle noted "quite frankly, this was one of the largest disc herniation I have seen. There was free disc material peeking out from the lateral edge of the posterior longitudinal ligament." The 2004 MRI showed no disc herniations. On re-cross examination, Dr. Fisher testified he only knew the pathology found in surgery occurred in the interim between the two MRIs.

43. On April 26, 2013, Dr. Weiss testified by deposition that he examined Petitioner on April 25, 2008, reviewed her medical records through 2005, the February 23, 2008 MRI, and issued a report. Petitioner was 48 years old at the time of the exam. She reported the motor vehicle accident of 2003, after which she developed low back pain radiating down the left leg to the foot. She treated with Dr. DeGuzman and an MRI showed degenerative changes. She was eventually able to return to full work but complained that she continued to have back pain since the 2003 accident. She also reported an accident in 2004 in which she fell through an open van door. This accident increased her pain. Once again she treated and was able to return to work at full duty, "but continued to have constant complaints."

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44. Petitioner then reported that in around February of 2008 her low back pain and left leg pain gradually got worse with no new injury. She did not report any specific accident associated with the increasing pain. She did "not specifically" report that her increased symptoms were due to the "seats that she used at work that were broken." She also did not report that the increased pain was due to her job activities. He was under the impression that she was a bus driver. Petitioner reported activities of daily living including bending, lifting, twisting, prolonged sitting, and physical exertion worsened her symptoms. Petitioner "clearly had a problem dating back to at least 2003," and continued to have complaints thereafter.

45. Dr. Weiss' examination appears to have been normal except for some restricted range of motion, which is subjective. He indicated that 98 or 99% of patients with radiculopathy have difficulty with heel to toe walking, she had no such difficulty. Petitioner exhibited multiple positive Waddell signs including pain with superficial or widespread palpitation, and simulated axial compression and trunk rotation. Other positive Waddell signs included stocking sensory diminishment in the left leg and inconsistent straight leg raises, which are both non physiological findings. Finally, she also "demonstrated pain behavior." She "basically had all" of the positive Waddell signs.

46. Based on his examination, the MRI, and medical records, Dr. Weiss diagnosed multilevel degenerative disc disease. He would not recommend surgery because 75 to 80% of patients who exhibit the number of positive Waddell signs as Petitioner do not improve with surgery. He would recommend surgery on such a patient only if there was obvious indication of objective pathology. Petitioner exhibited none, not even spasm. Dr. Weiss recommended psychological evaluation if Petitioner decided to have surgery.

47. Dr. Weiss opined that Petitioner's work activities were not a causal factor in her ongoing complaints. He believes that at the very least 70 pounds or more of repetitive lifting is necessary to aggravate degenerative disc disease. Repetitive lifting of lesser weights may actually promote increased nutrition of discs. Petitioner did not relate any heavy lifting in her work activities. He also did not believe driving the bus for extended periods contributed to her condition. Dr. Weiss actually drove a bus "for the purposes of seeing what it was like." The seats are "usually either cushioned or air seats or supported seats." In addition, military tests of ejection seats, which involve extraordinary extreme compression of the spine, showed no disc herniations. Therefore, Dr. Weiss would not believe that normal bumps or potholes experienced by a bus driver would aggravate degenerative disc disease.

48. Dr. Weiss acknowledged that Dr. Chenelle indicated he found a herniated disc at L2-3 in his operative report. That condition would not correlate with Petitioner's symptoms in her left foot. Such symptoms would be related to pathology at L4-5 or L5-S1. Dr. Chenelle also found no significant compression at L4-5 and therefore did not operate on that level. The operative report was "further evidence" that Petitioner's "presentation can't be relied upon." Petitioner's complaints after the surgery also reinforce his opinions because operating on L2-3 is not going to relieve foot pain.

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49. Dr. Weiss also noted that a traumatic injury at L2-3 is rarer than at levels lower down and in this case the L2-3 level would be farther away from the bottom of the seat, which would be affected by road conditions. If Petitioner had reported to him that she had a problem with her seat causing the onset of her symptoms, Dr. Weiss "absolutely" would have put that statement in his report.

50. On cross examination, Dr. Weiss testified he believed that the only records he had regarding the 2003 accident were an MRI and records of Dr. DeGuzman. He did not believe he reviewed any records of Dr. Chenelle regarding treatment after that accident. He reviewed the actual MRI films from 2003, 2004, and 2008. In his opinion the 2003 MRI showed multilevel degenerative disc disease. He did not see any recommendation for surgery after the 2003 motor vehicle accident. He agreed that she was treated conservatively after that accident and that she was able to return to work at full duty after physical therapy.

51. Dr. Weiss understood that from 2005 Petitioner worked full duty as a bus driver until February 2008. He agreed that the 2004 MRI showed "no acute changes." Dr. Weiss reiterated that he had no medical records between 2005 and the MRI report of 2008. Petitioner reported to him pain in her low back and left foot from 2003, but it got progressively worse and was further made worse by prolonged sitting. Dr. Weiss agreed that it was common for patients to complain that back pain was exacerbated by prolonged sitting.

52. Dr. Weiss further testified he did not have information about the specific bus that Petitioner was driving or pictures of the seats she was using. He agreed that he recommended Petitioner have work restrictions. He diagnosed multilevel degenerative disc disease with protrusion, which includes the disc herniations. Somebody with preexisting degenerative disc disease and of Petitioner's age would be more likely to develop herniations "than a virgin."

53. Dr. Weiss also stated that vibration is not considered a cause or aggravating factor for degenerative disc disease. Neither would a broken seat or bumps aggravate that condition. Going over a pothole with a seat with no support could perhaps cause a strain of facet joints, but there is no evidence that it could cause a disc herniation.

54. On redirect examination, Dr. Weiss explained that disc protrusions are disc herniations. His diagnoses were consistent with the MRIs and the operative report. The increased pain degenerative disc disease patients report with prolonged sitting or standing mostly comes from facet joints "because they tend to collapse down" and not the discs. Such activity would not cause disc herniation even though they could make conditions more symptomatic.

55. Finally, Dr. Weiss posited that there was no indication Petitioner sustained any acute injury. Petitioner reported all types of activities of daily living besides prolonged sitting increased her back pain. Petitioner never reported a lack of support in her bus seats.

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Initially, the Commission notes that the claimant has the burden of proving that all elements of his/her claim, particularly the prerequisites that the injury complained of arose out of and in the course of the employment. *See, Sisbro v. Industrial Commission,* 207 Ill. 2d 193 (2003); *Illinois Institute of Technology v. Industrial Commission*, 68 Ill. 2d 236 (1977). The Commission retains original jurisdiction on claims on review from an arbitrator and is required to assess the credibility of witnesses. *See, Allen v. Industrial Commission,* 61 Ill. 2d 177 (1975).

The Arbitrator found that Petitioner proved that she suffered repeated repetitive trauma driving a bus which caused an aggravation of her low back and hip pain and condition of ill being. The Arbitrator clearly found her testimony credible about her work activities, the condition of the buses and seats she was using, and that her work activities caused the increase in her symptoms. He noted the "disparity" between Petitioner's testimony and that of Respondent's witnesses who testified she would be provided a different bus almost every day. In addition, he also found persuasive the causation opinions of Dr. Chenelle and Dr. Fisher.

The Arbitrator was correct that there was a "disparity" in the testimony of Petitioner and Respondent's witnesses, Mr. Amams and Mr. Hendricks. However, the Commission finds more credible the testimony that the assignment of buses was random and that Petitioner was almost certainly not assigned old buses on a continuing or consistent basis presumably based on some sort of motivation for retaliation. Petitioner's credibility was undermined by the fact that she apparently did not write up the buses for bad seats in the pre-trip reports and Respondent's witnesses indicated they would have received multiple reports of bad seats from other drivers who drove the same buses Petitioner drove. In addition, it is apparent that Petitioner was in no way squeamish about filing grievances, but she filed no such grievance about the bus seats. Her testimony that she verbally reported to supervisors that the seats were defective and that there should be better rotation of the bus assignments is simply not corroborated by the record.

The Commission does not find the causation opinions of Dr. Chenelle and Fisher particularly persuasive because they clearly based their opinions on the assumption that Petitioner consistently used seats that were not cushioned and not supportive, which is likely incorrect. In addition, the Commission finds Dr. Weiss's opinion more persuasive that those of Dr. Chenelle and Dr. Fisher because he actually drove a bus operated by Respondent and therefore had a better understanding of the stresses the lumbar spine would experience driving the bus.

Finally, Petitioner's credibility is probably most damaged by the fact that she apparently did not attribute her symptoms to the bus seats until her visit with Dr. Chenelle on January 12, 2009, 11 months after she sought treatment for her symptoms. Prior to that, she attributed her symptoms to the 2003 motor vehicle accident, which was then exacerbated by the 2004 accident in which she fell out of a van. Not only did she fail to tell her treating doctors about the allegedly offending seats, she apparently did not tell that to Dr. Weiss, who she knew was hired by Respondent to opine on causation.

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The Commission concludes that Petitioner did not successfully sustain her burden of proving that she was sustained a compensable accident by being subjected to consistent use of unsupported, non cushioned, or non-functioning seats. We also conclude that Petitioner did not successfully sustain her burden of proving that her condition of ill being of the lumbar spine was causally related to the risks incident to her employment of driving a bus. Therefore, Petitioner's claim for benefits under the Workers' Compensation Act is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated September 27, 2014 is reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for benefits under the Workers' Compensation Act is denied.

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.

The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: JUL 31 2015

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-7/15/15
46

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

George Sanders,
Petitioner,
vs.
City of Chicago,
Respondent,

NO: 12 WC 43585

15IWCC0599

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of what is the nature and extent of the petitioner's permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 4, 2014 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $32,100.00. 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: JUL 30 2015

MB/mam
o:7/9/15
43

Mario Basurto

David L. Gore

Stephen Mathis

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

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George Sanders,
Petitioner,
vs.
City of Chicago,
Respondent,

NO: 12 WC 43585

15IWCC0599

DECISION AND OPINION ON REVIEW

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DATED: JUL 30 2015

MB/mam
o:7/9/15
43

Mario Basurto

David L. Gore

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

SANDERS, GEORGE
Employee/Petitioner

Case# **12WC043585**

15IWCC0599

CITY OF CHICAGO
Employer/Respondent

On 9/4/2014, 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 0.05% 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:

2221 VRDOLYAK LAW GROUP LLC
MICHAEL P CASEY
741 N DEARBORN ST 3RD FL
CHICAGO, IL 60654

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

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

George Sanders
Employee/Petitioner

Case # **12 WC 43585**

v.

Consolidated cases: _____

City of Chicago
Employer/Respondent

15IWCC0599

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 **Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago, Illinois**, on **July 24, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

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FINDINGS

On **August 8, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**70,408.00**; the average weekly wage was $**1,354.00.**

On the date of accident, Petitioner was **62** years of age, ***single*** with **0** 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 $**14,056.49** for TTD, $**00.00** for TPD, $**00.00** for maintenance,

and $**00.00** for other benefits, for a total credit of $**14,056.49.**

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $712.55/week for 64.5 weeks, because the injuries sustained caused a 30% current loss of use of the left leg, as provided in Section 8(e) of the Act.

Respondent shall be given credit for $14,056.49 as payment to Petitioner for temporary total disability, pursuant to Section 8(b) of the Act and credit for 20% loss of use of the left leg, pursuant to 93 WC 22907.

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.

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FINDINGS OF FACT

The parties stipulate that the city of Chicago (hereinafter referred to as the "Respondent") was operating under the Illinois Workers' Compensation Act on August 8, 2012. On said date George Sanders (hereinafter referred to as "Petitioner") sustained accidental injuries that arose out of and in the course of his employment with the respondent. On this date, he was working in the Department of Streets and Sanitation, as motor truck driver. Petitioner was signaled by a co-worker to come to the back of the truck, and on his way, he slipped on debris, hitting his left leg on the truck. He was 62 years of age and claims injury to his left leg.

The parties proceeded to hearing on July 24, 2014, with the only disputed issues being causation and the nature and extent of injuries to Petitioner's left leg.

Both Petitioner's testimony and the medical records give a history of the accident with similar detail. Petitioner testified that he hit his knee while walking toward the back of the truck. Petitioner reported to MercyWorks that day, and was diagnosed with a left knee contusion and strain. An x-ray of the left knee was performed, which was negative for any fracture however, did show severe, degenerative joint disease in the left knee.

An MRI of Petitioner's left knee was performed on Aug. 30, 2012. The MRI showed no tears, but found (1) moderate to severe tri-compartmental degenerative changes; and (2) a small and partially extruded medial meniscus, with a blunted free margin; the appearance of which suggested a prior meniscectomy. Petitioner testified at trial to a prior injury to his left knee, which required surgery, as the result of a work accident that took place on March 18, 1993. PX2, pgs.2-5.

On Sept. 12, 2012, Petitioner had one injection to his left knee by Dr. Maday. Petitioner also participated in physical therapy and work hardening, and was released to return to work in a full duty capacity, by Dr. Maday on Nov. 26, 2012; approximately 3.5 months after the date of accident. Petitioner testified that he has not treated for his left knee since his release by Dr. Maday. PX3, pgs. 4 & 13.

Petitioner testified that he does not take any prescription pain medication for his knee but does take over-the-counter Tylenol twice a week. Petitioner testified upon his return to work, he was able to complete his regular tasks without incident, and his pay was not affected by the injury upon his return to work. However, Petitioner did testify that he would not have retired when he did, had he not hurt his left leg again. Petitioner retired from the City of Chicago on June 30, 2013, approximately seven months after his release. Petitioner previously recovered 20% of the left leg through a worker's compensation settlement, under 93 WC 22907 for the work incident of March 18, 1993. RX1.

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CONCLUSIONS OF LAW

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

It is within the province of the Commission to determine the factual issues, to decide the weight to be given to the evidence and the reasonable inferences to be drawn there from; and to assess the credibility of witnesses. *See, Marathon Oil Co. v. Industrial Comm'n*, 203 Ill. App. 3d 809, 815-16 (1990). And it is the province of the Commission to decide questions of fact and causation; to judge the credibility of witnesses and to resolve conflicting medical evidence. *See, Steve Foley Cadillac v. Industrial Comm'n,* 283 Ill. App. 3d 607, 610 (1998).

It is established law that at hearing, it is the employee's burden to establish the elements of his claim by a preponderance of credible evidence. *See, Illinois Bell Tel. Co. v. Industrial Comm'n.,* 265 Ill. App. 3d 681; 638 N.E. 2d 307 (1st Dist. 1994). This includes the issue of whether Petitioner's current state of ill-being is causally related to the alleged work accident. *Id.* A claimant must prove causal connection by evidence from which inferences can be fairly and reasonably drawn. *See, Caterpillar Tractor Co. v. Industrial Comm'n.*, 83 Ill. 2d 213; 414 N.E. 2d 740 (1980). Also, causal connection can be inferred. Proof of an employee's state of good health prior to the time of injury and the change immediately following the injury is competent as tending to establish that the impaired condition was due to the injury. *See, Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 356 N.E.2d 28 (1976). Furthermore, a causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident and inability to perform the same duties following that date. *See, Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 193 (1986).

In the subject case, there is no dispute that on August 8, 2012, Petitioner sustained accidental injuries that arose out of his employment. The dispute is whether Petitioner's current condition of ill-being is causally connected to this incident. The testimony of Petitioner and medical records support fact that the petitioner's condition of ill-being is causally related to the accident.

L. What is the nature and extent of the injury?

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). This includes the nature and extent of the petitioner's injury.

Neither party submitted an AMA impairment rating pursuant to section 8.1b. Petitioner's occupation was a truck driver for the city of Chicago. He drove a standard residential garbage truck and he testified that the job required him to enter and exit the vehicle fifteen (15) to twenty (20) times a day. This testimony was credible and unrebutted. He would do this by stepping off the ground with his left foot on a step of the truck, approximately two (2) to three (3) feet above ground level; then lift his

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weight up into the truck. He weighed 235 pounds at the time of the accident. Additionally, he was required to operate some trucks with manual transmission, which required the use of both his legs to operate the clutch and the break. Petitioner credibly testified that putting weight on the left leg caused left knee pain. He credibly testified that he would have others get his lunch so that he would not have to exit and enter the truck. He credibly testified that there is no light duty on his job and that he had to perform all of the duties of the job.

He testified that because of the difficulty in performing all of the duties of the job and the pain in the left knee, he retired six (6) months after he returned to work. The Arbitrator finds that petitioner's occupation is such that it increases the risk of permanent partial disability, resulting from the work injury.

Petitioner was 62 years old at the time of the injury and diagnosed as having significant, pre-existing osteoarthritis; supported by the x-rays and MRIs that were performed after the work injury. The weight of credible evidence in this record demonstrates that the pre-existing osteoarthritis caused little problems for petitioner with his left knee and that he was able to perform his full duties, without complaint. It was only after the work accident of August 8, 2012, that he had pain in the knee that continued after he returned to work. The Arbitrator finds that petitioner's age is a factor that increases the level of permanent partial disability, resulting from the work injury.

Petitioner testified that as result of the work accident and the continuing pain in the performance of his daily job duties, he took early retirement. He retired six (6) months after he returned to work. He testified he is not married and lives alone and that his intent was to continue to work for Respondent if he had not injured his left knee on August 8, 2012. The Arbitrator finds that the Petitioner's future earning capacity has been diminished as result of the work accident.

The medical records demonstrate that Petitioner had significant left knee osteoarthritis, which was quiescent without symptoms, prior to the work accident. The injury to the left knee resulted in pain to the knee that ranged up to 9/10 as corroborated in the medical records. The pain was such that Petitioner would walk with a limp and Dr. Maday administered an injection of lidocaine and Demerol into the knee. Dr. Maday diagnosed the condition as degenerative changes with a new onset of pain, following traumatic injury. The records corroborated Petitioner's difficulty climbing stairs, kneeling, lifting from the floor and lifting overhead. Quadriceps atrophy was documented. Work hardening in addition to physical therapy was prescribed to address the ongoing pain and disability. Petitioner testified that placing weight on the left knee causes pain. He had no problem putting weight on his left knee before the accident of August 8, 2012. He takes Tylenol for his knee approximate twice a week depending upon what he was doing with the left leg.

Considering all of the factors of section 8.1b, the Arbitrator finds that Petitioner sustained a work accident on August 8, 2012 resulting in 30 percent loss of use of the left leg. Petitioner had a prior award for 20% loss of use of the left leg in 93 WC 22907. After deduction of that 20% loss of use for

15IWCC0599

prior award, the Arbitrator finds Respondent shall pay Petitioner the difference, 10% loss of use of the left leg. Respondent shall pay Petitioner permanent partial disability benefits of $712.55/week for 64.5 weeks, because the injuries sustained caused a 30% current loss of use of the left leg, as provided in Section 8(e) of the Act with a deduction of 20%, pursuant to the prior award.

15IWCC0599

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
12 WC 43585
SIGNATURE PAGE

Signature of Arbitrator

September 4, 2014
Date of Decision

SEP 4-2014

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DARRELL N. NASH,

Petitioner,

15IWCC0602

vs. NO: 13 WC 36287

CITY OF CHICAGO,

Respondent.

DECISION AND OPINION ON REVIEW

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

Petitioner testified he is 55 years old and works for Respondent as an "asphalt helper." In that job he repairs potholes, pavement, and "grinding out the streets." In the winter he does "potholes or filling in for radius cuts." In the spring he usually hangs signs. He was currently still involved with his spring/summer work activities of hanging signs.

Petitioner also testified he injured his lower back on October 28, 2013, when he picked up a box of cardboard road signs weighing about 75 to 80 pounds. An MRI taken December 23, 2013 showed degenerative disc disease throughout the lumbar spine with mild right and mild to moderate left foraminal stenosis, a disc bulge at L4-5 with shallow central and left paracentral disc protrusion without significant spinal cord compromise, but mild bilateral foraminal narrowing, and a disc bulge and associated osteophytic ridge at L5-S1 without significant spinal cord compromise, but mild left foraminal narrowing. Petitioner treated with medication and physical therapy until May 8, 2013, at which time he was discharged from treatment and released to full duty.

15IWCC0602

Petitioner testified that currently he notices pain when he bends over to pick up a parcel of signs. It is in his low back down his left leg. "After a period of time," he has tingling in his feet and a burning sensation in his hip. He drives about 25 minutes to work. When he arrives he has to take his time getting out of the car because of his back. His left leg gets numb from his hip to his toes if he sits in the car too long. He no longer goes to the gym. He tried it once "and it didn't feel good." He does not do as much yard work as he did prior to the accident. Furthermore, he has "some serious pain" in his back, leg and hip after cutting grass. He now has somebody come over to do that. He has ridden his motorcycle twice since being released by Dr. Gireesan. It caused numbness and his back "didn't feel good at all;" he was in the process of selling the motorcycle. Picking up laundry, garbage, or his five year old grandchild is painful. He has difficulty sleeping.

The Arbitrator assessed the bases for determining a permanent partial disability award under the 2011 legislation. He placed greater weight on Petitioner's relatively advanced age and heavy labor in finding a higher level of permanent disability. He also noted that Petitioner had not begun his winter activities as an asphalt helper. Therefore, he did not know his ability to perform the tasks involved in pavement grinding. Accordingly, he placed some weight on Petitioner's potential loss of earning potential. Finally, the Arbitrator did not find Petitioner entirely credible because he was not forthcoming. Therefore, he relied on the medical records and not Petitioner's testimony regarding permanent partial disability. He awarded Petitioner 30 weeks of permanent partial disability benefits representing loss of 6% of the person as a whole.

Respondent argues the permanent partial disability award is excessive. It stresses that the Arbitrator improperly determined Petitioner's middle-age status is a factor increasing permanent partial disability. Respondent differs from the Arbitrator arguing he will have to live with his disability for a shorter period of time than a younger worker. It also posits the Arbitrator should not have increased permanency based on the fact Petitioner had not started his winter duties, because Petitioner was released to full duty.

The Commission notes that most arbitrators seem to be using a claimant's relatively advanced age as a factor limiting permanent partial disability rather than increasing it because of his/her having to live with the condition for a shorter period of time. The Commission also concurs with Respondent that the fact Petitioner had not yet begun his winter work responsibilities should not have been a consideration for increasing permanent partial disability based on loss of earning potential. Not only was Petitioner released to full duty, there was no evidence introduced at arbitration regarding the physical demand level of Petitioner's winter duties. The only testimony regarded the weight of the parcel of cardboard signs he had to handle during his spring/summer work activities.

Finally, Petitioner's condition apparently resolved to the point he was released to perform heavy labor with treatment consisting of only medication and physical therapy. Therefore, in looking at the entire record before us, the Commission concludes that an award of 3% loss of the person as a whole is appropriate in this case and modifies the Decision of the Arbitrator accordingly.

15IWCC0602

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $971.58 per week for a period of 28&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 sum of $726.56 per week for a period of 15 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 3% 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.

The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: JUL 3 1 2015

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-7/15/15
46

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0602

NASH, DARRELL N Case# **13WC036287**

Employee/Petitioner

CITY OF CHICAGO DEPT OF TRANSPORTATION

Employer/Respondent

On 10/22/2014, 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 0.05% 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:

1752 LAW OFFICE OF RAYMOND L ASHER
LISA F AZOORY
200 W JACKSON BLVD SUITE 1050
CHICAGO, IL 60606

0113 CITY OF CHICAGO
MICHELLE S BRYANT
30 N LASALLE ST 8TH FL
CHICAGO, IL 60602

15IWCC0602

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Darrell N. Nash
Employee/Petitioner

v.

City of Chicago Dept. of Transportation
Employer/Respondent

Case # **13** WC **36287**

Consolidated cases: **None**

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 **Stephen Friedman**, Arbitrator of the Commission, in the city of **Chicago**, on **October 6, 2014**. 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 _____

15IWCC0602

FINDINGS

On **October 28, 2013**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**75,783.80**; the average weekly wage was $**1,457.38**.

On the date of accident, Petitioner was **54** years of age, married with **1** dependent child.

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 $**30,958.71** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**30,958.71**.

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

ORDER

Respondent shall pay Petitioner temporary partial disability benefits of $971.58/week for 28 1/7 weeks, commencing October 28, 2013 through May 11, 2013, as provided in Section 8(a) of the Act. Respondent is given a credit of $**30,958.71** for TTD. This results in a credit for the overpayment of benefits of **$3,615.67**

Respondent shall pay Petitioner permanent partial disability benefits of $721.66/week for 30 weeks, because the injuries sustained caused the 6% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

October 22, 2014
Date

ICArbDec p. 2

OCT 22 2014

15IWCC0602

Statement of Facts

On October 28, 2013, Petitioner Darrell Nash was employed by Respondent City of Chicago, Department of Transportation as an asphalt helper.

He testified that his job duties included filling potholes, pavement repair and grinding. He posted signs for street repair. He did this from spring to winter. In the winter he filled potholes and operated a radial saw.

On August 28, 2013 he was posting signs. The signs were in a box that weighed 75 to 80 pounds. Petitioner testified that he went to post a sign on a post and as he stepped back, he stepped into a sewer and fell to his left, hitting the ground and landing on his buttocks. Petitioner testified that he reported the accident to his supervisor Mike Flores and was sent to Mercy Works. He drove there. Petitioner testified that he was experiencing sharp agonizing pain in his low back and left leg.

Mercy Works records were admitted as Petitioner's Exhibit 1. The history in Dr. Diadula's 10/28/2013 note is that "he stepped off the curb into a hole. He was trying to catch himself to break the fall, but he twisted and injured his low back. He did not have any impact of his back against the curb." The subjective complaints were low back pain radiating to the left foot with numbness and tingling. He denied any similar condition in the past. He was diagnosed with a low back sprain. He was given Toradol and prescribed Norco and advised to use ice and then heat and home exercises. He was taken off work. On 10/28/13 he was seen in follow up and referred to see an orthopedic back specialist.

Petitioner testified that he was referred to Dr. Gireesan and first saw him on 11/4/13. Petitioner testified that he was recommended for an MRI which was performed on 12/23/13. Petitioner testified that he underwent a second MRI in February, 2014. He had physical therapy through 5/1/14. On May 8, 2014 he was released to return to work full duty. Petitioner testified that at the time of his release his pain was tolerable. He was prescribed 75 Codeine tablets. Petitioner testified that these lasted him 2 ½ months.

Dr. Gireesan's records were admitted as Petitioner's Exhibit 2. The 11/04/2013 note records complaints of pain in the low back and radiation with tingling and weakness. The physical exam notes normal strength, reflexes, sensation and a negative straight leg raising. The assessment was discogenic low back pain. The 12/05/2013 office note has similar finding and allowed Petitioner to return to light work if available.

The MRI performed 12/23/2013 noted multilevel degenerative changes. It also noted a hydronephrosis of the left kidney. Petitioner was referred to an urologist. Petitioner testified that he underwent surgery for a kidney stone in January, 2014. Petitioner testified that the surgery did not change his back pain. The records of Northwestern Memorial Hospital were admitted as Petitioner's Exhibit 4. They document the surgery on January 7, 2014. The January 8, 2014 progress note status that patient reports almost immediate improvement in low back pain. The January 10, 2014 progress note and Discharge Summary both state "pain controlled."

Dr. Gireesan's 01/23/2014 note states that Petitioner is recovering from his kidney surgery and continues to complain of pain in the low back area with radiation to the left lower extremity. The review of the MRI shows deterioration of the disc at L5-S1 but no evidence of any herniated disc. The 2/14/2014 note states Petitioner is sleeping OK. Pain gets worse with shoveling snow and lifting. Petitioner testified that he attempted to shovel snow from his porch, but the pain forced him to have his neighbor do the snow removal. A course of physical therapy was recommended. The 03/21/2014 note records that Petitioner did not report any radiation of pain to the lower extremities. Petitioner testified that he did not make that statement. A further MRI was performed on 02/17/2014. The impression was multilevel degenerative

disease, most prominent at L5-S1. The 04/12/2014 note states Petitioner is feeling better. He has 60 percent relief of his pain. He wants to finish PT and return to work. Dr. Gireesan released Petitioner to return to work on 05/08/14. In his note of that date, he notes 5/5 strength in all muscle groups and negative straight leg raising. Petitioner has still some residual back pain .which comes and goes.

The records of Accelerated Rehabilitation Centers were admitted as Petitioner's Exhibit 3. They show physical therapy from 02/24/2014 through discharge on 05/01/2014. Petitioner reported decreased pain since treatment was initiated. There was no numbness or tingling or loss of sensation in his lower extremities.

Petitioner testified on direct examination that he had no prior back problems before the date of accident. On cross examination, he admitted he had back injury on May 22, 2006 with treatment on 3 occasions at Mercy Works, and another back injury in 2007 with treatment at Mercy Works. Petitioner testified that in 2007, he had an MRI which showed degenerative joint disease. Petitioner testified that he saw Dr. Weiner, an orthopedic physician. Petitioner testified that he had no back or left leg complaints from 2007 until the date of accident.

Petitioner testified that he currently is working his regular job duties. Petitioner testified that he drives 25 minutes to work and has to get out of the car with complaints of numbness in his left leg from the hip to the toes. Petitioner testified that he has pain in his back and left leg with many household activities. He does not go to the gym. Petitioner testified that he tried to ride his motorcycle 2 times since the accident and it did not feel good, his left leg would go numb. Petitioner testified that he is trying to sell it.

Petitioner testified that he has not returned to see Dr. Gireesan since May 8, 2014. Petitioner testified that Dr. Gireesan told him there was no more he could do. Petitioner testified that Dr. Gireesan said surgery was an option. He is not taking any prescription medication. Petitioner testified that he was concerned it was habit forming. He takes regular Tylenol. He does his home exercises.

Conclusions of Law

In support of the Arbitrator's decision with respect to (F) Causal Connection, the Arbitrator finds as follows:

As a result of the accident on October 28, 2013, Petitioner sustained an injury to his low back. Petitioner conceded that he had prior work injuries to the low back in 2006 and 2007 on cross examination. He had treatment at Mercy Works at that time and had an MRI which showed degenerative disc disease. He had no medical treatment from 2007 until the date of the accident and had immediate treatment and complaints related to that incident. The Arbitrator finds that Petitioner sustained an aggravation to his degenerative disc disease condition as a result of the accident on October 28, 2013 and that the treatment and complaints thereafter are causally related to that accident.

The Arbitrator notes the incidental finding on the MRI of the kidney stone and the treatment for that condition at Northwestern Memorial Hospital. There is no claim that this treatment was caused by the accident. The Arbitrator finds that the low back and left leg complaints documented and treated by Dr. Gireesan are related to the compensable back injury and not related to this kidney condition.

Accordingly, the Arbitrator finds that petitioner sustained an aggravation of his pre existing condition of degenerative disc disease in his low back as a result of the accident on October 28, 2013.

In support of the Arbitrator's decision with respect to (L) Nature and Extent, the Arbitrator finds as follows:

The date of accident in this matter is after September 1, 2011 and therefore permanent partial disability must be evaluated pursuant to the provisions of Section 8.1b(b) of the Act.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a asphalt helper at the time of the accident and that he is able to return to work in his prior capacity as a result of said injury. The Arbitrator notes that this job includes lifting boxes of signs that can weigh up to 80 pounds. Petitioner also does paving work including grinding and filling potholes. This would be considered a heavy job. Because of heavy nature of the work, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 54 years old at the time of the accident. Because of Petitioner's age as an older employee for the type of heavy work that he performs, the Arbitrator therefore gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has returned to his regular occupation and has been performing his regular duties. The Arbitrator notes that he has returned to posting signs and has not yet performed the winter duties of pavement grinding. Because of this, the Arbitrator therefore gives some weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner was diagnosed with discogenic back pain corroborated by the MRI studies. The studies did not reveal a disc herniation. The neurological studies were always negative. With respect to Petitioner's current subjective complaints of continued back pain and left leg symptoms, the Arbitrator notes inconsistencies with Petitioner's testimony and the other evidence. Petitioner's testimony that he struck his buttocks on the ground is not documented in the initial histories provided to Mercy Works, Dr. Diadula or Dr. Gireesan. The records of Dr. Gireesan and Accelerated Rehabilitation Center do not document ongoing leg complaints in the May, 2014 visits. Dr. Gireesan's notes do not support Petitioner's testimony concerning a discussion of possible surgery. The Arbitrator also notes that Petitioner did not admit to prior back injuries until confronted with medical records on cross examination. Because of this evidence, the Arbitrator therefore gives greater weight to the medical records and lesser weight to Petitioner's testimony on this factor.

All factors except subsection (i) of §8.1b(b) are relevant in making the award.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 6% loss of use of person as a whole pursuant to §8(d)2 of the Act.

In support of the Arbitrator's decision with respect to (N) Credit, the Arbitrator finds as follows:

The parties agree that Petitioner was paid TTD for a period in excess of the period of lost time. The amount of the overpayment was stipulated to be $3,615.67. The Respondent is entitled to credit in this amount against the permanent disability awarded herein.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

FRANKIE LANIER-BOOTH,

15IWCC0600

Petitioner,

vs. NO: 09 WC 52537

STATE OF ILLINOIS – DEPARTMENT OF EMPLOYMENT SERVICES,

Respondent.

DECISION AND OPINION ON REVIEW

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

Findings of Fact and Conclusions of Law

1. Petitioner testified she had an associate's degree in applied science and a BA in business administration from Robert Morris. She began working on an MA in health administration, but had to stop for financial reasons. She began working in retail in 1976, which included taking boxes out to the floor and stocking the floor. She lifted boxes that weighed between 35 and 40 pounds. She engaged in that activity until around 1985 when she began working for Will County as Administrative Assistant to the CEO and the medical director. That job involved physical work similar to what she was doing in retail but the items she was required to lift weighed 40 to 45 pounds. She worked for Will County until 2005.

15IWCC0600

2. In 2005 she began working for a nonprofit company operating clinics. She had to travel to various sites and she had to deliver medical and office supplies. She would have to lift things like boxes with 10 reams of paper from the ground onto the van. At that time she was also working part-time for Carson's department store performing job duties similar to what she described in other retail jobs. She was laid off in 2007 and began working for a recycling scrap business. There she had to lift items weighing more than 35 to 40 pounds. In May of 2009 she began to work for Comcast until the fall of 2009, when she was hired to work for Respondent as a program representative. In her job for Respondent she had to carry boxes of client files which weighed anywhere between 35 and 40 pounds.

3. Petitioner also testified on December 1, 2009, she was 5'1" and 228 pounds. She was working in an office in downtown Joliet. Most of the office was carpeted but the reception area had linoleum tile. The linoleum was slippery, especially when wet. At times program representatives were asked to perform the role of greeter. They would rotate in the role.

4. The greeters would get out of the chair in the reception area, greet clients, and direct them to where they were supposed to go. She was instructed to fill in for the regular greeter, Mike, during his lunch break between 12 and 1. Mike is about 6'1" or 6'2". The chair was higher than she would have liked. It was adjustable, but adjusting it was difficult. You have to hold a lever on the side to unlock the setting. "You almost have to bounce to try to do it." She decided not to adjust the chair because she was going to be there for only an hour. She estimated she was required to get out of the chair 45 times in that hour. She would put her hands on the arms of the chair and "scoot forward" to get her feet to the floor. As she was getting out of the chair, which was on wheels, it fell back. Petitioner also fell back and hit her head, neck, and right shoulder and arm.

5. Petitioner's daughter came and took her to an emergency room. The next day she saw her General Practitioner, Dr. Sifuentes, who took her off work and prescribed physical therapy. She saw Dr. Ho, a pain specialist, who prescribed, an MRI, injections, and a TENS unit. She had a Functional Capability Evaluation ("FCE") on February 8, 2010.

6. Petitioner stated she continued to have pain and Dr. Patel performed a radio frequency ablation. Later he administered additional occipital nerve blocks. Dr. Patel then referred her to Dr. Rathi, a neurologist for her chronic headaches since the injury. Dr. Patel released her to light duty work as of July 29, 2010. She had a second FCE and released from treatment on August 24, 2010. The doctor told her there was nothing more he could do because Respondent "basically had his hands tied forcing him to send" her back to work. She continued to work in light duty until she was laid off. She had been classified as an intermittent worker.

7. Petitioner also testified she had been seeking employment as an administrative assistant since her lay off. She has applied for two to three jobs a day. She can no longer work in shipping and receiving because of her lifting restrictions. She got one interview with a medical office, but did not get hired.

15IWCC0600

8. Petitioner testified that currently she still has headaches and dizziness. Sometimes she feels uncomfortable driving. The only time she had headache and dizziness prior to the accident was during seasonal allergy season. She was "really into lifting" weights, which she can no longer do. She can't clean. She used to do "a lot of cooking and stuff" but it was hard to knead because she would aggravate her neck and would "literally have to lay down" and take Tylenol or aspirin. She was prescribed Vicodin, but that makes her sick. She also still had problems with her shoulder and arm. Today she wanted to remain alert so she did not "take any Tylenol or anything" and she has "throbbing, aching pain." She uses her TENS unit daily. She no longer can type as fast as she used to. Her daughter combs her hair, if it gets combed at all. The injury has ruined her life. Her condition was no better than it was when Dr. Patel released her, and on some days worse.

9. The medical record reveals that Petitioner complained of headaches to her general practitioner on several occasions in 1997, 1998, and 2001. She had a brain CT in 1997. She complained of "dizziness" in 2002, 2003, and 2004. On April 10, 2008, Petitioner presented to Holy Cross Hospital complaining of dizziness for the past two to three days. Her blood pressure was 116/67 but was 89/56 the previous night. It was noted that her dizziness might be due to her hypertension medication. She reported she felt like she was going to faint and was sent to the emergency department. A brain CT was normal except for sinusitis.

10. Petitioner presented to the emergency room after the instant accident and a brain CT was normal. Petitioner returned to the emergency room on January 25, 2010 and February 25, 2010 complaining of dizziness. On both occasions brain CTs were normal. She was admitted to hospital on February 25th and it was hypothesized that her dizziness was associated with her blood pressure medication, which was suspended.

11. On January 5, 2010, Petitioner presented to Dr. Ho on referral from Dr. Sifuentes. Petitioner reported her work accident prior to which "she is her usual state of good health." She continued to have neck, right shoulder and right arm symptoms despite a current course of physical therapy. She complained of a throbbing pain, which was improving somewhat. Dr. Ho noted some subjective weakness and loss of sensation but no impingement signs, muscle atrophy, or loss of range of motion. Dr. Ho suspected a cervical strain and sprain, which should resolve on its own. However, because of "development of what may be cervical radiculitis" he was concerned about possible cervical pathology and ordered an MRI.

12. The MRI showed multilevel degenerative disc disease most pronounced from C3-4 through C6-7, with mild degrees of central canal narrowing at a few levels, mild to moderate degrees of neural foraminal narrowing most pronounced at C5-6, but no critical central or neural foraminal stenosis. Dr. Ho indicated that it was reasonable to state that her multilevel degenerative disc disease was the cause of her symptoms, but it was difficult to ascertain the level that generated the pain. He thought an EMG and cervical epidural steroid injection were indicated because of the severity of her symptoms. On presentation for the EMG, Petitioner refused the test because she was "afraid of needles."

15IWCC0600

13. On February 23, 2010, Dr. Patel administered an epidural steroid injection. Over the next four months, Dr. Patel administered nerve block injections, median block injections, and performed right cervical radiofrequency ablation of the C3, C4, and C6. Petitioner reported almost complete resolution of neck pain but her headaches persisted.

14. On July 20, 2010, Petitioner presented to Dr. Rathi, a neurologist, on referral from Dr. Patel. Petitioner reported her headaches "started immediately after the fall." "She saw stars, lights flashing with the headaches." The headaches were getting worse. The headaches are debilitating causing "average 10/10 pain." Dr. Rathi's neurologic exam appeared to have been normal. She administered bilateral occipital nerve blocks and trapezius trigger point injections and prescribed Elavil, Naprosyn, and Flexeril.

15. On July 27, 2010, Petitioner returned to Dr. Patel who indicated that he spoke to the neurologist, Dr. Rathi, who told him there was "nothing organic with the patient and there is nothing neurologically that needs to be done." He ordered an FCE and released her to sedentary work.

16. Petitioner had an FCE on August 6, 2010. Petitioner was found to be able to lift 30 pounds and carry 25 pounds occasionally, lift 15 pounds and carry 13 pounds frequently, and lift 6 pounds and carry 5 pounds constantly. She was rated as being able to work at the medium "strength" level. Her job as "data entry clerk" fit into the sedentary physical demand level. Therefore, Petitioner could return to work as a data entry clerk.

17. On August 24, 2010, Petitioner returned to Dr. Patel and reported her headaches were still the same but she learned to tolerate them. He noted that the FCE indicated that Petitioner could continue the sedentary physical demand level job and could lift in the medium category. He declared her to be at maximum medical improvement and maintained the sedentary work restriction.

18. Dr. Coe testified by deposition that he examined Petitioner and reviewed her medical records at the request of her lawyer. Petitioner reported her accident and at the time Dr. Coe saw her she was working full duty as an employment service representative. Petitioner last saw her latest treating doctor, Dr. Patel on August 24, 2010, but still had residual symptoms, took medication, and used a TENS unit.

19. Dr. Coe testified that Petitioner's multilevel degenerative disc disease preexisted the accident. However, "this condition was largely asymptomatic before this accident." After the accident she developed "persistent cervical discogenic pain, cervical facetogenic pain, and cervical myofascial pain with cerviogenic headaches and also right cervical radiculopathy symptoms." He saw no medical records indicating Petitioner had previous treatment of her cervical spine. Therefore, he believed Petitioner's cervical condition was stable prior to the instant accident. Testimony that she was able to carry 30, 40, 50 pounds on a regular basis in prior jobs would reasonably be interpreted as indicating her spine could tolerate significant lifting. Dr. Coe opined that Petitioner's work accident resulted in her condition of ill being for which she received treatment.

15IWCC0600

20. On cross examination, Dr. Coe testified that trigger points he found in his examination of Petitioner were "localized focal areas of tenderness within the soft issue on the right side of her neck." The report of tenderness is subjective on the part of the examinee. The only objective test for discogenic pain would be a discogram, which is an aggressive intervention. Dr. Coe concluded Petitioner had facetogenic pain because she responded favorably to the facet block injections, although only temporarily. That response was corroborated by Dr. Coe's finding of tenderness directly over the facet joints. Similarly, Petitioner's response to occipital nerve block injections was a basis for Dr. Coe's diagnosis of occipital neuralgia. There is no objective test for myofascial pain, which is pain coming from muscles tendons, and ligaments. However, trigger points are a characteristic of myofascial pain. Dr. Coe was not aware of any diagnostic tests prior to the accident.

The Arbitrator found that Petitioner's accident arose out of her employment because the chair she was using exposed her to a particular risk associated with her employment. We agree. It was unrebutted that Petitioner was directed to greet clients at the reception area and thereby to use the particular rolling chair. The fact that she testified it was difficult to adjust and/or that it was not adjusted to her particular stature (5' 1" 228 pounds) put her at greater risk of slipping off the chair because her feet would not be in contact with the floor to help stabilize her as she got up from the chair, thereby contributing to her fall. Therefore, the Commission affirms the Decision of the Arbitrator that Petitioner sustained a compensable accident.

The Arbitrator awarded Petitioner 150 weeks of permanent partial disability benefits representing loss of 30% of the person as a whole. The Arbitrator relied on the FCE, Petitioner's testimony about her previous ability to lift in her employment, and her multiple conditions of ill being. He concluded that "it was clear that her employability has been impaired." Regarding the FCE, despite the Arbitrator's conclusion and Dr. Patel's interpretation, the FCE did not really restrict Petitioner to sedentary work. It noted that she had a medium "strength level," and that she could return to work in her current position that was classified as sedentary. In addition, although Petitioner testified she applied for two to three jobs a day, she did not present any job search records. There also was no vocational rehabilitation analysis concerning Petitioner's employability and earning potential. Petitioner herself testified that she had a BA in business administration and took graduate courses in health administration. At the time of arbitration, Petitioner earned less than $40,000 a year. It is difficult to substantiate that her earning potential was substantially reduced due to her physical limitations.

In addition, the Commission notes that it is a bit disconcerting that there does not appear to be any objective findings to verify any acute condition of ill being or Petitioner's substantial subjective complaints. Indeed, Dr. Patel indicated the neurologist, Dr. Rathi, told him there was "nothing organic with the patient and there is nothing neurologically that needs to be done." Petitioner refused perhaps the best objective test to verify a neurological condition because of an alleged fear of needles, when she did not seem to have any problems with the numerous injections she received. Finally, Petitioner experienced many of her current symptoms for years prior to her accident. Her headaches and dizziness were generally attributed to hypotension or chronic sinusitis. It is really unclear to what degree her current subjective symptoms are related to her work accident.

Therefore, in looking at the entire record before us, the Commission concludes that an award of 10% loss of the person as a whole is appropriate in this case and modifies the Decision of the Arbitrator accordingly.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $502.46 per week for a period of 34&2/7 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 sum of $452.21 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 10% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $39,679.72 for medical expenses under §8(a) of the Act pursuant to the applicable medical fee schedule in §8.2 of the Act.

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

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

DATED: JUL 31 2015

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-7/14/15
46

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0600

LANIER-BOOTH, FRANKIE Case# **09WC052537**

Employee/Petitioner

ILLINOIS DEPT OF EMPLOYEE SECURITY

Employer/Respondent

On 4/17/2014, 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 0.05% 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:

0924 BLOCK KLUKAS & MANZELLA PC
MICHAEL D BLOCK
19 W JEFFERSON ST SUITE 100
JOLIET, IL 60432

4980 ASSISTANT ATTORNEY GENERAL
COLIN KICKLIGHTER
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0499 DEPT OF CENTRAL MGMT SERVICES
MGR WORKMENS COMP RISK MGMT
801 S SEVENTH ST 6 MAIN
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

APR 17 2014

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0600

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

- ☐ 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

FRANKIE LANIER-BOOTH
Employee/Petitioner

v.

ILLINOIS DEPT. OF EMPLOYEE SECURITY
Employer/Respondent

Case # 09 WC 52537

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **New Lenox, Illinois**, on **12/16/2013 and 2/6/2014** . 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 **December 1, 2009**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**39,192.00**; the average weekly wage was $**753.69**.

On the date of accident, Petitioner was **51** years of age, ***married*** with **4** dependent children.

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

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

Respondent shall be given a credit of $**16,7125.31** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $**16,725.31**.

Respondent is entitled to a credit of $**28,435.27** under Section 8(j) of the Act.

ORDER

Respondent shall be given a credit of $28,435.27 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 Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $502.46/week for 34 2/7 weeks, commencing 12/01/09 through 07/28/10, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $39,679.72, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $452.21/week for 150 weeks, because the injuries sustained caused the 30% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

4/16/14
Date

ICArbDec p. 2

APR 17 2014

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In Support of the Arbitrator's Decision regarding "C" (Accident Arising out of and in the course of the employment) the Arbitrator makes the following findings and conclusions:

Petitioner, a 51 year old administrative assistant for the Illinois Department of Employment Security, had a bachelor's degree in business administration and had been working on a masters approximately two years before her accident. Her previous work history was mostly in retail, which included shipping and receiving and taking boxes of merchandise from the floor, as well as stocking the floor, with weights approximately 35 to 40 pounds. She worked as an administrative assistant to the CEO and as Medical Director for The Will County Health Department, and as part of her duties, as in retail, she would do the mail which would include picking up boxes weighing 40 to 45 pounds. She was a 20 year employee with the County, but then was recruited by Aunt Martha's Clinics as medical program director to set up their clinics, which she did from 2005 to 2007. After getting the clinics set up she was laid off. At that time she was also working retail, similar to what she had done before for Carson's, and going to school to try and get her masters, which she couldn't complete due to the financial reasons from the lay off. From approximately 2007 following her lay off, to May 2009, when she began working for Comcast customer service, she worked for a recycling scrap business, which entailed, among other things, lifting refrigerators, stoves, water heaters, and the like with one other person. Her Comcast job did not involve physical work, but was all working the phone.

In the fall of 2009 she received a call to begin working for the State of Illinois. She testified it could be daily that she would lift banker boxes of files and boxes of forms in the area of 35 to 40 lbs. Before then her neck, right shoulder and arms were fine.

Before that time she had never had a workers' compensation claim. She was 5' 1" tall, 228 lbs., working in a downtown office in Joliet where most of the area was carpeted except for the reception area, which was tiled and smooth like the floor of the hearing site at the New Lenox Village Hall, which the Arbitrator notes is a very smooth floor. The tile at her job was smooth, not like cobblestone, but she could not recall whether the tiles were grouted or not.

On December 1, 2009, Mike Gruening was one of the program reps who was assigned to be a greeter that day. He was approximately 6' 1" or 6' 2" tall. Petitioner was not scheduled to be a greeter that day, but her supervisor directed that she fill in for Mike at lunchtime from approximately noon to 1:00 p.m. The job entailed getting in and out of a chair with canisters to direct claimants to the places where they should go for the services they needed. The chair was higher than what Petitioner would require for her height, as it was set for Mike's. Petitioner provided that it was difficult to adjust the height, and required bouncing up and down while moving a lever. Petitioner indicated that she decided to not adjust the chair since she was only filling in for an hour and it would then have to be readjusted for Mike. She performed her duties, getting in and out of the chair, and was getting out of the chair to greet a claimant at approximately 1:00 p.m. when she put her feet on the floor, scooted forward, and then the chair went out backwards from her and she fell backwards, hitting her neck, right shoulder and arm. Petitioner testified that she had scooted out and shifted so the weight of her butt was forward on the chair. Her testimony was consistent with the accident report she filled out 6 weeks later (Resp. Ex. 1).

Dr. Jeffrey Coe, a physician board certified in occupational medicine, which includes risk assessment, testified that a person of Petitioner's height, if the chair is set up for a taller person, would be potentially somewhat unstable in her movements getting off of the chair (Pet's. Ex. 21, pp. 28 – 29).

The law on the subject was recently set forth by the Appellate Court in the case of *Springfield Urban League v. IWCC*, 2013 Ill. App. (4th) 120219 WC, 990 N.E. 2d 284 (2013). The Court held, as have many Courts before, that "in the course of employment" refers to the time, place, and circumstances under which the Claimant is injured. Here, the Plaintiff was injured during work hours at her place of employment, so there is no doubt that she was in the course of her employment. The Claimant was at work performing the activities of her job.

The Court went on to state that "arising out of employment" refers to the origin or cause of the claimants injury. The Court noted that typically an injury arises out of one's employment if, at that the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. Here, the evidence is clear and unequivocal that Petitioner was performing duties she was instructed to perform by her employer. Thus there is no question but that Petitioner's accident also arose out of her employment.

In *County of Peoria v. Industrial Commission*, 31 Ill. 2d 562, 202 N.E. 2d 504 (1964), the Supreme Court held that where an employee is performing his actual duties, even if after a party and only at the suggestion of an employer, it none the less arises out of his employment. So, too, in *Spees v. Stapleton*, 104 Ill. App. 2d 385, 244 N.E. 2d 430 (1969), the Appellate Court noted that where Petitioner is actually performing the duties of his job, then the risk is not incidental to employment and you don't go to the issue of whether the worker was exposed to a risk to a greater degree than other members of the public. The rule was actually stated with the corollary, that unless the accident occurs while claimant is actually performing duties of his job, a risk is not considered incidental to the employment unless he was exposed to that risk to a greater degree than other members of the public (Id. @ 391).

Sisbro v. Industrial Commission, 207 Ill. 2d 193 797 NE 2d 665 (2003), considered the leading case on causal connection, also speaks to "arising out of" in the context of an employee performing actual duties: "When workers physical structures . . . give way under the stress of their usual tasks, the law views it as a accident arising out of . . . It is a well-settled rule that where an employee, in the performance of his duties and as a result thereof, is suddenly disabled, an accidental injury is sustained." 207 Ill. 2d at 205.

Thus, because Petitioner was performing her actual duties as a greeter, getting in and out of the chair, the analysis doesn't get to the issue of whether the injury was incidental to the employment and, if incidental, whether Petitioner was exposed to a risk greater than that to other members of the public.

However, even assuming arguendo that there is an issue of greater risk, in *Calloway v. Cook County*, 12 IWCC 159, the Commission recently noted that a chair with wheels constituted an increased risk of injury. The Arbitrator's Decision, affirmed by the Commission, noted that even if the employee was careless, it would be no different than a carpenter hitting his finger with a hammer. Also, there, as here, Petitioner's job required her to be in and out of the chair, which would be a greater risk than the general public is exposed to by reason of frequency. See *Village of Villa Park v. IWCC*, 2013 Ill. App. (2d) 130038 WC. Further, there was additional evidence of increased risk by reason of the fact that the chair was elevated to the height of someone one foot taller than Petitioner, which Petitioner did not adjust due to her only filling in for the taller person for an hour.

The chair was difficult to adjust by Petitioner's testimony, and would have exposed Petitioner to risks in and of itself, as she would have to bounce on the chair while holding a lever to attempt to lower the chair.

The Commission has also affirmed cases involving chairs on wheels in *Esche v. Wal-Mart*, 09 IWCC 1072, and *Vassos v. SBC*, 08 IWCC 0173, where there the Arbitrator found, as affirmed by the Commission, that although there was no defect in the chair or carpeting, the issue was irrelevant, as Petitioner was in the performance of her duties at the time of the accident. The Arbitrator is aware of the Commission Decision in *Victoria Cornelius v. Tinley Park MHC*, 13WC0497. However, that case involved an incidental activity, as opposed to performance of actual duties. Accordingly, the Arbitrator finds that Petitioner sustained an accident arising out of and in the course of her employment.

In Support of the Arbitrator's Decision regarding "F" (Causal Connection), the Arbitrator makes the following findings and conclusions:

Petitioner was in a state of good health. She in fact testified that she was actually working out lifting fairly heavy weights, until the accident in question. She immediately went to the emergency room at Silver Cross Hospital with a history of symptoms beginning when she fell from a seated position, one hour earlier, and complaints of an injury to the head, with a diagnosis of closed head trauma. (Pet's. Ex. 1, pp. 6 – 8)

The following day, she went to her family doctor with complaints of status post fall, head injury and neck pain, which the examiner noted pain radiating into the right arm and shoulder. (Pet's. Ex. 3, p. 6) She thereafter underwent physical therapy until January 5, 2010, when she saw another doctor, Simon Ho, with a history of neck, shoulder and arm symptoms following a fall from a chair, striking the ground with her back and head area. He noted she was only improving somewhat, and continued to have her symptoms.

The doctor's impression and plan was patient being a very pleasant 51 year old woman with a work place injury in the neck. The doctor felt it should resolve with analgesic and physical therapy, but "however, given the development what may be some cervical radiculitis syndrome on the right side I would be concerned that there would be a cervical cause for her symptoms." (Pet's. Ex. 6, pp. 6-7) Petitioner then underwent more physical therapy, shots, and, importantly, radiofrequency ablation.

After her treatment was completed, she saw Dr. Jeffrey Coe, an occupational medicine specialist, who opined affirmatively on causal connection. (Pet's. Ex. 9, p. 7) No contrary opinions have been offered.

Accordingly, the Arbitrator finds that a causal connection exists between the accident of December 1, 2009 and the conditions of ill being for which Petitioner has been treated herein, based on the chain of events, prior good health, and the unrebutted doctors' opinions.

In Support of the Arbitrator's Decision regarding "K" (TTD), the Arbitrator makes the following findings and conclusions:

The parties stipulated that the period of TTD was December 1, 2009 through July 28, 2010, being 34 2/7 weeks, with the dispute being that it was not a compensable injury. In light of the Arbitrator's findings in that regard, TTD for the agreed period is awarded.

In Support of the Arbitrator's Decision regarding "J" (Medical Expenses), the Arbitrator makes the following findings and conclusions:

Respondent paid substantially all the medical, with balances of the following amounts:

(11) **SILVER CROSS HOSPITAL**
BILLING FOR DATES OF SERVICE
12/1/2009 #F027060185

TOTAL	$2,117.35
BALANCE	$2,117.35

(12) **SILVER CROSS HOSPITAL**
BILLING FOR DATES OF SERVICE
12/22/2009 #F02717859

TOTAL	$1,258.75
BALANCE	$1,258.75

(13) **SILVER CROSS HOSPITAL**
BILLING FOR DATES OF SERVICE
1/6/2010 #F027171859

TOTAL	$323.40
BALANCE	$323.40

(14) **SILVER CROSS HOSPITAL**
BILLING FOR DATES OF SERVICE
1/25/2010 #F027370220

TOTAL	$2,443.95
BALANCE	$2,443.95

(15) **EM STRATEGIES**
BILLING FOR DATES OF SERVICE
12/1/2009 #48328

TOTAL	$284.00
INS PMT/ADJ	-284.00
BALANCE	$0.00

(16) **EM STRATEGIES**
BILLING FOR DATES OF SERVICE
1/25/2010 #48328

TOTAL	$424.00
INS PMT/ADJ	-424.00
BALANCE	$0.00

(17) **IPN – FUTURE DIAGNOSTICS GROUP**
PREMIER PYSICAL THERAPY
RS MEDICAL
BILLING FOR DATES OF SERVICE
1/7/2010 – 2/3/2012

TOTAL	$11,444.30
INS PMT/ADJ	-7,892.00
BALANCE	$3,552.30

(18) **IPN – HEALTH BENEFITS**
BILLING FOR DATES OF SERVICE
1/5/2010 – 8/24/2010

TOTAL	$20,104.56
INS PMT/ADJ	-19,141.00
BALANCE	$963.56

(19) **IPN - ILLINOIS PHARMACY**
2/2/2010 – 5/4/2010

TOTAL	$205.41
INS PMT/ADJ	-114.27
BALANCE	$91.14

(20) **WILL COUNTY COMMUNITY HEALTH CENTER**
DR. JOHN SIFUENTES
BILLING FOR DATES OF SERVICE
12/2/2009 – 5/18/2012 #3332hpXL & 5726ng

TOTAL	$1,074.00
INS PMT/ADJ	-580.00
PATIENT PMT	-260.48
BALANCE	$233.52

Dr. Coe testified without rebuttal that all treatment was reasonable and necessary. (Pet's. Ex. 21, pp. 37 – 38) The Arbitrator agrees. Accordingly, the bills are awarded in the amount of $39,679.72 with Respondent to have a credit either for payments they made or payments made pursuant to Section 8(j) of the Act in the sum of $28,435.27, with Respondent to hold Petitioner harmless pursuant to Statute for any Section 8(j) credits. Petitioner is to be reimbursed the $260.48 she paid, and Respondent per stipulation may pay providers directly.

In Support of the Arbitrator's Findings regarding "L" (Nature and Extent of the Injury), the Arbitrator makes the following findings and conclusions:

See Arbitrator's findings regarding "C" (Accident Arising out of) and "F" (Causal Connection, Supra). It is clear from the evidence that Petitioner's entire work history, with the exception of a short period of time she worked for Comcast, she was required to do moderate physical lifting in approximately the 30 to 45 lb. range. At one job she lifted heavy appliances with another person. She additionally was able to lift weights at home. Following the injury, she had two Functional Capacity Assessments, both of which showed her at only the sedentary level. (Pet's. Ex. 8, Pet's. Ex. 6, pp. 37 – 41) The later test showed her able to work sedentary, with occasional lifting of 30 lbs. but frequent lifting of only 12.5 lbs. Important to her credibility, both tests were valid. From her physical stature the Arbitrator would expect a higher level in the absence of an injury.

Petitioner was laid off from her current job September 30, 2012, and since then has been conducting a job search, which only resulted in one interview for a physician's office where she did not get the job. She has had to limit her search to jobs with limited lifting requirements, and since her past history is mostly in retail, shipping and receiving, and working for the County of Will. It is clear that her employability has been impaired.

Petitioner testified that she is limited in the things she can do, in addition to no longer being able to lift weights. She can no longer clean or do a lot of cooking, and just standing with her arm hanging produces pain where she will have to take aspirin or Tylenol. She has also had continuous headaches and dizziness, and sometimes has to take one of her children along when she drives. She has problems with her shoulder and arm, as well as an aching pain in the neck. She will also get tingling and numbness. Movement will help, but she can't keep her shoulder or arm at any one position for too long.

Petitioner testified that she can't lift 40 to 50 lbs. anymore. She applied for 2 to 3 jobs a day, looking for work 7 days a week since her termination from the State, but she has to look for jobs with no lifting restrictions, as she no longer lifts as she did in the shipping and receiving jobs which she had done. If she does something to her neck she has to lie down until the pain subsides. She still has headaches and dizziness. She is sometimes not comfortable driving. She continues to have pain in the neck and right shoulder area. She uses her TENS unit daily. The doctor had prescribed Vicodin, but it makes her sick. As a result, she has been using Tylenol or aspirin. If standing for any period of time and keeping her arm to the side her neck will start to hurt with tingling and numbness, but movement helps as she can't keep it any position to long. She no longer cleans or lifts.

Petitioner testified that the State had made reasonable accommodations for her during the two years she worked after the accident, until her position was eliminated. Now she is hesitant to do anything that will aggravate her condition, and with the neck and shoulder problems she can no longer type as fast as she used to. She will toss and turn and her condition will wake her up in the evening.

Dr. Coe, Petitioner's examining occupational medicine physician, did a complete record review of Petitioner's treatment up to the time of his report of November 15, 2011 (Pet's. Ex. 9, pp. 2 – 4) which is consistent with the records. She was initially taken to the Silver Cross Hospital Emergency Room when she gave an accurate history of the fall. She then went to her family physician, Dr. Sifuentes, with complaints of pain in the head and right side of the neck as well as dizziness, giving the history of the accident at work. He prescribed medication and physical therapy which she attended. She then saw a pain management specialist, Dr. Ho, and underwent a cervical MRI showing multi-level degenerative disc disease, most marked at C3-C7, with neuroforaminal narrowing at C5-C6. Following this Dr. Ho prescribed an EMG/NCV, a cervical epidural steroid injection, medication and a TENS unit. After physical therapy, she did a functional capacity and tested out at the sedentary physical demand level. She then had physical therapy. She reported ongoing aching and throbbing on the right side of her neck radiating into the shoulder. She then received a cervical epidural steroid injection by an anesthesiologist, Dr. Patel which led to some symptomatic improvement, with Petitioner reporting 50% relief although continuing to experience right sided neck, head and arm pain. Dr. Patel then tried occipital nerve and facet blocks which lead to some symptomatic improvement.

Finally, Dr. Patel advised a procedure, being radio frequency ablation of the cervical facet joints and occipital nerve, which were performed May 4, 2010, and which also led to some symptomatic improvement. She then had repeat occipital blocks which led to limited improvement, and was a referred to a neurologist, Dr. Rathi. There she complained of chronic headaches following the work accident unimproved by injection therapies, and Dr. Rathi diagnosed cervicalgia and tension headaches. The repeat functional capacity assessment found her capable of working at the sedentary level, described as entry level data entry clerk, and again was determined valid, which shows Petitioner repeatedly gave good efforts.

Dr. Coe testified that people such as Petitioner frequently have degenerative changes in the spine without any symptoms at all, and that something happened in the fall on December 1, 2009 that changed the

previously stable, asymptomatic state of her cervical spine, causing inflammation, irritation and pain from the structures in and about the cervical spine, the cervical intervertebral disc, the cervical facet joints, and the cervical musculature. This required both acute and chronic medical treatment. (Pet's. Ex. 21, p. 31)

Regarding to the issue of disability, Dr. Coe testified that based on the Functional Capacity Assessment(s), that the sedentary physical demand level would be appropriate for Petitioner, which would be lifting 10 lbs. or less on an occasional basis. (*Id.* p. 39) Thus while Petitioner has skills which would allow her to work in the sedentary level, most of her employment career has been in jobs requiring physical lifting beyond her limits. A substantial part of the labor market is no longer available to her because of her injury. Dr. Coe expounded on the problems Petitioner would have. (*Id.* @ p. 43 – 44)

On cross-examination, Dr. Coe explained that in a clinical office setting, it is the pattern of symptoms and pattern of responses that are helpful in identifying a painful disc, and there is no other way short of aggressive intervention. (*Id.* @ 48) Her discogenic pain is diagnosed with range of motion, things that squeeze or put pressure on the disc. It's also the response to epidural steroid injections, which is usually taken as a marker for disc related pain and associated nerve injury. (*Id.* @ 48 – 49) From all of these, including the past history of no neck symptoms, the response to the steroid injections, the decreased range of motion and reports of pain, Dr. Coe concluded that a component of her chronically reported neck pain was discogenic pain. (*Id.* @ 48 – 49)

Regarding facetogenic pain, Dr. Patel's facet blocks in April and May of 2010, with significant but temporary resolution of symptoms, are the hallmark for diagnosis of facet-mediated joint pain, and that coupled with the finding of tenderness directly over the facet joint pains, was enough for the diagnosis. The only other objective way to test is blocking the joint, which was what Dr. Patel did, which confirmed the diagnosis. (*Id.* @ 49 – 51)

Regarding myofascial pain Dr. Coe provided that there is no objective test, only the report of pain in certain areas. (*Id.* @ 51) He noted Dr. Patel could actually visualize the facet joints with a fluoroscopic examination which he did, putting a needle in and injecting medication into the facet joints, and noting that her pain would decrease. Dr. Coe stated "That's pretty much as objective as you can get with pain." (*Id.* @ 57 – 58)

As far as occipital neuralgia, Dr. Coe testified that there are two ways to diagnosis that condition. One is blocking the occipital nerve, which Dr. Patel did on two occasions and lead to some improvement. This lead to the diagnosis. When Dr. Coe examined her she still had tenderness over the occipital nerve, but that was subjective. (*Id.* @ 52) Dr. Coe was aware that Petitioner had returned to work as a computer data base entry person. (*Id.* @ 52)

In Gordan v. *State of Illinois DOT Joliet Yard*, 07 IWCC 1599, Petitioner suffered from a facet arthropathy, had some mild degenerative changes, and required radio frequency ablation, as did Petitioner here. An award of 15% man as a whole was affirmed, with Petitioner returning to full duties which included laboring. In *PTO Services v. Industrial Commission,* 188 Ill. App. 3rd 24, 543 N.E. 2d 1099 (3rd dist. 1989), the arbitration award of 50% man as a whole for cervical tendonitis was reinstated where Petitioner could not go back to his old job as a truck driver laborer and the labor market would be impaired as to him. In *Hubl v. Certified Installations*, 12 IWCC 0176, Petitioner, a tile setter, lost his trade due to a hand injury but tested out at the "Heavy" level on FCE. An award of 50% man as a whole was affirmed. In *Biggs v. State of Illinois, School for the Deaf*, 07 IWCC 0122, a contract employee for the State was awarded 30% 8(d)2 where Petitioner was formerly a union painter who suffered a non-surgical back condition impairing his former trade and affecting

his employability. In *Ferguson v. Harrah's Casino*, 12 IWCC 0876, a 36 year old casino dealer suffered aggravation to her cervical and lumbar spine which precluded return to those duties. She found a part-time job which was essentially adult baby-sitting, which was sedentary. An award of 50% man as a whole was affirmed, although there was no surgery, nor the radio frequency ablation Petitioner had here.

Factors favoring a higher award are that Petitioner still has a significant work life ahead. She has multiple conditions which affect both her discs and her facet joints, which are significant yet separate pain generators. Her treatment required epidural injections, occipital nerve blocks, physical therapy, and finally a radio frequency ablation. Both functional capacity evaluations were valid and left her at the sedentary level when most of her employment career required physical activities beyond that, rendering her with a significantly limited labor market available to her after she was terminated by Respondent. Lastly, she still has significant symptoms and requires use of a TENS unit which had been prescribed.

Mitigating factors against the higher award is that no surgery was required beyond the radio frequency ablation, and that she was able to obtain one job in her work career which did not require physical labor, albeit for only a short period of time. Petitioner appeared to the Arbitrator to be a very credible witness. This case is closest to *Biggs*. Petitioner can work, as in *Hubl* and *Biggs*, but due to the disability she lost her lifting capabilities and was hampered in finding employment both because of the disability and the economy, as in *Hubl*. In Biggs most of the treatment was chiropractic, and the condition was degenerative, as here, although without the facet injury Petitioner suffered from here. Accordingly, the Arbitrator awards for the nature and extent of the injury as set forth in the Award herein above.

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Noe Ernesto Mayorga,

Petitioner,

vs. NO: 07 WC 16411

Tyson Fresh Meats, Inc.

15IWCC0563

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 20, 2013 is hereby affirmed and adopted.

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

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 Circuit Court.

DATED: JUL 22 2015

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gaf
O: 7/16/15
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MAYORGA, NOE ERNESTO
Employee/Petitioner

Case# **07WC016411**
07WC016413

TYSON FRESH MEATS INC
Employer/Respondent

15IWCC0563

On 11/20/2013, 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 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0190 LAW OFFICES OF PETER F FERRACUTI PC
KALI PEHRSON
PO BOX 859
OTTAWA, IL 61350

2593 GANAN & SHAPIRO PC
PAUL D DYKSTRA
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

15IWCC0563

STATE OF ILLINOIS)
)SS.
COUNTY OF ROCK ISLAND)

☐ 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

NOE ERNESTO MAYORGA ,
Employee/Petitioner

v.

TYSON FRESH MEATS, INC. ,
Employer/Respondent

Case # 07 WC 16411

Consolidated cases: 07 WC 16413

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was consolidated with claim no. 07 WC 16413, and heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Rock Island**, on **June 6, 2013**. 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: _____

15IWCC0563

FINDINGS

On **June 19, 2006**, 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 not* sustain an accident that arose out of and in the course of employment.

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

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

In the year preceding the alleged injury, Petitioner earned **$17,134.99**; the average weekly wage was **$407.98**.

On the date of the alleged accident, Petitioner was **60** years of age, ***married*** with **one** dependent child.

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

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

Respondent shall be given a credit of $ **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 $ **88,956.40** for payment of medical benefits under Section 8(j) of the Act.

ORDER

Petitioner failed to prove that he sustained an accidental injury arising out of and in the course of his employment with Respondent on **June 19, 2006.**

Petitioner further failed to prove that his current condition of ill-being as claimed is causally related to an alleged accidental injury of June 19, 2006.

All claims made for compensation by Petitioner in this matter are thus hereby denied.

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 JOANN M. FRATIANNI

November 15, 2013
Date

NOV 20 2013

15IWCC0563

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Petitioner is claiming a work injury to his left knee that occurred on June 19, 2006. Petitioner testified he started working for Respondent in 1990. For the first two years, he used a knife to cut meat on a line. For the next 15 years, he worked a job where he put chemicals on food while on a conveyor line.

Petitioner testified that as part of his conveyor job, a forklift would bring materials on a pallet. Petitioner would then lift boxes containing meat. These boxes would weigh approximately 60 pounds each. He would lift these boxes from one pallet to another, then to the "worm." Petitioner would also lift and carry boxes to the grinder line. On occasion he would also have to lift and carry boxes under the conveyor belt, which was approximately 1-1/2 to 2 meters high.

Petitioner testified he would lift and carry 20-30 boxes an hour and approximately 250 boxes a day. He was required to stand all day long. Petitioner testified Respondent required him to wear a pair of work boots, and his job also required him to kneel and squat frequently.

Petitioner testified he noticed a gradual onset of pain in both knees while lifting heavy boxes, constantly squatting, kneeling, twisting and pivoting while holding boxes. Petitioner is claiming that his activities resulted in repetitive trauma, which resulted in a total left knee replacement surgery on June 19, 2006.

Petitioner consulted with Dr. Potaczek on February 3, 2005. Dr. Potaczek recorded complaints of bilateral knee pain and when up for a very long period of time it hurt bilaterally. Petitioner then returned to see Dr. Potaczek on March 9, 2005. Dr. Potaczek noted complaints of when standing for a long time his knees hurt. When he is at work and walks to the bathroom downstairs, it bothers him a great deal. He says he can walk 2 to 3 blocks but it is uncomfortable and it hurts.

Petitioner also completed an "Employee Injury/Illness Statement" through an interpreter. He signed this statement on May 19, 2005. Petitioner identified his signature at trial, but did not recall completing the form. Petitioner reported "pain in both knees" on this form and noted that this problem was noticed 3 or 4 years ago." When asked on the form to describe what he was doing when he first noticed this problem, Petitioner answered "start hurting and with time start getting worse." When asked to explain how the injury occurred, Petitioner answered "unknown." When asked what he believed the cause or aggravation of his condition, Petitioner answered: "standing for long periods of time starts hurting."

Petitioner saw Dr. Eilers for examination. Dr. Eilers recorded a history that for 17 years, Petitioner walked on concrete floors, lifted and carried 60 pound boxes of fat, rotated, walked, and dumped boxes, approximately 30 boxes an hour, noticing bilateral knee pain. Dr. Eilers testified by evidence deposition that Petitioner's lifting, bending, twisting, turning, walking and standing at work aggravated the bilateral knee degenerative joint disease, necessitating medical treatment. Dr. Eilers also testified that the bilateral knee condition was so advanced and deteriorated, that Petitioner would experience symptoms with performance of simple activities of ordinary life, such as walking.

Dr. Hagman also saw Petitioner. He examined Petitioner at the request of Respondent. On July 3, 2009, Dr. Hagman noted Petitioner was 63 years of age with advanced arthritis to both knees. Dr. Hagman also noted in an addendum report dated October 9, 2009 that Petitioner was 5 feet 5 inches tall, and weighed 216 pounds. Dr. Hagman felt that Petitioner's advanced bilateral knee arthritis was the result of age and heavy weight, and once this condition is present, any activity of ordinary life would cause it to become symptomatic.

Based upon the above, the Arbitrator finds that Petitioner failed to prove that his condition of ill-being complained of was causally related to the accidental injury which allegedly manifested itself on June 19, 2006. Petitioner in particular has failed to prove which activity, if any, performed at work on a repetitive basis, would cause an injury to arise out of and in the course of the employment by Respondent.

E. Was timely notice of the accident given to Respondent?

See findings of this Arbitrator in "C" above. The evidence shows that Petitioner actually gave notice to Respondent as through the preparation and signature of the Employee Injury/Illness Statement, which he completed and dated on May 19, 2005.

Based upon the above, the Arbitrator finds that the Petitioner gave Respondent timely notice of this alleged injury in a timely fashion, as defined by the Act.

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

See findings of this Arbitrator in "C" above.

Based upon said findings, the Arbitrator finds that the condition of ill-being complained of is not causally related to any work activities performed on behalf of Respondent by the Petitioner.

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?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made for medical charges or expenses by Petitioner in this matter are hereby denied.

K. What temporary benefits were in dispute?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims made for temporary total disability benefits by Petitioner in this matter are hereby denied.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "C" and "F" above.

15IWCC0563

Based upon said findings, all claims made for permanent partial disability benefits by Petitioner in this matter are hereby denied.

O. Should penalties or fees be imposed upon Respondent?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims for penalties and attorneys fees made by Petitioner are hereby denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT YACOUB,

Petitioner,

15IWCC0601

vs.

NO: 12 WC 30968

RICHARD J. DALEY COLLEGE,

Respondent.

DECISION AND OPINION ON REVIEW

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

Petitioner worked for Respondent as director of its audiovisual department. On August 8, 2011, his left shoulder was injured when a large speaker he was carrying with a co-worker fell on him. An MRI showed a large full-thickness tear of the distal supraspinatus and infraspinatus tendons with retraction of torn tendon fibers to the level of the glenohumeral joint, mild distal subcapularis tendinopathy without evidence of underlying tear, moderate joint effusion, and moderate AC arthropathy with mild narrowing of the subacromial space.

On December 29, 2011, Dr. Guelich performed arthroscopic rotator cuff repair. On February 29, 2012, Dr. Guelich released Petitioner to restricted duty. On May 16, 2012, Dr. Guelich noted Petitioner's shoulder was good enough to proceed with his work demands and released him to full duty as of June 4th. Petitioner continued to work for Respondent on full duty status until he voluntarily retired from his employment in July of 2013, at the age of 67. The Arbitrator awarded Petitioner 62.5 weeks of permanent partial disability benefits representing loss of 12.5% of the person as a whole.

15IWCC0601

Petitioner testified he still had pain in his shoulder and numbness shoots into his left arm. The pain is mainly at night and he still uses pillows to elevate his left arm, which reduces the pain. He first noticed the numbness after the surgery. The pain was not always there; "maybe at least three days a week" he feels the pain. The only medication he takes is Tylenol. He tries to avoid taking too much because of his heart condition and only takes the Tylenol "maybe three times a week." He cannot lift much with his left arm. He has difficulty taking "a gallon of milk from the fridge." His left hand gets tired a lot when he shaves. He has numbness about 80% of the time. However, in his treatment note on the visit immediately preceding releasing Petitioner to full duty work, Dr. Guelich indicated that while Petitioner was developing some numbness and tingling, Dr. Guelich thought those symptoms were independent of his shoulder condition.

As the Arbitrator correctly noted Petitioner's injury predated the effective date of the 2011 legislation amending the Workers' Compensation Act. Therefore, the specific criteria cited in that legislation to determine a permanent partial disability award do not specifically apply. Nevertheless, the Commission finds some of those criteria relevant. Here, the Commission finds particularly relevant the fact that Petitioner did not prove any diminution of earning capacity. He was able to work full duty from the date of his release to full duty until his voluntary retirement at 67. Petitioner appears to have had an excellent outcome of his surgery. His retirement appears to have had nothing to do with his work injury. Rather it appears to be related to his age, lifestyle choice, and/or his significant cardiac condition identified in the record. In addition, Petitioner's current complaints were limited in nature. He felt pain maybe three days a week and took Tylenol maybe three times a week. Finally, perhaps Petitioner's greatest current complaint was related to numbness 80% of the time. However, Dr. Guelich specifically opined that the numbness was not related to his shoulder injury. Therefore, in looking at the entire record before us, the Commission concludes that an award of 10% loss of the person as a whole is appropriate in this case and modifies the Decision of the Arbitrator accordingly.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 50 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 10% 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.

The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: JUL 31 2015

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-7/14/15
46

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

15IWCC0601

YACOUB, ROBERT
Employee/Petitioner

Case# 12WC030968

RICHARD J DALEY COLLEGES OF CHICAGO
Employer/Respondent

On 9/4/2014, 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 0.05% 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:

2221 VRDOLYAK LAW GROUP LLC
MICHAEL P CASEY
741 N DEARBORN 3RD FL
CHICAGO, IL 60654

2461 NYHAN BAMBRICK KINZIE & LOWRY PC
ROBERT HARRINGTON JR
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

15IWCC0601

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Robert Yacoub
Employee/Petitioner

v.

Richard J Daley Colleges of Chicago
Employer/Respondent

Case # **12** WC **030968**

Consolidated cases: **D/N/A**

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **8-27-2014**. By stipulation, the parties agree:

On the date of accident, **8-11-2011**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $**61,649.64**, and the average weekly wage was $**1185.52**.

At the time of injury, Petitioner was **65** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**20,097.40** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**20,097.40**.

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

ORDER SEE ATTACHED FINDINGS AND CONCLUSIONS OF LAW

Respondent shall pay Petitioner the sum of $**695.78**/week for a further period of **62.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **12.5% loss of use of the person as a whole.**

Respondent shall pay Petitioner compensation that has accrued from **8-11-2011** through **8-27-2014** , and shall pay the remainder of the award, if any, in weekly payments.

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

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

Molly C Mason
Signature of Arbitrator

9/4/14
Date

SEP 4- 2014

Robert Yacoub v. Richard J. Daley Colleges of Chicago
12 WC 30968

Arbitrator's Findings of Fact

Petitioner was 65 years old as of his undisputed work accident of August 11, 2011. He testified he worked for Respondent for 18 or 19 years before the accident. His job titles changed over the years but he was always in charge of Respondent's audio/visual equipment. His duties included hiring and training employees and setting up equipment for presentations and events. He regularly lifted objects of various sizes, including speakers, which could weigh up to 75 pounds. He also used ladders to install wiring and cabling overhead.

Petitioner testified he is left-handed. He denied having any left arm problems prior to the accident. On the day of the accident, he and other employees were setting up equipment at a site in anticipation of an event that was to be held the next day.

Petitioner testified that, immediately before the accident, he and a "big guy" named Richard were supporting the weight of one large speaker. Petitioner became involved in a conversation with a third individual. Richard was unaware of this conversation and unexpectedly let go of the speaker. The speaker fell and hit the top of Petitioner's left shoulder. Petitioner testified he felt a cold sensation throughout his left arm when this happened. He sat down to rest. A dean arrived and Petitioner told him what had happened. Accident reports were then completed.

Petitioner testified he first sought treatment on August 17, 2011. On that date, Petitioner went to Advocate Illinois Masonic Family Practice, where he saw a provider named Lindsey Warcik. Warcik's handwritten notes reflect that Petitioner complained of left shoulder pain of six days' duration. Warcik indicated that a large speaker fell onto Petitioner's left shoulder six days earlier and that Petitioner felt a "pop" in his shoulder on impact. Warcik also noted that Petitioner complained of 7-9/10 left shoulder pain radiating down to his fingers as well as numbness and tingling in his left hand.

On left shoulder examination, Warcik noted 70 degrees of active lateral motion, a full passive range of motion, no palpable point tenderness, mild crepitus and intact sensation. She diagnosed a "left shoulder injury 2/2 trauma; possible rotator cuff injury." She ordered X-rays and prescribed ice applications and Tylenol. She instructed Petitioner to avoid lifting and follow up in two to three days.

Petitioner returned to Advocate Illinois Masonic Family Practice on August 19, 2011. Based on the handwriting, it appears he saw a different provider on that date. The provider's signature is not legible. The provider noted that the X-rays showed mild arthritis. He or she instructed Petitioner to continue range of motion exercises and follow up if necessary. PX 1.

Petitioner testified that, on August 19, 2011, a doctor at Advocate Illinois Masonic Family Practice referred him to a specialist, Dr. Guelich.

Petitioner first saw Dr. Guelich on September 12, 2011. The doctor's note of that date reflects that Petitioner complained of persistent left shoulder pain since a work accident in which a large object fell directly onto his shoulder and head.

On left shoulder examination, Dr. Guelich noted significant weakness as well as pain with significant firing of the rotator cuff, slight infraspinatus and supraspinatus weakness, positive impingement and Neer's signs and negative Speed's and O'Brien's tests.

On neck examination, Dr. Guelich noted a full functional range of motion and a negative Spurling sign.

Dr. Guelich interpreted left shoulder X-rays as showing what appeared to be "slight avulsion, possibly insertion of the supraspinatus with suggestion of acute rupture."

Dr. Guelich prescribed an MRI and physical therapy. He released Petitioner to light duty with no overhead work. PX 2.

The left shoulder MRI, performed on September 17, 2011, showed a "large full-thickness tear of the entire distal supraspinatus with retraction of the fibers to the level of the glenohumeral joint line" and a complete tear of the infraspinatus with retraction to the level of the glenohumeral joint line. The interpreting radiologist noted some atrophy, suggestive of a chronic component, but also edema-like signals in the fibers of both tendons, "consistent with additional acute component." He described the labrum as grossly intact and the long head of the biceps tendon as "normal in location, signal and morphology." PX 2, pp. 11-12.

Petitioner returned to Dr. Guelich on October 7, 2011. The doctor noted persistent left shoulder complaints. He reviewed the MRI results with Petitioner and discussed several treatment options. He noted that Petitioner expressed a desire to continue conservative care. He recommended additional therapy and continued the previous work restrictions. PX 2, p. 13.

At the next visit, on November 30, 2011, Dr. Guelich noted that, despite additional therapy, Petitioner had experienced "progressive loss of function" to the point where he was having difficulty performing even routine activities. On re-examination, he again noted significant weakness within the rotator cuff as well as positive supraspinatus and impingement signs. He again discussed treatment options, with Petitioner electing arthroscopic repair. PX 2, p. 14.

Dr. Guelich operated on Petitioner's left shoulder on December 29, 2011. In his operative report, he indicated he repaired a "massive" rotator cuff tear, which was retracted "just lateral to the glenoid" and a degenerative Type 1 SLAP labral tear. He also performed an acromioplasty and decompression and an "extensive bursectomy/synevectomy." PX 2, p. 15.

Following the surgery, Petitioner returned to Dr. Guelich on January 4, 2012. The doctor described the incisions as healing nicely. He indicated he told Petitioner to be "very cautious" due to the "size of his tear and the severity of it." He instructed Petitioner to start physical therapy in two weeks.

At the next visit, on January 25, 2012, Dr. Guelich noted "great progress," indicating Petitioner was "able to almost fully actively elevate and internally and externally rotate to a reasonable arc of motion." He instructed Petitioner to continue therapy. He indicated Petitioner could resume light duty in ten days. PX 2, p. 17.

On January 22, 2012, Dr. Guelich noted that Petitioner's range of motion was continuing to improve but that he was still having pain with certain activities. He prescribed additional therapy and released Petitioner to work with no use of the left arm. PX 2, p. 18.

About a month later, on February 24, 2012, Dr. Guelich wrote a note indicating Petitioner still required therapy but could resume light duty, with avoidance of lifting and excessive activities, on February 27, 2012. PX 2, p. 19. The doctor issued a second note on February 28, 2012 indicating Petitioner could resume working the next day but with "special requirements and limits." He described Petitioner as having a "physical impairment that substantially limits some of his major life activities – specifically lifting and excessive activities associated with his left shoulder." He went on to describe Petitioner's period of disability as "indefinite" and lasting up to one year. PX 2, p. 21.

On April 4, 2012, Dr. Guelich noted improved strength but "pain and apprehension with resisted internal and external [rotation]." He recommended additional therapy and released Petitioner to work with no lifting over 5 to 10 pounds with the left arm. PX 2, p. 21.

Petitioner testified he began experiencing numbness and tingling in the fingers of his left hand after Dr. Guelich operated on his left shoulder. On April 18, 2012, Dr. Guelich noted that Petitioner was "developing some numbness and tingling." The doctor described these symptoms as likely related to the neck rather than the left shoulder. On left shoulder examination, he rated rotator cuff strength at 4-/5. On neck examination, he noted "some mild radicular findings"with hyperextension, reproducing the hand symptoms. He prescribed a Medrol Dose-Pak for the radicular symptoms. He instructed Petitioner to stay off work and progress in therapy to work conditioning. PX 2, p. 22.

On May 16, 2012, Dr. Guelich noted that Petitioner denied any significant neck pain but was still complaining of some numbness in his thumb and index finger. On left shoulder examination, he noted normal rotator cuff strength and a full range of motion with "minimal impingement signs." On neck examination, he noted no fo[cal] neurologic changes and a negative Spurling's sign. On left wrist examination, he noted negative Tinel's and nerve compression testing. He cleared Petitioner for full duty. PX 2, p. 23.

Petitioner testified he resumed working for Respondent on June 4, 2012. He indicated he resumed his former job but obtained help from his staff members when it came to lifting. He testified he experienced left shoulder pain when he attempted to perform lifting.

Petitioner returned to Dr. Guelich on June 27, 2012. The doctor noted he had returned to work, "taking out [sic] supervisory role," but was "still complaining of some pain and loss of terminal elevation and strength." On examination, he noted "slightly diminished strength in the adducted position" with resisted internal and external rotation. He described the ABER position as "actually quite good with excellent strength." He also noted a full active range of motion. Based on the impingement signs, he injected Petitioner's shoulder with Dexamethasone and Lidocaine. He recommended additional therapy, noting that Petitioner had been "unable to complete a full course." He anticipated that four to six weeks of therapy would help Petitioner restore his external rotation strength. He did not impose any restrictions based on Petitioner's representation that he was "not required to lift significant weights." He requested a job description. PX 2, p. 24.

Petitioner underwent another therapy evaluation on June 29, 2012. The evaluating therapist noted that Petitioner complained of left shoulder pain, rated 7-8/10, and difficulty with brushing his teeth and shaving. The therapist also noted that Petitioner reported "unspecific inconsistent left upper extremity/finger numbness." PX 2, p. 41.

Petitioner returned to Dr. Guelich on August 15, 2012. The doctor noted that Petitioner was better, pain-wise, but was "still having some weakness, mostly with external rotation." On examination, he noted 4/5 strength in the abducted and externally rotated positions, a good range of motion and good postural controls. Based on Petitioner's positive response to the injection, the doctor recommended additional therapy to try to improve the infraspinatus weakness. He indicated he would likely order an MR arthrogram if the weakness persisted. He did not impose any restrictions. PX 2, p. 25.

The therapy notes that post-date August 15, 2012 extend through September 18, 2012, with the therapist indicating that Petitioner cancelled sessions scheduled for September 13th, 18th and 20th. On September 6, 2012, the therapist indicated that "ER," presumably external rotation, "remains biggest strength deficit."

On December 12, 2012, Petitioner returned to Dr. Guelich and complained of occasional left shoulder pain with lifting and reaching. On examination, the doctor noted that the previously positive "drop arm" sign had completely resolved. He also noted a "near full range of motion with pain at maximal elevation and some pain with external rotation." He recommended that Petitioner complete his therapy. He referred Petitioner to a different therapy facility, AthletiCo, that was closer to Petitioner's home. He instructed Petitioner to return to him in three months. PX 2, p. 26.

Petitioner testified he was not able to complete all of the prescribed therapy due to an unrelated cardiac condition. Petitioner further testified he retired on July 10, 2013. Under

cross-examination, Petitioner acknowledged that he continued performing his regular job between the time he returned to work on June 4, 2012 and his retirement.

Petitioner testified he last saw Dr. Guelich on August 5, 2013. On that date, the doctor noted that Petitioner had undergone cardiac stent insertion four months earlier. He indicated that Petitioner was still experiencing pain in the proximal shoulder in the deltoid region along with numbness in his fingertips, primarily at night. He described the numbness as being in a "carpal tunnel distribution." On examination, he noted a normal range of motion, pain with impingement testing and 4/5 supraspinatus weakness. He diagnosed arthralgia of the shoulder region and shoulder tendonitis. He recommended home exercises, a consultation with a physical therapist and a return visit in four weeks. PX 2, p. 27.

Petitioner testified he set up a subsequent appointment to see Dr. Guelich but had to cancel due to his cardiac condition. Petitioner further testified he mentioned his shoulder condition to his personal physician on various occasions after August 5, 2013. The records concerning these personal physician visits are not in evidence.

Petitioner testified he experiences pain in the top of his left shoulder as well as numbness that travels down his left arm into his fingertips. He rubs his left hand in order to relieve the numbness. He experiences the pain primarily at night. He experiences the numbness about 80% of the time. He sleeps with his left arm propped up on pillows. He takes Tylenol for his pain about three nights per week. His pain is aggravated by lifting and any overhead activity. He is able to lift an object using both hands but has difficulty when he tries to lift using only his left hand. When he reaches into the refrigerator to take a gallon of milk off a shelf, he has to use his non-dominant right hand to support his left arm. He has to take breaks while shaving because his left hand gets tired.

Respondent did not call any witnesses or offer any documentary evidence.

Arbitrator's Credibility Assessment

The fact that Petitioner worked in a supervisory capacity for Respondent for many years weighs in his favor credibility-wise. No one contradicted Petitioner's testimony that he obtained lifting assistance from members of his staff after he resumed working in June 2012.

The Arbitrator found Petitioner's testimony concerning his ongoing complaints to be highly credible.

What is the nature and extent of the injury?

The Arbitrator notes this is a pre-amendatory case, since Petitioner's accident occurred prior to September 1, 2011. The Arbitrator finds that Petitioner is permanently partially disabled to the extent of 12.5% loss of use of the person as a whole, equivalent to 62.5 weeks, under Section 8(d)2 of the Act. In so finding, the Arbitrator relies on the following: 1) the fact

that the injury involved Petitioner's dominant left arm; 2) the extensive pathology (i.e., "massive" rotator cuff tear and SLAP tear) documented in the operative report; 3) the 4/5 supraspinatus weakness Dr. Guelich documented on August 5, 2013; 4) Petitioner's credible testimony that he obtained assistance from subordinates after returning to work; and 5) Petitioner's credible testimony concerning the manner in which his injury has affected his sleep and routine activities such as shaving and lifting a gallon of milk.

STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

☒ 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

DeJuante Forman,

Petitioner,

vs.

NO. 13WC001700
14WC001853

McLane Midwest,

Respondent.

15IWCC0593

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 accident, temporary total disability, causal connection, medical expenses, notice, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 23, 2014 is hereby affirmed and adopted.

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

15IWCC0593

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

DATED: JUL 29 2015
SJM/sj
o-6/25/15
44

Stephen J. Mathis

Mario Basurto

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FORMAN, DEJUANTE
Employee/Petitioner

Case# **13WC001700**
14WC001853

15IWCC0593

McLANE MIDWEST
Employer/Respondent

On 9/23/2014, 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 0.04% 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:

2427 KANOSKI BRESNEY
THOMAS R EWICK
2730 S MacARTHUR BLVD
SPRINGFIELD, IL 62704

RUSIN & MACIOROWSKI LTD
MARK COSIMINI
2506 GALEN DR SUITE 108
CHAMPAIGN, IL 61821

STATE OF ILLINOIS)
)SS.
COUNTY OF URBANA)

15IWCC0593

☐ 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

DEJUANTE FORMAN
Employee/Petitioner

v.

MCLANE MIDWEST
Employer/Respondent

Case # 13 WC 01700

Consolidated cases: 14 WC 01853

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 **Molly Dearing**, Arbitrator of the Commission, in the city of **Urbana**, on **July 23, 2014**. 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 **March 29, 2012** and **November 16, 2012,** Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

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

Timely notice of these accidents *were not* given to Respondent.

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

In the year preceding the injuries, Petitioner earned **$63,826.72**; the average weekly wage was **$1,227.44.**

On the dates of accident, Petitioner was **27** years of age, ***married*** with **7** dependent children.

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

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

Respondent shall be given a credit of **$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 **$1400.44** under Section 8(j) of the Act.

ORDER

Petitioner has failed to prove, by a preponderance of the credible evidence, that Petitioner provided Respondent timely notice of the alleged work accidents of March 29, 2012 and November 16, 2012. Claim is denied. All remaining issues are moot.

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.

Arbitrator Molly Dearing

September 19, 2014
Date

SEP 23 2014

15IWCC0593

STATE OF ILLINOIS)
) SS
COUNTY OF CHAMPAIGN)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DEJUANTE J. FORMAN,
Employee/Petitioner

v.

Case Nos. 13 WC 01700
14 WC 01853

MCLEAN MIDWEST,
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner filed two claims alleging that he sustained injuries resultant from cumulative trauma. In 13 WC 01700, Petitioner alleges that he sustained injuries to the person as a whole on November 16, 2012, and in 14 WC 01853, he alleges that on March 29, 2012, he sustained injuries to the person as a whole. The cases were consolidated.

Petitioner, at the time of his work accidents, was 29 years of age and employed by Respondent, a grocery distributor, as a driver. Petitioner began his employment with Respondent in October 2007, and at the time of his hire, he underwent a Department of Transportation physical examination and strength testing in order to hold a commercial driver's license. He renewed his commercial driver's license in 2009 and 2011.

Petitioner testified that, the course of his job duties as a driver for Respondent, he picked up a trailer filled with products at the distribution center in Danville. The merchandise was pre-loaded into a trailer. He performed between five and 39 stops at various store locations, such as gas stations, during a single trip. Upon arriving at the store, Petitioner employed a two-wheel dolly to unload totes containing cases of merchandise from the trailer. The totes contained a variety of products, such as cases of oil, candy bars, bottles of water, or transmission fluid. Petitioner testified that the dollies could hold anywhere from 20 to four hundred pounds of merchandise on the dolly at any given time. Petitioner pushed and pulled the dolly from ten to 30 feet from the truck to the entrances of the stores, oftentimes over ramps and curbs. At the store, he testified that some customers requested him to unstack the totes to allow store employees to count and scan the merchandise. Petitioner often had to carry merchandise back to his truck when items were returned by the customer. Petitioner testified a driver could be on the road during a single trip for 20 to 36 hours, if he was working with another driver, and the two drivers would divide the driving duties. He acknowledged that if two drivers were on duty, they would both unload the merchandise and utilize separate dollies. If Petitioner was the only driver on duty, such as on a short trip, he would deliver the product by himself. Petitioner testified that his job duties as a driver remained the same throughout the duration of his employment.

A job description of a Driver Helper was admitted as Petitioner's Exhibit 7. The last page states that a "Driver Helper" is also known as a Deliver Driver, Backhaul, or Driver. The specific job duties of a driver listed in Petitioner's Exhibit 7 include lifting and lowering portable step ladders from side of trailer, pulling ramps from ram carriage and attaching them to the trailer, positioning ramp gate over curbs, lowering boxes/toes off stacks inside the trailer and placing them on a two-wheeled dolly, pushing loaded two-wheeled dolly down a ramp and into the delivery site, dropping the load at the delivery site, and hand-carrying boxes into the delivery site. The "GMSI Physical Activities Analysis" contained in Petitioner's Exhibit 7 states that a driver may have to frequently, one-third to two-thirds of the shift, lift, carry and lower boxes weighing up to 50 to 75 pounds. It also notes that a driver would frequently, meaning one-third to two-thirds of his or her shift, engage in pushing and pulling the two-wheel dolly of boxes and totes, reaching above shoulder, bending and twisting, and crouching, stooping and squatting. PX 7. Petitioner noted he did not have to use a pallet jack as reflected in the job description, and he disagreed with the job description in that it reflects a driver makes an average of ten stops per shift. Petitioner testified that he generally made 15 to 30 stops per shift. Petitioner testified that the job description otherwise fairly and accurately depicts his duties as a driver, but he noted that throughout his employment, he never worked with a helper, just another driver.

Photographs depicting Petitioner's job tasks and utilization of a two-wheeled dolly to delivery merchandise were admitted as Petitioner's Exhibit 9. The photographs also depict the types and sizes of totes that would set on dollies. PX 9.

Petitioner's driver payroll summaries were admitted as Petitioner's Exhibit 8. Petitioner testified that the summaries reflect the amount of stops he performed, as well as the weight for each individual load and weekly weights he carried on his truck. Petitioner testified that an average load weighed approximately 20,000 pounds.

Petitioner testified that in March 2012, he began experiencing sharp pain in his lower back while unloading products from his truck and carrying it down the ramp. He denied experiencing problems in his lower back or low back treatment prior to March 29, 2012. On March 29, 2012, Petitioner presented to his family physician, Dr. George Gindi. Petitioner complained of pain in the lower part of his back for about a week, and he reported to Dr. Gindi that he lifts 200 pound carts every day by dolly at work and was taking ibuprofen to relieve his pain. Dr. Gindi diagnosed an unspecified back ache and returned him to work on the following Monday. PX 3. Petitioner testified that he informed Howard Nelson, Respondent's shop manager, that he was experiencing back pain from running down the ramp. He also testified that he informed other drivers as well.

Following his March 29, 2012 appointment with Dr. Gindi, Petitioner testified that he continued to experience pain in his back, but worked through it. He acknowledged that he did not seek treatment after March 29, 2012 until he saw Dr. Gindi on November 16, 2012. Petitioner continued to work for Respondent during that time period and his job duties remained the same. Petitioner testified that on November 16, 2012, his back pain worsened. He was unsure as to whether he worked on November 16, 2012. Petitioner presented to Dr. Gindi on that date and reported that he had been lifting 200 pound carts at work. Dr. Gindi noted muscle spasms in the lumbar sacral area, referred Petitioner for physical therapy, and kept him off of work to November 19, 2012. Dr. Gindi also prescribed a TENS unit. PX 3.

Petitioner testified that he delivered Dr. Gindi's off work slip of November 16, 2012 to Hubert Williford, a dispatcher for Respondent. Petitioner testified that he informed Mr. Williford that he was having back pain from "doing all this work". Petitioner returned to work on November 19, 2012, and he stated that he discussed his back pain with other drivers, namely Chris Waterman, Greg Cooper, Dominique Darnel and Tim Schroeder, on that date.

On December 27, 2012, Dr. Gindi took Petitioner off work until January 8, 2013, and referred him to physical therapy. PX 3, 11. Petitioner testified that he reported his work status to Mr. Williford in dispatch, and Mr. Williford instructed him to send the off work slip to Juan Hatchett in Human Resources by way of facsimile. Petitioner testified that he observed Dr. Gindi's assistant fax the off work slip to Respondent. Thereafter, Petitioner received a phone call from Mr. Hatchett, who informed him that his service for Respondent was no longer needed.

On January 8, 2013, Petitioner presented to Dr. Gindi, and Petitioner was noted to have muscle spasms in the lumbar sacral area. Dr. Gindi recommended light duty work for Petitioner. On February 25, 2013, Dr. Gindi referred Petitioner for an MRI. PX 3. A MRI of February 27, 2013 revealed a bulging disc at L5-S1 with no significant impression on the thecal sac or encroachment into neural foramina. PX 1.

Petitioner underwent physical therapy at Provena from March 1, 2013 through March 27, 2013. On the final disability questionnaire, Petitioner reported improvement with pain intensity, personal care, lifting, walking, and sitting. PX 4.

On May 28, 2013, Petitioner reported to Dr. Gindi that his right leg was falling asleep at least once per day. Dr. Gindi took Petitioner off of work for one month. On July 9, 2013, Dr. Gindi referred Petitioner to Dr. Santiago and issued a note placing Petitioner on light duty work with no lifting over 25 pounds and no standing for long periods of time. PX 3.

On July 17, 2013, Petitioner presented to Dr. David Fletcher for a consultation regarding his low back pain. Petitioner reported to Dr. Fletcher lifting 200 pound carts at work using a dolly. He complained of heaviness in his back and tightness in his low back. Petitioner stated that at times, his right leg will fall asleep, and he experiences numbness, tingling, and increased pain with standing for a long time. Dr. Fletcher's assessment was right S1 radiculopathy secondary to a disc bulge at L5-S1 related to his cumulative work activities for Respondent. Dr. Fletcher recommended modified duty of no lifting more than ten pounds, electrical studies with Dr. Trudeau, physical therapy for three weeks, a TENS unit, medication, and a Medrol Dose pack. PX 2.

On August 12, 2013, Petitioner presented to Dr. Ivan Santiago, a pain specialist with Christie Clinic. Petitioner reported injuring himself at work while repetitively lifting totes that weighed between 50 and 80 pounds throughout his shifts. He informed Dr. Santiago he loaded totes onto a dolly, and then pushed and pulled the dolly and maneuvered it over curbs. Petitioner reported that the dolly would have 200 pounds of merchandise on it and that he worked anywhere between 24 and 36-hour shifts. Petitioner complained of numbness in his right leg at least four times a week, right-sided back pain, and an aching, shooting, and sharp pain at times. Dr. Santiago recommended an EMG/NCV of the right lower extremity. On August 14, 2013 Petitioner underwent an EMG/NCV, which revealed no evidence of lumbosacral radiculopathy, polyneuropathy or plexopathy. PX 1.

Petitioner returned to Dr. Santiago on September 4, 2013, and Dr. Santiago performed a right lumbar medial branch block under fluoroscopy. On September 18, 2013, Dr. Santiago diagnosed Petitioner with displacement of lumbar intervertebral disc without myelopathy and unspecified thoracic or lumbosacral neuritis or radiculitis. Dr. Santiago performed a lumbar epidural steroid injection at L5-S1. On October 7, 2013, Petitioner returned to Dr. Santiago and reported 70% pain relief for one week following the injection. Petitioner requested work restrictions since "there are some jobs available for him but he thinks they are too extrenous [sic] for him such lifting more than 75 lbs, standing for 10 hours, etc." Dr. Santiago recommended a work status of no lifting more than 30 pounds and no standing more than eight hours per shift. On October 17, 2013, Dr. Santiago performed a second lumbar epidural steroid injection at L5-S1. Petitioner presented to his last treatment visit with Dr. Santiago on November 14, 2013. Dr. Santiago noted that the lumbar epidural steroid injections helped Petitioner, but he was continuing to have a right sided lumbar ache. Petitioner reported to Dr. Santiago that "he has been trying to apply for jobs but none seem to fit his desire and what he feels he can handle." Dr. Santiago diagnosed Petitioner with ongoing pain of the right low back of unknown etiology. He recommended Petitioner continue with home exercises, returned Petitioner to full duty, and released him to return on an as needed basis. PX 1.

Dr. David Fletcher testified by way of evidence deposition on October 9, 2013. Dr. Fletcher saw the Petitioner on July 17, 2013, at which time Petitioner complained of low back pain with radiation into his right leg. Petitioner completed a pain drawing consistent with radicular pain from the low back area down the back of his leg in a dermatomal fashion. Petitioner told Dr. Fletcher that the onset of his symptoms was gradual and related to his activities for Respondent where he was required to conduct constant material handling with large weights lifting boxes in and out of trucks, using dollies and weights up to 100 pounds. Dr. Fletcher noted that subsequent to taking any history from Petitioner, he had an opportunity to review a written job description from Petitioner, which placed Petitioner at a very heavy work level under the U.S. Department of Labor's Dictionary of Occupational Titles, Physical Demand Levels. Dr. Fletcher testified that his physical examination demonstrated a relatively normal gait and an abnormal neurological examination with a positive straight leg raising test, which Dr. Fletcher opined was consistent with Petitioner's subjective complaints. Petitioner also had a decreased ankle jerk indicative of a compromise of the right S1 nerve root, and an objective sign consistent with Petitioner's subjective complaints. Dr. Fletcher believed the histories given to Dr. Gindi and himself by Petitioner were consistent. Dr. Fletcher reviewed Petitioner's Department of Transportation's Medical Examination Reports regarding his certifications and noted an absence of back or leg dysfunction identified during the four year period from Petitioner's first Department of Transportation examination on October 17, 2007 through his most recent examination in 2011. During that time, Petitioner was at a very heavy work level and was able to meet the physical demands of his job as a driver. PX 2.

Dr. Fletcher diagnosed Petitioner with right S1 radiculopathy, and explained that Petitioner suffered with inflammation due to injury of the right S1 nerve root that lies between the L5-S1 vertebrae. According to the physical activities analysis of the job description of a Driver Helper, that position was required to frequently bend, twist, crouch and squat. Dr. Fletcher opined those activities cause micro degeneration of discs that can lead to cumulative trauma. Dr. Fletcher stated Petitioner is not overweight or obese, does not smoke, and there are no other co-morbidity risk factors other than his job analysis. Dr. Fletcher testified that, based upon the consistent histories Petitioner reported to his physicians, the absence of any other intervening cause, and the physical demand analysis enumerated in his job description, in addition to his own training and experience, Petitioner's job duties for Respondent were causative of his low back condition. Dr. Fletcher noted

that his causation opinion would not change if Petitioner did not actually work on March 29, 2012 or November 16, 2012 because he believed Petitioner's injuries to be cumulative trauma rather than resultant from an acute accident. PX 2.

Dr. Fletcher testified that Petitioner's MRI was consistent with very early stages of degenerative changes, and that the MRI findings could have been present as distantly as 2007. Dr. Fletcher further conceded that while the disc bulge demonstrated on Petitioner's MRI may not have been caused by lifting, Petitioner's history provides the most likely explanation from the repetitive trauma aspect of his job. Dr. Fletcher acknowledged that Petitioner's negative EMG of August 14, 2013 found no impingement on the nerve root. Dr. Fletcher testified that prior to his deposition, he had an opportunity to review Dr. Santiago's records and commented his treatment plan was similar to that of Dr. Santiago's. Dr. Fletcher opined the treatment of Dr. Gindi and Dr. Santiago to be been reasonable and necessary. At the time Dr. Fletcher saw Petitioner, he restricted him to lifting no greater than 10 pounds. He agreed that Dr. Santiago's thirty pound lifting restriction issued in October 2013 was reasonable, but stated that he would have likely been more stringent with his restrictions in light of Petitioner's condition. PX 2.

Petitioner underwent a medical examination pursuant to Section 12 of the Act and an impairment rating examination pursuant to Section 8.1(b) with Dr. Joseph Monaco on April 11, 2014. After reviewing Petitioner's medical records and conducting a physical examination of him, Dr. Monaco opined that Petitioner sustained nonspecific low back with no evidence of any radicular neurologic deficits or radicular findings or complaints. He believed Petitioner had reached maximum medical improvement, and Dr. Monaco opined that Petitioner has zero percent impairment to his whole person regarding his low back. RX 4.

Dr. Monaco testified by way of evidence deposition on July 8, 2014. When Dr. Monaco saw Petitioner on April 11, 2014, Petitioner complained of pain mostly across his lower back. He complained of some symptoms in his right lower extremity, including his whole foot which he indicated felt like it was asleep and numb. Dr. Monaco testified that Petitioner's physical examination was normal. Petitioner had normal range of motion and was able to forward flex ninety degrees. His neurological examination was completely normal, and there was good range of motion of both hips without any provocation of the back pain. He had good circulation and no signs of any deep vein thrombosis with a negative Holman sign, and no calf tenderness. Dr. Monaco diagnosed nonspecific low back pain. Using the American Medical Association's (AMA) Guides to Evaluation of Permanent Impairment, Sixth Edition, Dr. Monaco noted Petitioner's specific diagnosis placed him in a class zero, though he acknowledged that his diagnosis could have also placed in a class one. Dr. Monaco felt that the appropriate class of diagnosis for Petitioner was a Class zero, which is described a documented history of a sprain/strain type of injury, now resolved, or occasional complaints of back pain with no objective findings on examination. Dr. Monaco stated his decision to place Petitioner in a Class zero, as opposed to a Class one, was largely his opinion and said decision was an option that another examiner could find to be appropriate. Dr. Monaco testified that a Class zero results in a zero percent impairment, whereas other classes of diagnoses will offer a spectrum of impairments within the class of ratings based upon grade modifiers. Because Dr. Monaco placed Petitioner within a Class zero, grade modifiers were irrelevant. Had Dr. Monaco placed Petitioner in a Class one, he testified that it would have rendered a default impairment rating of two percent. RX 4.

Dr. Monaco testified that during his examination of Petitioner, he found evidence of symptom magnification, and that Petitioner's report to Dr. Gindi during a treatment visit that his pain was 11/10 was evidence of such symptom magnification. Dr. Monaco noted that Petitioner's reported level of pain to him, from a 4/10 to a 6/10, was consistent with significant functional impairment, and inconsistent with Petitioner's demeanor during his examination in which he was moving freely around the room without difficulty and without affect. He further noted that Petitioner's lack of pain with prolonged sitting in his present position as an over the road truck driver was a "confounding finding" that suggested symptom magnification. Dr. Monaco acknowledged that Petitioner had no positive Waddell's signs indicative of malingering, though he noted that symptom magnification can be independent of positive Waddell's signs. Dr. Monaco acknowledged that he was retained by Respondent to conduct an impairment rating, and he was not asked to render any opinions with respect to causal connection between any alleged injuries and Petitioner's work. He was not offering any opinions with respect to causal connection between Petitioner's work activities and his work accidents, nor was he addressing any periods of temporary total disability and causal connection between Petitioner being off work and his work injuries. RX 4.

Hubert Williford testified at Arbitration on behalf of Respondent. Mr. Williford is employed by Respondent in dispatch in the Danville branch, which is a supervisory capacity, and has been so employed in that capacity for eight years. He has been employed by Respondent for a total of 32 years. Mr. Williford testified that when a driver reports a work injury, a first report of injury is completed and the driver is advised to call Med Core if he requires immediate medical attention. Thereafter, the driver is sent for a post-accident urinalysis. Mr. Williford testified that Respondent has a policy which requires employees to submit a physician's note to human resources if they are absent for three or more days. Mr. Williford explained that Respondent provides company benefits for employees that must be absent from work for non-occupational reasons for an extended period of time to help sustain the employees through those periods of lost work. Mr. Williford stated that if an employee were to inform him that he had an off work slip, he would ask the employee to bring the slip in to him directly.

Mr. Williford testified that he had no knowledge of Petitioner sustaining an injury on March 29, 2012, and does not recall a claim being made from that date. Mr. Williford denied Petitioner reporting to him a work injury of November 16, 2012 or giving him an off work slip relative to a work accident of that date. He testified that he spoke to drivers, such as Petitioner, on a frequent basis. Mr. Williford stated that had Petitioner reported an injury resultant from his work duties, he would have completed the initial first report of injury and then processed it, though he was unable to give an example of reporting a cumulative trauma injury. Mr. Williford testified that Respondent first learned of Petitioner's alleged work accident of November 16, 2012 on January 10, 2013, though he was unaware as to what Petitioner may have told other individuals at work about his back. Mr. Williford testified that in October, November, and December of 2012, Petitioner was in jeopardy of termination for violations of Respondent's attendance policy.

Petitioner testified that he presently experiences a sharp pain with certain activities, including bending over, heavy lifting, or mowing grass. He rated his pain as a four of five, and he does not take any medication. Petitioner is currently employed at Herzog Trucking as a driver, and has been working in that capacity since April 2014. He is not required to load or unload his truck in that position. Petitioner drives approximately five and a half to six hours per shift, three days per week, and he earns $800.00 per week. Petitioner testified that he is not currently looking for alternative employment that would enable him to work more hours, though he acknowledged that he could

resume applying for employment that he applied for previously but was precluded from accepting due to his previous work restrictions. Petitioner stated he gets paid by the load in his current position and he stated that other jobs he applied for required Hazmat training.

Job searches performed by Petitioner between February 2013 and January 2014 were admitted as Petitioner's Exhibit 6. Petitioner testified that he performed two job searches per day and then spent the remainder of his day "pretty much relaxing". The Arbitrator's review of the job searches reveals that Petitioner generally performed five to six job searches per week and most applications were completed online. Petitioner testified he applied to be a satellite repairman, FedEx Ground driver, electrical engineer, crisis counselor, speech therapist, production worker at Flex N Gate, and with Conway Freight. He testified he was determined to do whatever it took to feed his family of nine people. Petitioner acknowledged that he was offered a job with some employers, like Servpro, but once the employer learned of his restrictions, he was unable to take the position.

Teammate Counseling/Corrective Action Records were admitted as Respondent's Exhibit 2 relative to Petitioner's work violations. Correspondence from Petitioner's counsel to Respondent dated January 9, 2013 with Petitioner's Application for Adjustment of Claim in 13 WC 13700 attached thereto was admitted as Respondent's Exhibit 5.

CONCLUSIONS OF LAW

To recover benefits under the Workers' Compensation Act, a claimant bears the burden of proving all the elements of his claim. *A.M.T.C. of Illinois, Inc. v. Industrial Comm'n*, 77 Ill.2d 482, 488 (1979). Liability under the Workers' Compensation Act "cannot rest upon imagination, speculation, or conjecture or upon a choice between two views equally compatible with the evidence, but such liability must arise out of the facts established by a preponderance of the evidence. *Mirific Products Co. v. Industrial Comm'n*, 356 Ill. 645, 650 (1934). "It is the function of the Commission to judge the credibility of witnesses, determine the weight to be given to their testimony, and to draw reasonable inferences from that testimony. The Commission need not award compensation merely because claimant's version of the relevant events is undisputed." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 478 (4th Dist. 1987).

The Arbitrator finds Petitioner's credibility suspect. He did not present as candid or forthright in his demeanor and testimony at Arbitration, especially on cross examination. Petitioner oftentimes appeared evasive in his answers, and he also appeared to have difficulty in recalling information on cross examination. Petitioner commented that "it's been so long ago now, you know, to where trying to recalculate all the way back then…", though he was able to recall dates, names and other details from the same distant past with clarity and ease on direct examination. The Arbitrator notes that Petitioner answered questions on direct examination that he later claimed on cross examination he could not recall, for example, whether he underwent any treatment between his two dates of accident. Moreover, on January 8, 2013, Petitioner rated his pain as an 11/10, which raises suspicions about his propensity for exaggeration. Dr. Monaco shared similar suspicions when he found evidence of symptom magnification during his examination of Petitioner. Dr. Monaco found that, not only were Petitioner's complaints inconsistent with the lack of physical findings, but his symptomatology and reports of pain were inconsistent with his demeanor in his office in which Petitioner was moving about freely without affect or indications of pain. RX 4.

In regard to disputed issue (E), Section 6(c) of the Act states that an injured employee must give notice to the employer as soon as practicable, but no later than 45 days, after sustaining an accidental injury arising from the employment. 820 ILCS 305/6(c). "Compliance with the requirement is accomplished by placing the employer in possession of the known facts related to the accident within the statutory time period, namely 45 days." *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill.App.3d 92, 98 (1994). A claimant's claim is barred only if no notice whatsoever has been given to the employer. *Id.* The legislature has mandated a liberal construction of notice, and "if some notice has been given, although inaccurate or defective, then the employer must show that he has been unduly prejudiced." *Id.*

In the present cases, Petitioner testified he reported to Howard Nelson, the shop manager, that he was experiencing back pain resultant from running down a ramp at work, and informed other drivers of his work accident of March 29, 2012. Petitioner further testified that he reported back pain from "doing all this work" to Hubert Williford, a dispatcher, on November 19, 2012 when he delivered an off work slip to him. He also testified he discussed his back pain with other drivers on that same date, namely Chris Waterman, Greg Cooper, Dominique Darnel, and Tim Schroeder, though Petitioner called none of the four drivers to testify at Arbitration to corroborate his testimony.

At Arbitration, Mr. Williford rebutted Petitioner's testimony, and credibly testified that Petitioner never tendered any off work slip to him or reported any work injury. Mr. Williford testified that Respondent first became aware, as did he, that Petitioner was claiming a work-related accident of November 16, 2012 when Respondent received Petitioner's Application for Adjustment of Claim on January 10, 2013. Respondent's Exhibit 5 corroborates Mr. Williford's testimony, as correspondence from Petitioner's counsel to Respondent enclosing Petitioner's Application for Adjustment of Claim relative to Petitioner's alleged November 16, 2012 accident is stamped as having been received on January 10, 2013. RX 5.

Although Petitioner stated that he observed Dr. Gindi's assistant fax an off work slip to Respondent on December 27, 2012 arising from his treatment of that date, the Arbitrator notes that Petitioner's off work slip from his treatment visit of December 27, 2012 is not dated until the next day on December 28, 2012, nor does it mention whether Petitioner's off work status is relative to a work injury. The Arbitrator also finds no evidence indicative of a fax, either a facsimile cover page or off work slip with a facsimile number printed near the top of the page, present in the record.

Petitioner's claim regarding the issue of timely notice in these matters essentially rests upon his testimony. Given the Arbitrator's conclusions as to Petitioner's credibility, and in light of the record in its entirety, the Arbitrator does not place significant evidentiary weight on Petitioner's testimony and concludes that Petitioner's testimony, standing alone, is insufficient to support a finding of notice in these cases. Based upon the foregoing, the Arbitrator finds that Petitioner has failed to prove, by a preponderance of the credible evidence, that Petitioner provided Respondent timely notice of his alleged accidental injuries within 45 days of the March 29, 2012 and November 16, 2012 accidents. Therefore, the Arbitrator finds that both claims are barred, consistent with Section 6(c) of the Act and the Appellate Court's holding in *Gano Electric Contracting, supra.*

As the remaining issues of accident, causal connection, temporary total disability and permanent partial disability benefits are moot, the Arbitrator makes no conclusions as to those issues.

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

Louis Needham,

Petitioner,

vs.

NO. 13WC016375

15IWCC0594

Gilster-Mary Lee,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care, evidentiary issues, and temporary disability, and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 10, 2014 is hereby affirmed and adopted.

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.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $14,800.00. 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: JUL 29 2015
SJM/sj
o-7/16/15
44

Stephen J. Mathis

David L. Gore

Mario Basurto

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

NEEDHAM, LOUIS
Employee/Petitioner

Case# **13WC016375**

13WC016374

GILSTER-MARY LEE
Employer/Respondent

15IWCC0594

On 7/10/2014, 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 0.06% 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:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0693 FEIRICH MAGER GREEN RYAN
BRANDY L JOHNSON
2001 W MAIN ST
CARBONDALE, IL 62901

15IWCC0594

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Louis Needham
Employee/Petitioner

v.

Gilster-Mary Lee
Employer/Respondent

Case # 13 WC 16375 (D/A: 3.5.13)

Consolidated cases: 13-WC-16374

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **May 8, 2014**. 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. [x] 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. [x] 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. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

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

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

On March 5, 2013, Petitioner **did** sustain an accident that arose out of and in the course of employment.

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

Petitioner's current condition of ill-being *is* causally related to the accident on March 5, 2013

In the year preceding the injury, Petitioner earned $**43,976.21**; the average weekly wage was $**935.66**.

On the date of accident, Petitioner was **37** years of age, ***married*** with **1** dependent child.

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

Petitioner was temporarily totally disabled from **March 12, 2013** through **July 18, 2013** and received all TTD due and owing during that time.

Respondent shall be given a credit of $**11,495.74** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $$**11,495.74**.

Respondent is entitled to a credit of $**9308.09** under Section 8(j) for medical bills paid by its group medical plan.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $623.77/week for a further period of 42 weeks, commencing 7/19/13 through 5/8/14, as provided in Section 8(b) of the Act.

Respondent shall pay the medical expenses contained in Petitioner's group exhibit and shall have credit for any amounts paid. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit, as provided under § 8(j) of the Act.

Respondent shall authorize and pay for the treatment recommended by Dr. Davis and Dr. Mall.

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

July 1, 2014
Date

JUL 10 2014

LOUIS NEEDHAM V. GILSTER-MARY LEE CORPORATION
13-WC-16374 (DOI 7/25/12) & 13-WC-16375 (DOI 3/5/13)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner has filed two Applications for Adjustment of Claim for injuries he sustained on July 25, 2012, and March 5, 2013. (AE2). Petitioner alleged he incurred an injury to his right elbow on July 25, 2012, and an injury to his right knee on March 5, 2013. *Id.* The cases were previously consolidated; however, the parties agreed that only case 13 WC 16375 would be addressed in this 19(b) proceeding. At the hearing, testimony was offered by Petitioner and Sarah Needham.

The Arbitrator finds:

Petitioner testified that he has been employed by Respondent as an over-the-road truck driver since 2006. Petitioner had problems with his right knee before March 5, 2013. Petitioner further testified that he was diagnosed with gout in 2005 and, since then, has continuously taken Allopurinol, Indomethacin, and steroid packs for the condition. Petitioner testified that the medication controlled his gout symptoms. In 2005, Petitioner also injured his right knee in a work-related trucking accident.

Petitioner testified that since 2005, he has had flare-ups and a lot of gout issues in his knees. His right knee was bad between 2005 and 2009, but he continued to work. During gout flare-ups, he would use a wheelchair or crutches due to the agonizing pain from ambulation. His gout attacks have caused Petitioner to miss work over the years, but he did not believe he missed work in 2012 or 2013.

Petitioner also received treatment for right knee pain and gout since 2005.

According to the medical records, Petitioner was treated for bilateral knee pain and gouty arthritis in 2006. (RX11, p. 238, 241). On October 13, 2007, Petitioner was seen in the emergency room for right knee pain that had not improved despite his gout medication. Petitioner's knee was swollen, tender to palpation, and his range of motion was diminished. (RX11, p. 220). He rated his pain as 8 out of 10, was using crutches, and received medication for gouty arthritis. (RX 11, p. 217, 221)

On September 11, 2009, Petitioner was seen at the REA Clinic for purposes of establishing care. Petitioner provided a history of bilateral knee complaints present since an accident in 2005. He also had a history of gout. Petitioner was scheduled for an MRI of his right knee. (RX12, p. 105). An MRI, taken on September 14, 2009, showed a small meniscal tear, ACL findings most consistent with at least a moderately severe partial tear, osteoarthritic changes, joint effusion, and some prepatellar fluid. (RX 10, p. 9; RX 12, p. 101).In reviewing the MRI report, Petitioner's doctor noted Petitioner might benefit from physical therapy and a possible injection. He might also need an ortho referral. (RX 12, p. 101) Petitioner was referred to Dr. J.T. Davis for treatment of the meniscal and ACL tears. (RX12, pp. 98-100).

On September 30, 2009, Petitioner saw Dr. Davis with complaints of right knee pain that was predominately in the front and center of his knee. (RX10, p. 6). Petitioner advised the doctor he had been in a truck accident four years prior and that his knees had been bad since that time. *Id.* He acknowledged a history of arthritis. (RX 10, 2) With regard to his right knee he had complaints of swelling, pain, numbness and weakness. Although he was initially told his complaints were related to gout, his symptoms did not improve with treatment. *Id.* Petitioner indicated the pain also felt different than what he experienced with gout. *Id.* Over the years, he did

notice the pain was temporarily relieved with steroid packs. *Id.* He rated the pain as a 10 out of 10, and reported the knee would give way while walking on uneven surfaces or going up and down hills. *Id.* The knee symptoms were aggravated by weight bearing activities, keeping the knee flexed for prolonged periods, bending, squatting, flexing, and ascending or descending stairs and hills. *Id.* On exam, Petitioner's range of motion was reduced, medial and lateral joint line tenderness were present to palpation, and he had mild effusion. *Id.* Testing revealed a painful, equivocal McMurray maneuver, a softened Lachman test, and a +1 anterior drawer test. *Id.* X-rays showed evidence of chondral calcinosis bilaterally and mild osteoarthritis. (RX10, p. 7). Dr. Davis' assessment was right knee pain, mild osteoarthritis with chondral calcinosis, an ACL tear, and a possible small medial meniscal tear. *Id.* Dr. Davis advised there was a chance an ACL reconstruction may be needed if Petitioner had persistent instability, but the procedure would not address his pain complaints. *Id.* Dr. Davis related the pain to chondral calcinosis a possible, small medial meniscus tear, and an ACL tear. *Id.* He recommended a course of conservative care and, if it failed, a potential diagnostic arthroscopy for debridement and partial medial meniscectomy. *Id.* (See also RX 12, pp. 97-98)

Petitioner was again seen at REA Clinic on October 7, 200. It was noted Petitioner had right knee swelling, decreased range of motion, pain that increased with ambulation, and was utilizing a wheelchair at home. (RX12, p. 96). He received a right knee injection. (RX 12, p. 111)

On March 1, 2010, Petitioner was seen for bilateral knee complaints. (RX12, p. 91). He was tender on the right medial aspect of the knee, and his exam was positive for varus strain and swelling. *Id.* Petitioner's diagnosis was right knee pain and both an MRI and Celebrex were recommended. *Id.* On March 15, 2010 Petitioner's wife called Dr. Yochum's office. She reported that Petitioner's knee had improved with a steroid pack but he continued to have pain on the inner aspect of the knee when sitting with it in a bent position. (RX12, p. 84). Petitioner had cancelled his MRI, and it was recommend the test be rescheduled and an injection considered. *Id.*

On April 28, 2010,"?[illegible]/18/10 (RX 12, p. 83), October 8, 2010 and December 9, 2010 Petitioner's wife telephoned the doctor's office regarding flare-ups in her husband's gout condition. (RX 12, pp. 83, 80)

On January 13, 2011 Petitioner presented for his DOT physical. Petitioner's positive uric acid problems were noted. (RX 12, p. 73)

On February 7, 2011 Petitioner's wife again called the doctor's office about a gout flare-up. (RX 12, p. 71)

On March 16, 2011 Petitioner's wife called the doctor reporting Petitioner wished to see a specialist for his gout. An appointment was made with Dr. Michael. Petitioner was then hospitalized for an acute gout attack primarily of the upper extremity. During his hospitalization Petitioner reported significant discomfort in his left knee which was drained. (RX 12, p. 60)

On March 18, 2011, Petitioner was found to have a small amount of right knee effusion. (RX12, p. 61). On April 7, 2011, he was again seen for right knee swelling and pain. (RX12, p. 49). He was diagnosed with gout and prescribed medication. *Id.*

Petitioner was working during the last part of August of 2011 when he had another gout flare-up in his leg(s). Petitioner's wife called reporting Petitioner was driving but couldn't walk and wanted a steroid pack which was provided. (RX 12, p. 22) On October 13, 2011 Petitioner was seen at Marshall Browning ER for a 1 1/2 week history of right knee pain. (RX 11)

On July 11, 2012, Petitioner presented to the Emergency Room at Marshall Browning Hospital for bilateral knee pain that was rated as a 10 out of 10. (RX11, p. 31). The right knee pain was located in the posterior aspect of the knee. *Id.* He was unable to ambulate without assistance, his range of motion was decreased, and his knees were red and warm. *Id.* Petitioner indicated his gout medication was not working, and he had flare-ups two times a week. (RX11, p. 34). He was assessed with acute gout and taken off of work until July 13, 2012. (RX11, pp. 35, 37). Additionally, the medical records document numerous gout attacks between 2005 and 2013, but do not specify the body parts affected. (RX11; RX12).

On March 5, 2013, Petitioner was exiting his truck around 8:00 a.m. and stepped out onto the catwalk steps. When he turned around to step down off of the catwalk, his foot stayed planted and his knee twisted. *Id.* His knee popped, he fell, and landed on his right side. Petitioner finished his run and made his second delivery. His last day of work was March 11, 2013.

According to the medical records, Cooper County EMS was dispatched to a rest area on March 11, 2013 where Petitioner was found complaining of severe knee pain. Cooper County Fire was also on the scene. Petitioner reported having fallen in Mississippi one week earlier. He also stated that he had begun experiencing pain in his right knee about 2:30 a.m. that morning and he rated it as a "10/10." Petitioner's right knee was described as somewhat swollen and he told personnel he had been on a steroid for his gout. (PX 3)

Petitioner was taken by ambulance to Cooper County emergency room on March 11, 2013. His complaints included right knee tenderness, swelling, and effusion. He was diagnosed with a sprain. (PX 3)

Petitioner presented to the REA Clinic on March 14, 2013, for the twisting injury to his right knee. (RX12, p. 4). He complained of a dull and aching pain aggravated by climbing stairs, movement and walking. On exam, the right knee was tender and there was severe pain with motion. (RX12, p. 6). He had joint line tenderness and a positive McMurray test bilaterally. *Id.* An MRI, performed on March 20, 2013, showed findings consistent with a contusion that was most prominent along the lateral distal femoral condyle. (PX5, p. 2). The test also showed subchondral internal low T1 high T2 signal in the distal medial femoral condyle posteriorly, questionable erosion along the medial tibial plateau, and either complex joint effusion or a possible synovial intercondylar notch cyst. *Id.* On March 26, 2013, Petitioner was referred to Dr. Davis. (PX7, p. 36).

On March 27, 2013, Petitioner obtained a higher quality MRI that showed a radial tear of the right medial meniscus, a slight irregularity of the inner margin of the posterior horn that likely represented fraying, and a chronic partial tear of the medial collateral ligament. (RX9, p. 1-2). It further showed extensive synovitis, abnormal areas of soft tissue that could be related to the history of gout, and soft tissue that appeared thickened along the popliteus tendon. *Id.*

On March 27, 2013, Dr. Christopher Rothrock, an orthopedic surgeon, performed a Section 12 Exam. (RX1, p. 1; RX5, p. 5). Petitioner described his twisting injury, reported a history of gout and intermittent bilateral knee pain, and denied any prior trauma to the right knee. (RX1, p. 1). Petitioner advised the doctor that in the preceding six months his gout had been well controlled. Dr. Rothrock reviewed the two MRIs performed in March of 2013. *Id.* He found the first MRI showed a significant contusion of the lateral distal femoral condyle. *Id.* The second MRI (performed that day) showed continued edema within the lateral distal femoral condyle near the attachment of the popliteus tendon, a medial collateral ligament tear, a thickened ACL, the suggestion of a radial tear of the root of the medial meniscus, and extensive synovitis that was consistent with the history of gout. *Id.* Petitioner, on exam, had moderate effusion, decreased range of motion, and was tender to deep

palpation at the lateral distal femur, medial joint line, and lateral joint line. Petitioner's quad displayed moderate atrophy and Petitioner was noted to raise his leg with pain. (RX1, p. 2). He was unable to tolerate other testing. *Id.* X-rays showed mild patellofemoral osteoarthritis with spur formation. (RX1, p. 3). Dr. Rothrock's diagnoses were a medial collateral ligament tear and a contusion to the lateral distal femoral condyle. *Id.* He concluded Petitioner's current symptoms were causally related to the work accident on March 5, 2013. *Id.* The treatment recommendations were a knee brace, physical therapy, anti-inflammatory medication, and utilization of ice for the intermittent swelling. *Id.* Dr. Rothrock felt work restrictions of no driving and sitting work only would be appropriate. *Id.*

On April 3, 2013, Petitioner saw Dr. Davis for right knee pain that he described as achy, dull, sharp, occasionally throbbing, and rated as an 8 out of 10. (PX7, p. 2). The knee felt weak and was swollen. *Id.* Dr. Davis reported that, before March 5, 2013, Petitioner had no complaints of pain, instability, or mechanical issues in the knee since he was treated in 2009. *Id.* On exam, Petitioner had trace effusion, a negative McMurray, and was only lacking five degrees of flexion when compared to his left side. *Id.* There was medial and lateral joint line tenderness. *Id.* He had a positive Lachman's test, +2 anterior drawer test, pain and +1 varus stress in full extension, and +1 to +2 varus stress at 30 degrees of flexion. (PX7, p. 3). X-rays of the right knee revealed mild right knee tricompartmental osteoarthritis. *Id.* Dr. Davis' impression was an exacerbation of mild osteoarthritis, a grade two sprain of the lateral collateral ligament, and an exacerbation of a chronic ACL tear or medial meniscus tear. *Id.* Dr. Davis believed the work injury caused the sprain and aggravated the underlying arthritis, chronic ACL tear, and chronic meniscus tear. *Id.* Conservative care was recommended and Petitioner was taken off of work. *Id.*

On April 17, 2013, Petitioner continued to complain of right knee pain, had mild to moderate effusion, and limitations in motion. (PX7, p. 5). Physical therapy was ordered, Norco prescribed, and he was released to desk duty. (PX7, pp. 5-6, 24). Petitioner was seen at Pinckneyville Community Hospital on April 22, 2013 for therapeutic exercise and e-stimulation. (PX 6) When seen on April 29, 2013 for therapy, Petitioner, who was dependent on crutches at that time, reported having lost his balance while descending stairs and falling. (PX 6) Petitioner had some improvement by May 6, 2013, but still reported significant aches and pains. (PX7) As of May 9, 2013 the therapist noted Petitioner had fallen twice since his injury due to knee give-away. (PX 7) Aquatic therapy, Mobic, and Voltaren gel were prescribed. (PX7, pp. 8-10, 20).

Petitioner signed his Application for Adjustment of Claim on May 13, 2013. (AX 2)

On June 7, 2013 Petitioner was again seen at Pinckneyville Hospital for therapy and was noted to be complaining about his right knee pain, immobility, difficulty walking, and the inability to work. Petitioner gave a history of having stepped out of his truck, twisting his right knee, and falling to the ground. He reportedly felt a "pop." Petitioner indicated he was able to continue working for a short time but then had to stop because of his complaints. X-rays and an MRI revealed a meniscus tear and bone chip. Petitioner reported having both injuries before (approximately three years before) but being able to work. "This incident apparently exacerbated his problems." Petitioner was taking mobic and hydrocodone. On examination Petitioner's knees were checked for range of motion with Petitioner advising the doctor that his left knee had always been limited more than the right due to his gout. A therapy plan was agreed upon (PX 6)

On June 10, 2013, Petitioner reported persistent pain and a sensation of his knee giving away. (PX7, p. 12). His range of motion continued to be reduced and there was medial and lateral joint line tenderness. *Id.* Surgery was recommended, but Dr. Davis advised he likely would not proceed with an ACL reconstructive procedure should Petitioner have a significant amount of arthritis and any degree of residual ACL. *Id.* He recommended a

meniscal repair and an assessment of the ACL during the procedure. (PX7, p. 13). Petitioner was continued at sedentary duty and prescribed Norco. (PX7, pp. 14-15).

On July 9, 2013, Dr. Rothrock authored a supplemental report after reviewing prior medical records related to Petitioner's right knee and the 2009 MRI. (RX2). According to Dr. Rothrick, the records documented a long-standing history of gout, right knee pain, and dysfunction. *Id.* A comparison of the 2009 MRI and the March 27, 2013 MRI showed no interval changes in the medial meniscus tear and the appearance of the ACL. *Id.* The March 13, 2013 MRI did show bone edema of the lateral femoral condyle consistent with an acute sprain or contusion. *Id.* Dr. Rothrock observed Dr. Davis appropriately treated the sprain and contusion and Petitioner had reached maximum medical improvement for the work injury of March 5, 2013. *Id.* He did not believe there was a medical causal relationship between Petitioner's current state and the work accident on March 5, 2013. *Id.* His current condition could be attributed to his pre-existing medial meniscus tear and long-standing history of gout. *Id.* Petitioner did not incur any permanent partial disability from the work injury on March 5, 2013, and any work restrictions or future treatment would not be causally related to the work injury. *Id.*

On January 3, 2014, a new MRI showed a likely nondisplaced full thickness tear of the posterior collateral ligament at its midpoint and ACL tear at its origin. (PX9, p. 2). The test revealed a grade II tear of the lateral collateral ligament origin, a grade II tear of the posterior medial collateral ligament origin, and an edematous signal at the medial meniscal posterior horn capsular attachment that was consistent with a strain. *Id.*

Petitioner saw Dr. Nathan Mall, an orthopedic surgeon, on January 3, 2014, and reported the work accident caused pain in the lateral aspect of the knee, the front of the knee, and some medial side pain. (PX8, p. 2; PX10, p. 3). Petitioner told Dr. Mall he had no prior right knee injuries, but did experience some knee pain in 2009 and had an MRI that showed an ACL injury. (PX8, p. 2). He indicated he "never had any pain subsequent to [2009]." *Id.* On exam, there was moderate effusion, decreased range of motion, medial and lateral joint line pain, a 2A Lachman's test, and stability to valgus and varus stress. (PX8, p. 4). Dr. Mall reviewed the MRI and concluded the lateral femoral condyle and lateral tibial plateau edema had resolved. (PX8, p. 1). This demonstrated Petitioner had suffered an acute injury in March that had resolved. *Id.* Dr. Mall also felt the MRI showed an abnormal posterior root of the medial meniscus, without evidence of a distinct tear, some potential tearing of the anterior horn of the lateral meniscus, an abnormal ACL, and some material that could be related to gout. *Id.* Petitioner was diagnosed with a medial meniscal root tear, lateral femoral condyle edema, lateral tibial plateau bone edema, moderate effusion, and a potential subchondral fracture. (PX8, p. 4). Surgery was recommended, a diagnostic cortisone injection was administered, and 30 cubic centimeters of clear, blood-tinged joint fluid were aspirated. (PX8, pp. 4-5). Petitioner was released to work with restrictions of no repetitive use of the right upper extremity, no walking over 30 minutes without a break, no climbing stairs or ladders, and no lifting, squatting, kneeling, or climbing, (PX8, p. 6).

Dr. Mall stated a twisting type mechanism could cause a meniscal tear and Petitioner was very honest "in terms of having a prior MRI that demonstrated some irregularity in his ACL." (PX8, p. 5). The ACL continued to look abnormal, but he felt it was stable and did not contribute "whatsoever to his meniscal injury." *Id.* In addition to the effusion on the March 27, 2013 MRI, Dr. Mall opined the fact Petitioner was able to perform his job without problem between 2009 and the work accident indicated this was a new, acute injury. *Id.* He opined Petitioner's symptoms were causally related to the accident on March 5, 2013. *Id.*

On January 23, 2014, Dr. Rothrock issued a second supplemental report after reviewing the 2014 MRI and records of Dr. Mall. (RX3). Comparing the March 27, 2013 and the 2014 MRIs showed resolution of the bone edema of the lateral femoral condyle. *Id.* Dr. Rothrock concluded there was no interval changes to the medial

meniscus tear or the appearance of the ACL between September 14, 2009, and March 27, 2013. *Id.* He opined a medical causal relationship did not exist between Petitioner's current state and the accident on March 5, 2013. *Id.* The need for surgery was not causally related to the accident on March 5, 2013. *Id.*

On January 31, 2014, Petitioner told Dr. Mall he only received four to five days of relief with the injection. (PX8, p. 7). Dr. Mall continued to recommend surgery, but did not think an ACL reconstruction would be necessary unless it was completely unstable. *Id.* Petitioner's relief from the injection led Dr. Mall to conclude the condition was mechanical in nature rather than an arthritic or inflammatory condition. (PX8, p. 8).

On February 28, 2014, Petitioner told Dr. Mall that a fall on February 25, 2014, caused him to have increased pain that was just starting to improve. (PX8, p. 11). He thought he fell because his knee gave out on him and reported a continued feeling of instability and knee swelling. *Id.* Dr. Mall had reviewed Dr. Davis' note from April of 2013, documenting a 2005 car accident that caused possible ACL and medial meniscus injuries. *Id.* He noted that, after conservative care in 2009, Petitioner "had no complaints of pain or instability or mechanical issues in the knee" until his work injury on March 5, 2013. *Id.* Petitioner advised he was able to work full duty, get in and out of trucks without problems, and had no swelling between 2009 and March 5, 2013. (PX8, p. 12). This led Dr. Mall to conclude the right knee was asymptomatic. *Id.* On exam, there was medial joint line tenderness, some mild lateral joint line tenderness, effusion, a positive McMurray's exam, a 2A Lachman's test, and a pivot slide. (PX8, p. 11). His diagnoses were right knee medial meniscal tear, partial lateral meniscal tear, and an ACL deficiency that was now symptomatic. (PX8, p. 12). Dr. Mall noted Petitioner's quadriceps strength had improved, causing him to believe the instability was coming from the ACL. *Id.* Dr. Mall opined the March 5, 2013, accident aggravated the prior ACL injury and may have torn the medial meniscus. *Id.*

On April 11, 2014, Dr. Mall noted Petitioner's pain, which was mostly medial, was about the same, he had some feeling of looseness, and he used a cane for long walks. (PX8, p. 14). An exam showed pain along the medial aspect of the knee, mild looseness with Lachman's testing, and a positive McMuray's examination. *Id.* A knee arthroscopy and possible ACL reconstruction were recommended. *Id.* Dr. Mall stated the surgery would permit him to determine whether the ACL or quadriceps weakness was causing instability. *Id.*

On April 24, 2014, Dr. Rothrock reviewed additional material from Dr. Mall and issued a third supplemental report. (RX4). After re-reviewing all four MRI films, he was still of the opinion there were no interval changes to the medial meniscus tear and the ACL's appearance from 2009 through 2014. *Id.* He agreed surgery was appropriate, but the need for it was not causally related to the work injury. *Id.*

Dr. Mall was deposed on March 24, 2014. (PX10). He has been practicing medicine for approximately one and a half years and is not board-certified. (PX10, pp. 39-40). Dr. Mall testified Petitioner's diagnoses were a right knee medial meniscus tear in the posterior root, a small area of potential abnormality in the lateral meniscus, an ACL injury, and resolved bone edema from an impact-type injury in the lateral compartment. (PX10, pp. 19-20). He concluded the work injury caused a meniscal tear and aggravated the pre-existing ACL tear. (PX10, p. 40). Dr. Mall felt the 2009 MRI showed an abnormality in the area of the posterior horn of the meniscus. (PX10, p. 21). He testified the tear seen in 2009 was in a different location than the root tear seen on the new MRIs. (PX10, pp. 21, 57-58). He opined the accident on March 5, 2013, caused Petitioner to incur a right knee injury that was different from his pre-existing problems and this injury precipitated the current symptoms. (PX10, pp. 27-28). Dr. Mall admitted the root tear could have been present in 2009, but the poor quality of the MRI prevented it from being seen. (PX10, p. 58).

Dr. Mall testified Petitioner did well after treatment for his ACL in 2009, then reinjured it, and now had symptoms of instability. (PX10, p. 25). As Petitioner was not having any pain, significant problems, or instability immediately prior to the accident, he concluded he clearly sustained a knee injury on March 5, 2013. (PX10, p. 27). The post-injury MRI also indicated an injury had occurred. *Id.* Dr. Mall recognized Petitioner had knee problems between 2009 and 2013, but testified he worked full duty, did not require multiple doctor visits, and the symptoms were not related to the prior meniscus or ACL injuries. (PX10, pp. 41, 43-44). He did not place much significance on the fact Petitioner's family doctor ordered an MRI in 2010 because he did not "necessarily always believe primary care doctors have the best indications for ordering MRIs." (PX10, p. 55). Despite Petitioner's degenerative arthritis and history of gout, Dr. Mall felt Petitioner would be a good candidate for an ACL reconstruction. (PX10, p. 59).

Dr. Mall stated gout causes arthritis which, in turn, causes or is associated with meniscal tears. (PX10, pp. 28, 50). He was unaware of Petitioner's diagnosis of chondrocalcinosis, a condition also known as pseudogout that causes arthritis and can overlap with gout. (PX10, pp. 52-54). Dr. Mall testified the x-rays did not show significant arthritis and neither the MRIs or the x-rays showed more than a very minimal amount of cartilage damage. (PX10, pp. 22, 28). If Petitioner was having problems from gouty arthritis, he indicated the cortisone injection should have provided extended relief. (PX10, p. 28). Dr. Mall also testified that the fluid pulled from Petitioner's knee gave no indication of a gouty process; it lacked the cloudiness typically seen with gout. Coupled with Petitioner's response to injection and the tinge of blood within the fluid, it was apparent that Petitioner's problem was mechanical and not arthritic.

Dr. Mall testified to his belief that Petitioner's current complaints were related to his March 2013 work accident and to Petitioner's lack of instability problems prior to the precipitating accident:

Q: So based upon the history you obtained from Mr. Needham, physical exam, prior diagnostic studies, prior records, were you able to reach an opinion within a reasonable degree of medical certainty as to whether this incident that occurred on March 5th of 2013 either caused, contributed to, or aggravated Mr. Needham's right knee condition?

A: I was. And so I believe that because he was not having any symptoms of instability, nor any pain prior to – immediately prior to his work injury and was working full duty, that he clearly had an injury to the knee, based on the MRI showing the lateral compartment edema, little bit of edema in the medial femoral condyle as well, and then the meniscus tear present, as well as the ACL injury, that there was an injury that occurred to the knee, and that that occurred with this work-related accident that occurred on March 5th of 2013. So just based on his symptoms alone, the fact that he was not having any problems before this in terms of significant problems that required him to have multiple treatments of his knee to the point now where he's been treated for this for over a year with continued pain and continued symptoms, I don't think there's any doubt that he didn't have an injury to the knee that's different than what he had – any preexisting problems in the past.

Q: We've talked about the fact that Mr. Needham has a documented history of gout. Do you believe that any of the symptoms that he's having in his right knee are coming from gout?

A: So gout can cause flare-ups of the knee and can cause little bouts of swelling, but the major problem with gout is that it causes arthritis, and it causes degradation of the cartilage. His MRIs, his x-rays, and everything show very minimal to no cartilage injury,

and if he was having problems from gouty arthritis, that cortisone injection would have lasted him a pretty long time.

So I don't think that there's any doubt that he had a new injury and that that injury precipitated the pain he's having now. And meniscus tears and ACL tears don't have anything to do with gout. Gout is – just because you have gout doesn't mean that anything wrong with your knee has to be related back to the gout.

So people that have gout can have other injuries to the knee just like anybody else can have it. So I think that there's a lot of discussion of gout in his records, but none of what we're talking about here in terms of his injury has anything to do with his gout. It just happens to be that that was in his prior history. (PX 10, pp. 27-28)

On August 19, 2013, and May 7, 2013, Dr. Rothrock, a board-certified surgeon who has been practicing medicine for twelve years, was deposed. (RX5, pp. 5, 59; RX6). When Dr. Rothrock first saw Petitioner on March 27, 2013, he had not been provided with any medical records to review. (RX5, p. 7). He diagnosed a causally connected contusion to the lateral distal femoral condyle and a medial collateral ligament tear. (RX5, pp. 14-15). Afterward, Dr. Rothrock received prior medical records and the 2009 MRI. (RX5, pp. 16-17). He noted Petitioner initially reported no prior injuries to the right knee, but the records showed a history of trauma. (RX5, p. 20). Upon comparing the 2009 and March 27, 2013, MRIs, Dr. Rothrock found no interval change and revised his causation opinion. (RX5, pp. 18-20). He opined the meniscal tear and appearance of the ACL were pre-existing and the accident on March 5, 2013, resulted in a sprain or contusion to the lateral femoral condyle. *Id.* After the opportunity to review all four MRIs in this case, Dr. Rothrock again concluded there was no interval changes to the medial meniscus tear or the appearance of the ACL from 2009 to 2014. (RX5, p. 19-20; RX6, p. 8). He explained when looking at an MRI, the doctor looks for "change, fluid, signifying a tear." (RX6, p. 11). The signal in this case was the same throughout all four MRIs, indicating the tear seen in all of them was the same. *Id.* The 2013 MRIs did show a new finding of bone edema in the lateral femoral condyle at the popliteus insertion which signified an acute sprain and contusion. (RX5, p. 19).

Dr. Rothrock explained the meniscus in the knee is a type of cartilage that sits on top of the tibia. (RX6, p. 9). The lateral meniscus and medial meniscus are both shaped like the letter "C," which line opposing sides of the tibia, and the open portions of each meniscus were positioned so that they faced each other. *Id.* The evidence of an acute injury was on the lateral side of Petitioner's knee in the distal femoral condyle, as opposed to the medial meniscus, and it completely resolved. (RX6, pp. 27, 29). Petitioner had reached maximum medical improvement for the sprain and contusion incurred on March 5, 2013, and Dr. Rothrock testified no further treatment was needed for the injury. (RX5, p. 28; RX6, p. 14). He opined the accident on March 5, 2013, was not a causative factor of Petitioner's current state of ill-being, and it was not possible for the 2013 accident to have aggravated the pre-existing medical meniscal tear based on the evidence of the location of the acute injury in the lateral part of the knee. (RX6, pp.11-12, 27). He found no permanent partial disability was incurred as a result of the injury on March 5, 2013. (RX5, p. 28; RX6, p. 14).

Dr. Rothrock indicated the treatment and work restrictions Petitioner received between August 19, 2013, and May 7, 2014, were not causally related to the accident on March 5, 2013. (RX6, p. 14). He testified the recommended surgery would not be causally related to the accident on March 5, 2013. (RX5, p. 28; RX6, p. 13). Due to Petitioner's degenerative arthritis and history of gout, Dr. Rothrock did not believe Petitioner would be a good candidate for an ACL reconstruction. (RX5, p. 39). He indicated Dr. Davis appeared to be of the same opinion. (RX5, p. 40).

In response to a hypothetical question, Dr. Rothrock testified that, assuming Petitioner was doing well and working full duty before March 5, 2013, and, after the injury on that date, did not return to baseline, the accident could be responsible for the increase in symptoms. (RX5, p. 40). He further testified the increase of symptoms could also just as easily be from the natural dilapidation of his degenerative joint. *Id.* It was Dr. Rothrock's opinion that, after Dr. Davis provided treatment for the sprain and contusion, there was not a causal connection between the March 5, 2013, accident and Petitioner's remaining knee condition. (RX5, p. 48).

Dr. Rothrock disagreed there were two distinct tears in the medial meniscus. (RX6, p. 12-13). The root lies at the top of the "C" and is a part of the posterior horn. (RX6, p. 10). Petitioner's tear was in the posterior horn near the root of the medial meniscus. (RX6, p. 12). Although the 2009 and March 20, 2013 MRIs were of poor quality, Dr. Rothrock found they were acceptable for a comparison to the later two MRIs. (RX6, p. 13).

Dr. Rothrock explained gout can lead to crystal deposition within the cartilage, inflammatory reactions, and destruction of the meniscus and joint. (RX5, pp. 8-9). Petitioner's x-rays revealed he had in the patellofemoral compartment and spur formation that demonstrated the chronicity of the problem. (RX6, p. 9).

During his first deposition, while under cross-examination, Dr. Rothrock conceded that Petitioner's work accident played a role in his current condition of ill-being:

> Q: Okay. Well, I'll even ask it the way you should on direct examination: Assuming this gentleman was, as Dr. Davis indicates, doing well prior to March 5 of 2013, assuming, sir, that he was working full duty as a truck driver without restriction, he has this injury as you say, and according to Dr. Davis and to you, he does not return to baseline, would you agree that the incident of 5 – excuse me 3-5-13 is responsible for the current increase of his symptoms?
>
> A: It could be.
>
> . . .
>
> Q: Okay. Certainly you would agree that the fall as described to you is a factor in this gentleman's continued symptoms?
>
> A: It has played a role. (PX 5)

Despite the above concession, Dr. Rothrock testified in a second deposition that Petitioner's work accident did not aggravate Petitioner's underlying condition. He testified that he could not appreciate the new pathology that Dr. Mall identified on MRI and that Petitioner's 2013 accident did not aggravate Petitioner's underlying pathology. He acknowledged that his supplemental reports offer no opinion as to what caused Petitioner's condition and only state it was not Petitioner's accident of March 5, 2013. (PX 6)

At the arbitration hearing Petitioner testified that he is 6 feet three inches tall and weighs 290 pounds. At the hearing, he testified that, due to his size, he always had difficulty using the catwalk steps to get in and out of his truck. Petitioner's symptoms since March 5, 2013, included a lot of pain in the front, inner part of the right knee and on the outside of the knee. He had sharp pain in the front, left corner of the knee and a lot of stability issues when too much pressure was placed on it. While the medial meniscal and ACL problems resulted in tenderness and difficulty walking, they only caused a little swelling. Conversely, a gout attack caused sharp pain in the front part of the knee and his joint would be swollen and unmovable. A gout flare-up felt like Petitioner's knee was filled with fluid which then pushed out on his kneecap. Flare-ups did not really cause knee tenderness, but did result in a loss of his range of motion and a limp with ambulation. Petitioner testified his ACL/meniscus

symptoms differed in both nature and location than the symptoms from a gout flare-up. The ACL/meniscus condition affected the inner knee, while gout flare-ups affected the front part of the kneecap.

Petitioner was given crutches when he went to the Emergency Room on March 11, 2013. He was not given instructions concerning how long to use the crutches and he continued to depend on them for two months. He began utilizing a cane four to five months after the injury and felt it eased the pain of stepping down on his right foot. Without the cane, he tended to stumble or fall. The cane was not prescribed, but Petitioner testified Dr. Mall recommended, on January 3, 2014, that he continue using it for stability. Since March 5, 2013, his right knee condition has never returned to baseline. He remains on restrictions.

Sarah Needham, Petitioner's wife of 12 years, also offered testimony at the hearing. Mrs. Needham indicated Petitioner had gout problems between 2005 and 2009, and she helped take care of him during the flare-ups. She testified that, prior to March 5, 2013 Petitioner was able to control his gout. She also testified Petitioner's gout had not always been controlled and he was on the wrong medication for quite some time. Several times, Mrs. Needham had to contact the doctor to get medication for Petitioner because he was on a run and experiencing a gout flare-up. The gout only became controlled when he was placed on a new medication regimen. Mrs. Needham did not believe that, after the accident on March 5, 2013, Petitioner ever returned to the same condition he was in pre-injury.

The Arbitrator concludes:

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner's current condition of ill-being in his right knee is causally related to his undisputed accident of March 5, 2013. This determination is based upon the mechanism of injury, the opinions of Dr. Mall and Dr. Davis, and both Petitioner's and Mrs. Needham's credible testimony concerning the condition of Petitioner's knee both before and after his accident.

When a pre-existing condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Even when a pre-existing condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 797 N.E.2d 665 (2003).

An accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 797 N.E.2d 665, 672 (2003). [Emphasis original]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3d Dist. 2000). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist., 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). If a pre-existing condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967); *see also Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 362 N.E.2d 339 (Ill. 1977).

Additionally, a causal connection between work duties and injured condition may be established by chain of events including workers' compensation claimant's ability to perform duties before date of accident and inability to perform same duties following date of accident. *Darling v. Indus. Comm'n of Illinois*, 176 Ill. App. 3d 186, 530 N.E.2d 1135 (Ill. App. Ct. 1988).

In this instance, the Arbitrator finds the opinions of Dr. Davis and Dr. Mall to be persuasive. Dr. Davis was in unique position of being Petitioner's treating physician both before and after the accident of March, and he had thorough knowledge of Petitioner's previous injuries, as he treated Petitioner for them back in 2009. Dr. Mall agreed with Dr. Davis that Petitioner's underlying right knee condition was aggravated by Petitioner's work accident. Dr. Mall and Dr. Davis noted that Petitioner's mechanical knee complaints were resolved at the time his work injury occurred, but have not subsided since that date. This corroborates Petitioner's testimony at Arbitration. Petitioner credibly testified that he had no further complaints with regard to his ACL or any other mechanical source since 2009. He also testified that his gout symptoms are distinct, and originate from an entirely different area of his knee. Petitioner's testimony was supported by Dr. Mall, who also testified that Petitioner's gout had absolutely nothing to do with Petitioner's mechanical complaints and instability. Dr. Mall confirmed his belief during the administration of Petitioner's cortisone injection, when fluid was aspirated that contained no gouty trophi or cloudiness, only blood evidencing acute trauma. Furthermore, Petitioner's gout never kept Petitioner from working full duty prior to his undisputed work accident. Dr. Mall consistently believed and testified that Petitioner sustained an aggravation of his preexisting pathology as well as new injury superimposed upon his preexisting condition. This belief was shared by Dr. Davis, although Dr. Davis was unable to appreciate the extent of the new injury due to the quality of the MRI, which both Dr. Rothrock and Dr. Mall agreed was poor.

The Arbitrator does not find the opinions of Dr. Rothrock persuasive or credible. After rendering a causation opinion favorable to Petitioner, he changed his opinion when asked to review Petitioner's past records following a recommendation for surgery from Dr. Davis. Dr. Rothrock then believed Petitioner's current complaints to be related solely to his pre-existing condition and gout. He claimed that Petitioner's sprain had resolved, while Petitioner's subsequent imaging studies showed edema and other evidence of acute trauma, as noted by Dr. Mall. When asked to explain his difference of opinion with regard to those findings, he simply stated that he was not able to appreciate these findings, and later that the lateral location of Petitioner's acute pathology led him to believe that the underlying conditions were not aggravated. The Arbitrator notes, however, that if the location of Petitioner's acute trauma was dispositive of whether or not Petitioner suffered an aggravation of his underlying condition, then Dr. Rothrock's first opinion incriminates the latter. Dr. Rothrock initially believed that Petitioner's medial tear *and* lateral pathology was related to his injury, prior to being fed information regarding Petitioner's past pathology. Hence, the location of the lateral pathology could not possibly rule out an aggravation of Petitioner's underlying condition. Dr. Rothrock was also fully aware of Petitioner's gout when he rendered his first causation opinion stating that Petitioner's complaints were related to his work injury. It is difficult to believe that Petitioner's accident in no way aggravated his underlying condition, given the unbreakable link between his accident and his inability to work full-duty. Furthermore, he conceded during his first deposition on cross-examination that Petitioner's accident did play a part in Petitioner's current symptoms. Dr. Rothrock believes that Petitioner's conditions require further treatment, but does not believe that same would be related to the March 2013 work accident. Based upon these clear inconsistences within Dr. Rothrock's testimony and the incongruences between his opinion and the evidence in the record, the Arbitrator does not find the opinion of Dr. Rothrock to be credible.

Petitioner testified without rebuttal that his condition has not returned to baseline since the accident, and that he remains under the restrictions of Dr. Mall. Petitioner has not sustained an intervening accident. His

symptoms of giving way are the result of the instability created by his undisputed work accident, and therefore a natural consequence flowing from his work injury. *See Lasley Const. Co., Inc. v. Indus. Comm'n,* 274 Ill.App.3d 890, 655 N.E.2d 5 (5th Dist., 1995). *See also Vogel v. Industrial Comm'n,* 821 N.E.2d 807, 813 (2d Dist. 2005). Courts have consistently held that for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition; as the Court in *Lasley Const. Co.*, aptly put it, "The fact that other incidents, whether work related or not, may have aggravated claimant's condition is irrelevant." *Id.*; *See also Teska v. Indus. Comm'n,* 610 N.E.2d 1 (1994) (finding no intervening accident since there would have been no aggravation due to bowling "but for" the original work related accident and the initial injury).

Based upon the foregoing, the Arbitrator concludes that Petitioner's current condition of ill-being is causally related to his work injury on March 5, 2013.

Issue (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?
Issue (K): Is Petitioner entitled to any prospective medical care?

Respondent only disputed medical care based upon its dispute of causal connection, which has been resolved in Petitioner's favor. Petitioner has clearly not reached maximum medical improvement, as Petitioner remains temporarily and totally disabled, recommended treatment remains outstanding and Petitioner wishes to proceed with same. Respondent is therefore ordered to pay the medical expenses contained in Petitioner's group exhibit #1 and to authorize and pay for the treatment recommended by Dr. Davis and Dr. Mall.

Issue (L): What temporary benefits are in dispute? (TTD)

Based upon the above findings as to causation and the evidence in the record showing that Petitioner remains temporarily and totally disabled due to his work injury, Respondent continues to be liable for temporary total disability benefits. Respondent paid temporary total disability benefits from March 12, 2013 up until July 18, 2013, but ceased paying after that date. Respondent is therefore ordered to pay temporary total disability benefits for a further period of 42 weeks (July 19, 3013 through May 8, 2014).

****

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

☒ 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

Guillermo Alfaro,

Petitioner,

vs.

NO: 12 WC 21434
(consol.) 13 WC 10099

Steak 'N Shake,

Respondent.

15IWCC0582

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent Steak 'N Shake and notice given to all parties, the Commission, after considering the issues of accident, notice, medical expenses, average weekly wage, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on October 3, 2014 is hereby affirmed and adopted.

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

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

15IWCC0582

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $2,700.00. 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: JUL 28 2015
MJB:ell
o-06/22/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

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

ALFARO, GUILLERMO
Employee/Petitioner

Case# 12WC021434

13WC010099

STEAK 'N SHAKE INC AND PANERA BREAD
Employer/Respondent

15IWCC0582

On 10/3/2014, 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 0.04% 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:

0564 WILLIAMS & SWEE LTD
DIRK A MAY
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

1832 KLAUKE LAW GROUP LLC
GEORGE F KLAUKE JR
10 MARTINGALE RD SUITE 400
SCHAUMBURG, IL 60173

0180 EVANS & DIXON LLC
ROBERT HENDERSHOT
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF McLean)

☐ 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
19(b)

Guillermo Alfaro
Employee/Petitioner

Case # 12 WC 021434

v.

Consolidated cases: 13 WC 10099

Steak 'n Shake, Inc. and Panera Bread
Employer/Respondent

15IWCC0582

Applications for Adjustment of Claim were filed in these matters, and *Notices of Hearing* were mailed to each party. The matters was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Bloomington, Illinois**, on **August 29, 2014**. 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 Respondents?

D. ☐ What was the date of the accident?

E. ☒ Was timely notice of the accident given to Respondents?

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 Respondents 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

15IWCC0582

On the date of accident, **May 7, 2012**, Respondents *were* operating under and subject to the provisions of the Act.

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

On this date, Petitioner **did** sustain an accident that arose out of and in the course of employment with Respondent **Steak n' Shake (12 WC 21434)**; Petitioner ***did not*** sustain an accident that arose out of and in the course of employment with **Panera Bread (13 WC 10099)**.

Timely notice of this accident was given to Respondents.

Petitioner's current condition of ill-being ***is*** causally related to the accident with respect to Respondent **Steak n' Shake (12 WC 21434)**; Petitioner's current condition of ill-being ***is not*** causally related to his employment with Respondent **Panera Bread (13 WC 10099)**.

In the year preceding the injury, Petitioner earned $**35,763 (combined)**; the average weekly wage was $**625.60**.

On the date of accident, Petitioner was **36** years of age, **married** with **4** dependent children.

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services as Respondent is found to have no liability for any medical services provided Petitioner.

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 **Steak n' Shake (12 WC 21434)** shall pay reasonable and necessary medical services of $**2,563.00**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent **Steak n' Shake (12 WC 21434)** shall authorize and pay for medical treatment as directed by Dr. Oakey.

Petitioner has failed to meet his burden of proof with respect to the issues of accident and medical causation as against Respondent **Panera Bread (13 WC 10099)**; therefore, no benefits for past medical treatment expenses or future medical treatment are awarded as against Respondent **Panera Bread (13 WC 10099)**.

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 **(12 WC 31434)**.

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

Date 9/30/14

ICArbDec19(b)

OCT 3 - 2014

STATEMENT OF FACTS:

Petitioner filed Applications for Adjustment of Claim alleging he sustained injuries to his upper extremities on or about May 7, 2012 while working for both Steak n' Shake and Panera Bread. Petitioner testified each employer was aware of the other prior to May 2012, as Petitioner had to advise them he would work at Panera's morning shift and work the evening shift at Steak n' Shake.

Petitioner testified he began working for Steak n' Shake in April 2004, performing duties including working on the grill, preparing shakes, and scooping ice cream. Petitioner explained he flipped "thousands" of burgers, and was required to push down hard with a spatula on each burger in order to flatten it out on the grill. Petitioner testified he also scooped several hundred ice creams on each shift, and explained scooping ice cream was difficult because the ice cream was frozen and hard. Petitioner stated when his right hand would become tired from trying to scoop ice cream he would use his left hand. Petitioner testified he worked at Steak n' Shake approximately forty hours per week until June 2014, when his hours were reduced to thirty to thirty-two hours a week. Petitioner testified at the same time his hours were reduced, Steak n' Shake also modified his job duties, taking him off grill work and ice cream scooping due to his hand complaints.

Petitioner testified he first started working for Panera in July 2009. Petitioner explained his duties at Panera were different from those at Steak n' Shake, and included grilling and cooking chicken, cutting items with a knife, making soups and sandwiches, and working the salad station.

Petitioner testified he initially developed pain and tingling in his right hand while working for Steak n' Shake. Petitioner testified he reported his hand symptoms to his supervisor at Steak n' Shake five to six years prior to the hearing, or 2008 to 2009, and would occasionally go to see a doctor for his hand symptoms. The medical records indicate Petitioner first reported hand symptoms to a doctor on February 9, 2009, when he presented to Community Health Center [*hereinafter* "CHC"] with complaints of "needle like pain" at night, numbness, and inability to feel cold water. (Resp. Ex. A1) It was noted Petitioner "works grill @ Steak n Shake." (*Id.*) The assessment was "R[ight] hand neuropathy/pain", and Petitioner was provided with a cock-up wrist splint for use at night. (*Id.*) Petitioner reported wearing his wrist splint when he returned to CHC on June 16, 2009, and further reported his hand pain was "gone". (*Id.*)

At a March 15, 2010 visit to CHC, Petitioner again reported using the wrist brace at night; however, he had complaints of right hand and finger tingling "worse on work days". Petitioner advised he "flips burgers @ Steak n Shake", and the CHC physician assessed probable carpal tunnel syndrome, advised Petitioner he "needs to go thru W[ork] C[omp]", and recommended a large handled spatula. (Resp. Ex. A1) On April 22, 2010, Petitioner advised the CHC physician he was seeing "WC doctor for CT – he is working on neck." (*Id.*) The Arbitrator notes that no records for that treatment were submitted into evidence.

On January 31, 2011 Petitioner was evaluated by Dr. Jerome Oakey for complaints of "right hand tingling and numbness" which had "bothered him for a couple of years." (Pet. Ex. 2) Petitioner told Dr. Oakey he had worked at Steak n' Shake for six years, always "back in the kitchen as a cook." (*Id.*) Dr. Oakey noted Petitioner's use of the wrist splint, home exercises, and medications had been unsuccessful in treating his symptoms, and he recommended an EMG. Dr. Oakey opined that "the work he has done at Steak and Shake for 6 years is causally related to the carpal tunnel". (*Id.*)

On March 7, 2011, Petitioner was seen at CHC. The CHC physician indicated Petitioner was now at standstill", and recommended Petitioner follow up with workers' compensation for his complaints of right wrist pain. (Resp. Ex. A1) Petitioner had filed a workers' compensation claim against Steak n' Shake on February 3, 2011; however, that case was later dismissed. (Resp. Ex. B2)

Petitioner was not again seen for right wrist symptoms until February 13, 2012, when he presented to CHC with complaints of "numbness/burning to R[igh]t hand all fingers for 4-5 years. Has worked grill @ fast food for 8 years." The assessment was "probable right carpal tunnel", and an EMG nerve conduction study was again recommended. (Resp. Ex. A1)

The EMG was performed by Dr. Nenita Tudtud, who noted Petitioner's complaints of right sided symptoms as well as "occasional numbness on the left hand but no [pain]", as well as Petitioner's history of working at Steak 'n Shake and doing "a lot of grilling". (Pet. Ex. 3) Dr. Tudtud interpreted the study as indicative of "very severe right carpal tunnel syndrome" and "mild left carpal tunnel syndrome", and she recommended surgical consultation for a right carpal tunnel release. (*Id.*)

Petitioner returned to Dr. Oakey on May 7, 2012 advising that physician his job at Steak n' Shake involved "repetitive gripping and grasping activities, more so with the right than the left". (Pet. Ex. 2) Dr. Oakey discussed with Petitioner the need for a right carpal tunnel release and reiterated his opinion the carpal tunnel was causally related to his work at Steak n' Shake over the preceding nine years. (*Id.*)

Petitioner testified by the time he saw Dr. Oakey on May 7, 2012, he had noticed an increase in his symptoms of tingling and numbness and pain, with the right-sided symptoms more significant than those on the left. Petitioner testified he would be bothered by his symptoms at both Steak n' Shake and Panera. Petitioner filed his second, present, claim against Steak n' Shake on June 19, 2102. (Resp. Ex. B3) Petitioner testified he discussed his hand complaints with his supervisor at Panera, Brian, approximately two years prior to trial, or roughly late 2012, and filed the present claim against that employer in March 2013.

Dr. Joseph Newcomer, a board-certified orthopedic surgeon, testified by way of deposition. (Pet. Ex. 1, 5) Dr. Newcomer evaluated Petitioner at the request of Steak n' Shake on October 12, 2012. (Pet. Ex. 1, 6) Dr. Newcomer received a history from Petitioner of his job duties at both Steak n' Shake and Panera, as well as a history of Petitioner's symptoms of numbness and tingling beginning around 2008. (Pet. Ex. 1, 7) Dr. Newcomer testified he reviewed Petitioner's medical treatment records and performed an examination limited to the right hand. (Pet. Ex. 1, 7-8, 9) Dr. Newcomer testified his diagnosis was "severe carpal tunnel syndrome", and he felt a carpal tunnel release was necessary. (Pet. Ex. 1, 10) Dr. Newcomer opined Petitioner's work at Steak n' Shake was "certainly an aggravation of" Petitioner's carpal tunnel syndrome, explaining Petitioner's activities of "grasping, gripping" at Steak n' Shake would aggravate the condition. (Pet. Ex. 1, 11) Dr. Newcomer added "I know those guys have to pound those patties out, and I know that could be an aggravation with the direct pressure in the hand." (*Id.*) Although Dr. Newcomer acknowledged he was aware of Petitioner's work at Panera when he completed his report, the doctor also acknowledged he did not make any mention of any causation opinion with respect to Panera in his report. (Pet. Ex. 1, 17)

At trial, Petitioner testified he experiences tingling and numbness in his right hand, and stated it feels as though his hand is on fire. Petitioner reported similar but less intense symptoms in his left hand.

With respect to (C.) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent; and, (F.)Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

The key to the determination of compensability of repetitive trauma injuries is the fixing of a manifestation date – the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 529-30 (1987) In considering the questions of repetitive trauma cases, the Supreme Court has cautioned "[t]he facts must be closely examined" so as "to ensure a fair result for both the faithful employee and the employer's insurance carrier." *Durand v. Industrial Comm'n*, 244 Ill.2d 53, 64 (2006). It is nearly axiomatic that a claimant for benefits has the burden of proving all elements of the claim; however, "[i]n cases relying on the repetitive-trauma concept, the claimant generally relies on medical testimony establishing a causal connection between the work performed and claimant's disability." *Williams v. Industrial Comm'n*, 244 Ill.App.3d 209 (1993) (*citing Nunn v. Industrial Comm'n*, 157 Ill.App.3d 470, 477 (1987)).

In this case, the medical evidence and testimony establishes a clear connection between Petitioner's work at Steak n' Shake and his carpal tunnel condition. Petitioner's complaints date as far back as 2009, prior to his employment at Panera, when he presented to CHC with carpal tunnel symptoms and advised he "works grill @ Steak n Shake". (Resp. Ex. A1) Petitioner's association of his symptoms with his work at Steak n' Shake continues throughout the medical records; the CHC records in 2010 and 2011 not only describe Petitioner's continued symptoms, but reference the claim against Steak n' Shake Petitioner had filed on February 3, 2011. Specifically, Petitioner advised the CHC physician on March 15, 2010 he had complaints in his right hand "worse on work days" and indicated his job was "flips burgers @ Steak n Shake". (*Id.*) Similarly, on January 31, 2011, Petitioner reported his symptoms to Dr. Oakey, advising he had worked at Steak n' Shake for six years "back in the kitchen as a cook". (Pet. Ex. 2) Petitioner even advised Dr. Newcomer his symptoms were related to his work at Steak n' Shake. (Pet. Ex. 1, 8)

Dr. Oakey opined on two separate occasions, January 31, 2011 and May 7, 2012, that Petitioner's carpal tunnel syndrome was causally related to his work at Steak n' Shake. This opinion was echoed by Dr. Newcomer, who testified Petitioner's work at Steak n' Shake was "certainly an aggravation of" Petitioner's condition. (Pet. Ex. 1, 10) Dr. Newcomer explained the basis for this opinion, referencing Petitioner's need to grasp and grip as well as specifically explaining flattening of the burgers as an aggravating factor in the carpal tunnel condition. Not only does the evidence show the relationship between his symptoms and his work at Steak n' Shake was plainly apparent to Petitioner, but the evidence shows this relationship was apparent to the doctors considering the issue of causation. This evidence, as well as Petitioner's credible testimony, demonstrates Petitioner not only sustained an accident arising out of and in the course of his employment with Steak n' Shake, but also proved by a preponderance of the evidence the causative link between his employment at Steak n' Shake and his condition of ill-being.

At the same time, Petitioner has not met his burden on the issues of accident and causation with respect to Respondent Panera. Petitioner specifically testified he reported his hand symptoms to his Steak n' Shake supervisor in roughly 2008 or 2009, before he had even started starting at Panera. This demonstrates Petitioner already believed there was a connection between his symptoms and his work at Steak n' Shake before starting at Panera. While Petitioner's records repeatedly mention Petitioner's employment at Steak n' Shake, none of those same records ever reference Petitioner's employment at Panera, further reinforcing Petitioner's belief it was the Steak n' Shake work which was causing his symptoms. Petitioner credibly testified as to the forces used and his difficulties with this Steak n' Shake duties, compared to the relatively simpler duties at Panera. Even Dr. Newcomer, who was aware of Petitioner's duties at both Panera and Steak n' Shake, linked Petitioner's symptoms only to Steak n' Shake and did not reference Panera in his report when considering causation. Even if Dr. Newcomer had testified Petitioner's duties at Panera played a causative role in his carpal tunnel syndrome, unlike his testimony about Steak n' Shake, there was no explanation of how the Panera duties played that causative role. Given the lack of sufficient evidence upon which to base a manifestation date and

the lack of medical testimony establishing a causative relationship, Petitioner has failed to meet his burden of proof on the issues of accident and causation with respect to Respondent Panera.

With respect to (E.) Was timely notice of the accident given to Respondent, the Arbitrator finds as follows:

Given the above findings, the only pertinent issue is whether proper notice was provided to Respondent Steak n' Shake. Petitioner's testified he reported his hand symptoms to his supervisor at Steak n' Shake in 2008 or 2009; this testimony was unrebutted by Steak n' Shake. Further, the May 7, 2012 accident date was not Petitioner's first attempt to allege he had suffered a work related injury to his hands; he had previously filed a claim against Steak n' Shake for an August 2010 manifestation date in February 2011. Additionally, Petitioner continued to perform the same job duties for Steak n' Shake until June 2014, when his hours and duties were altered. Steak n' Shake is not in a position to claim it was unaware of Petitioner's complaints, nor is Steak n' Shake in a position to allege prejudice when it continued to have Petitioner in its employ performing the same tasks he always had. For these reasons, the Arbitrator finds that Petitioner has met his burden of proof on the issue of notice with respect to Respondent Steak n' Shake.

While the above findings render the issue of notice provided to Respondent Panera moot, for the sake of completeness, the Arbitrator notes Petitioner's unrebutted testimony that he told supervisors at Steak N' Shake and Panera, respectively, in May, 2012 about problems with pain and numbness in his hands at work. The Arbitrator finds Petitioner met his burden of proof on the issue of notice with respect to Respondent Panera.

With respect to (G.) What were Petitioner's earnings, the Arbitrator finds as follows:

Petitioner alleges an average weekly wage based upon his concurrent employment at Respondents Steak n' Shake and Panera. Petitioner's testimony, unrebutted by either Respondent, was that both employers were aware of each other prior to the May 7, 2012 date of injury, as Petitioner had to advise each as to his schedule. Specifically, Petitioner had to advise them he was working the morning shift at Panera and the evening shift at Steak n' Shake.

Based upon this evidence, Petitioner is found to have a combined average weekly wage of $625.60.

With respect to (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; and (K.) Is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

Given the above findings, Respondent Steak n' Shake is ordered to pay the following reasonable and necessary medical expenses listed in Petitioner's Exhibit 4, pursuant to the Fee Schedule:

McLean County Orthopedics	$ 161.00
Reimburse Petitioner	96.00
Reimburse IDPA	2,306.00

The Arbitrator further finds that Respondent Steak n' Shake is ordered to authorize and pay for medical treatment as directed by Dr. Oakey.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kenneth Eric Cole,
Petitioner,

vs. NO: 07 WC 56727

15IWCC0543

State of Illinois,
Shawnee Correctional Center,
Respondent.

DECISION AND OPINION PURSUANT TO §8(a)

This matter comes before the Commission on Petitioner's §8(a) Petition, filed on October 29, 2013. A hearing was held before Commissioner Luskin in Mt. Vernon on March 25, 2015. Both parties were represented by counsel. The underlying claim arises out of right knee and lumbar spine injuries that occurred on December 5, 2007. That case was tried before Arbitrator Dibble with a Decision issued on May 4, 2009, awarding Petitioner $217,673.60 for necessary medical services, 20% loss of use of his right leg, and 22.5% loss of use of the person as a whole for his lumbar injury. No appeal was taken from that Decision. Petitioner filed this §8(a) Petition seeking medical expenses for ongoing treatment, which he alleges is related to his 2007 work injury.

Petitioner, a correctional officer at Shawnee Correctional Center, suffered a work injury to his right knee and lumbar spine on December 5, 2007, when he was violently attacked by an inmate. He underwent separate surgeries for a meniscal tear in his right knee and an annular tear at L5-S1. Dr. Gornet performed two-stage fusion surgery at L5-S1 on November 19 and 21, 2008; following postoperative recovery, Petitioner returned to work full duty. Subsequently, Petitioner suffered flare-ups of his back pain and radiculopathy. Dr. Gornet opined that as a result of the previous fusion surgery, Petitioner had developed adjacent level failure and now suffers from an annular tear at L4-5. The doctor recommended extending Petitioner's prior fusion at L5-S1 to the L4-5 level. Respondent disputed liability for this treatment, and Petitioner filed this Petition for Review pursuant to §8(a) on October 29, 2013.

15IWCC0543

The §8(a) hearing was held before Commissioner Luskin on March 25, 2015. Petitioner testified regarding his worsening symptoms that began on July 28, 2013. He described back pain and numbness and tingling in his legs and feet, especially after long days at work where he spent 90% of his time on his feet, walking on concrete, asphalt or tile. Dr. Gornet ordered Petitioner off work on August 12, 2013, due to this worsening pain and radicular symptoms. Petitioner underwent physical therapy, nerve root injections, and then epidural injections, but he continued to suffer shooting pain and numbness in his back and legs down to his feet. Respondent provided temporary total disability through the date of hearing.

Petitioner offered Dr. Gornet's testimony by deposition, and the doctor described Petitioner's condition after his 2008 fusion as improved, but subject to occasional flare-ups. Dr. Gornet did not see Petitioner between November 2010 and August 2013. In August 2013, Petitioner reported low back pain on the right side, right buttock and hip pain intermittently radiating to his right calf, and weakness in his right foot. These complaints began in late July 2013 without any precipitating accident. Dr. Gornet suspected an adjacent level problem and ordered an MRI, revealing a new tear on the right at L4-5. Dr. Gornet opined that a fusion causes additional stress on the adjacent segments and concluded the tear at L4-5 is causally related to his earlier fusion at L5-S1. The doctor attributed Petitioner's back and leg complaints to this new annular tear. He administered a transforaminal steroid injection and an epidural injection. After the injections failed to provide lasting relief, Dr. Gornet recommended surgery to extend Petitioner's L5-S1 fusion to L4-5.

At Respondent's request, Dr. David Lange performed a §12 examination. Although he found Dr. Gornet's recommendation for fusion surgery at L4-5 reasonable, Dr. Lange rejected Dr. Gornet's causation theory relating the need for that surgery to Petitioner's December 5, 2007 work accident and 2008 fusion surgery. Dr. Lange maintained that recent research had disproved this theory, except in circumstances where a laminectomy at the adjacent level was performed at the same time as the fusion; as such, he rejected Dr. Gornet's adjacent level causation theory, finding it "outdated."

After reviewing Petitioner's medical records and the depositions and records of both Dr. Gornet and Dr. Lange, the Commission is persuaded by Dr. Gornet's opinion in this case. Dr. Gornet has extensive experience and performed Petitioner's 2008 surgery, monitored his return of back pain and radicular symptoms and attempted conservative treatment. The Commission finds Petitioner's current complaints to be at least in part causally related to his 2008 fusion surgery. As the requested treatment appears reasonable from a surgical perspective, Petitioner's §8(a) Petition for prospective medical treatment is hereby granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §8(a) petition is granted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for the conservative treatment and fusion surgery at L4-5, as recommended by Dr. Gornet, pursuant to §8(a) and §8.2 of the Act.

15IWCC0543

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

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

Pursuant to §19(f)(1) of the Act, this case is not subject to judicial review.

DATED: JUL 16 2015

Joshua D. Luskin

Charles J. DeVriendt

Ruth W. White

jdl/dak
o-06/10/15
68

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

John F. Bauer,
Petitioner,

vs. NO: 12 WC 17756

15IWCC0545

Roadco Transportation Services,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses, wage rate, notice and being advised of the facts and law, affirms and adopts the 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).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 3, 2014, is hereby affirmed and adopted.

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.

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

15IWCC0545

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $27,400.00. 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: JUL 16 2015

Joshua D. Luskin

o-07/15/15
jdl/wj
68

Charles J. DeVriendt

Ruth W. White

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

BAUER, JOHN F
Employee/Petitioner

Case# 12WC017756

ROADCO TRANSPORTATION SERVICES
Employer/Respondent

15IWCC0545

On 12/3/2014, 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 0.07% 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:

0230 FITZ & TALLON LLC
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PTATE OF ILLINOIS)

)SS.

COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John F. Bauer
Employee/Petitioner

v.

Roadco Transportation Services
Employer/Respondent

Case # **12** WC **17756**

Consolidated cases: **none**

15IWCC0545

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 **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Chicago**, on **09/09/2014**. 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 ****Respondent ONLY disputed the cervical spine condition**

FINDINGS

On the date of accident, **05/19/2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**46,493.20**; the average weekly wage was $**894.10**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **3** dependent children.

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

Respondent shall be given a credit of $**44,960.68** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**44,960.68**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $596.06/week for 121 1/7 weeks, commencing 05/12/2002 through 09/09/2014, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 05/10/2012 through 09/09/2014, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $44,960.68 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule for services set forth in Petitioner Exhibit #1 as provided in Sections 8(a) and 8.2 of the Act for care rendered to the cervical spine and right arm and right shoulder. Respondent shall be entitled to credit for payments tendered to said providers as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay for reasonable and necessary prospective medical services as provided in Sections 8(a) and 8.2 of the Act for treatment recommended by Petitioner's attending physicians at Suburban Orthopedics for all care needed to cure and/or alleviate the effects of his work related injury with respect to the cervical spine and right arm and right shoulder.

The Arbitrator finds that fees and/or penalties should not be imposed on the Respondent.

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

12/3/14
Date

ICArbDec19(b)

DEC 3 - 2014

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

JOHN F. BAUER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	NO. 12 WC 17756
	)	
ROADCO TRANSPORTATION SERVICES, INC.,	)	15IWCC0545
	)	
Respondent.	)	

ADDENDUM TO ARBITRATOR'S DECISION

BACKGROUND

This matter was heard by the Honorable Jessica A. Hegarty, Arbitrator of the Commission, in the city of Chicago, on September 9, 2014. The disputed issues include accident, causal connection, prospective medical, TTD, and penalties and fees. The Arbitrator notes that Respondent only disputed the cervical spine condition alleged by Petitioner.

FINDINGS OF FACT

Petitioner resides in the City of Chicago and on the date of injury was employed by RoadCo Transportation. He was employed as a truck driver and his job required him to make deliveries; pick up loads; tarp and un-tarp flatbeds; drive semi tractors, vans, and pull refrigerated trailers; pick up loads and make deliveries. On occasion he had to actually unload the freight from the flatbed.

Petitioner is a professional truck driver having been employed in that vocation for approximately 27 years. He plans to continue in his chosen profession as a truck driver.

Petitioner testified that on May 10, 2012, Petitioner was in the process of delivering a load of lead-based blocks for a cancer research center in Wilmette, IL. In doing so, Petitioner noticed that two skids had broken and that the blocks had fallen over. A laborer at the job site assisted Petitioner in taking off the load with a lull (forklift). When Petitioner and the laborer encountered the two skids that were broken, the first skid was removed from the trailer with no difficulty. While removing the second skid of lead-based blocks which had fallen, and which scattered all over the flatbed, Petitioner and a laborer began to restack these blocks.

Petitioner climbed onto the flatbed and placed a skid near the fallen blocks. Then he and the laborer began to restack the blocks. Petitioner did not realize the first two blocks he tried to pick up were as heavy as they were. His left arm was down towards the bottom of the skid and his right arm was up. The blocks underneath were also leaning over. As he picked up his left arm he was holding the top part with his right arm and it jerked him down. He felt a sudden pain down the right side of his neck into the right shoulder and down the right arm. He immediately noticed numbness and tingling, burning and pain in the right side of his neck and in his right arm.

Petitioner testified that there was another operator working the Lull that saw what had happened who took pictures before the Petitioner and the laborer took the skids off to restack the goods that had fallen. Petitioner identified Exhibit No. 8 and indicated these were pictures that were taken on the date of the accident by the operator of the Lull.

Petitioner described the pain that occurred when he attempted to lift the blocks as pain that started at the top of his neck and went down his spine. Petitioner testified that the pain went down the neck to the right shoulder, down to the fingers and he noted numbness and tingling and burning in his thumb.

The parties agreed that the Petitioner notified management of the injury on the date in question. He provided notice to the employer when he returned to the warehouse with the truck and trailer. He advised the Safety Supervisor what had happened. The Safety Supervisor drove Petitioner to the company clinic, Excel Occupational Health, where initial medical care was rendered.

The records of Excel Occupational Health dated May 10, 2012, show a history of aching right shoulder, radiating pain down the right side of the neck, upper right side of the back, and down the right arm with burning in the fingers and hand. The history notes Petitioner picking up a 95-pound block and experiencing a burning sensation in the right shoulder down the right arm with no prior injury to the right shoulder.

Upon arrival at Excel Occupational Health the doctors conducted a physical examination and released Petitioner to light duty. The physicians at Excel released Petitioner to modified duty, limiting his work to: (1) no lifting, pushing, pulling greater than ten pounds with right arm; (2) no overhead activity, take medications, apply ice and return for follow up on May 14, 2012. The initial diagnosis at Excel Occupational Health revealed "Patient appears to have both a cervical strain as well as a right shoulder strain, however, at the time cervical injury may cause pain radiating to the upper extremity."

On May 14, 2012 Excel Occupational Health records indicate that Petitioner contacted them and advised that he would not return for care, but would treat with a physician of his choice.

On May 11, 2012, Petitioner returned to work to a light duty job which required him to drive a truck. Petitioner testified that driving the truck required that he shift and turn his head to maneuver the truck. Petitioner testified that as he drove the pain became more and more intense. Petitioner testified that he worked approximately eight to ten hours and the Respondent wanted him to keep working. Petitioner advised Respondent that he could not continue to work due to pain. Respondent allowed him to go home and he has not works since.

On May 14, 2012, Petitioner commenced care at Suburban Orthopaedics whose records reflect a history of restacking blocks on a broken skid and while attempting to pick up two blocks at once that were heavier that he thought, he felt pain in his neck, right shoulder and arm. X-rays of the cervical spine revealed a Grade I spondylolisthesis, with severe degenerative disc disease including slight inferior subluxation. The impression of the attending physician was right cervical radiculitis, right shoulder strain, right shoulder pain. An MRI of the cervical spine and shoulder were ordered and Petitioner was provided medications. The attending physician opined that the condition was work related and that Petitioner was unable to work.

On June 7, 2012, an MRI of the cervical spine revealed C5-6 minimal retrolisthesis and disc osteophyte complex. The MRI of the right shoulder revealed a cyst lesion adjacent to the anterior inferior glenoid labrum suspicious for paralabral cyst. Further evaluation through MR arthrogram was suggested if clinically indicated. The MRI revealed mild supraspinatus and infraspinatus tendinitis which may be a shallow interstitial tear of the supraspinatus tendon and the report also opined that there were glenohumeral degenerative changes.

On July 19, 2012, Suburban Orthopaedics reviewed the diagnostic studies and opined that the Petitioner suffered from right cervical radiculitis, right shoulder larger inferior paralabral cyst with anterior inferior labral tear. Further diagnostic workup, EMGs, medications and follow up care were recommended. The doctor opined in their work status report that the condition of ill-being was work related; that Petitioner was medically unable to work and he was to return for follow up care in four weeks.

On September 19, 2012, Suburban Orthopaedics records reflect Petitioner's complaints of neck and shoulder problems, numbness in the neck down the arm, tingling and pins-and-needles sensation in the hands. The impression was right cervical radiculitis and the physician commented that an EMG had not been approved by workers' compensation. The doctor did, however, review a prior MRI of the cervical spine dated October 29, 2003, and noted there were more changes on the current MRI than on the MRI of October 29, 2003. A review of the MRI taken on October 29, 2003 at Westlake Community Hospital revealed normal cervical spine without contrast.

The work status form authored by Suburban Orthopaedics on September 19, 2012 opined that the condition was work related and that Petitioner was medically unable to work. Follow up care was recommended.

On October 2, 2012, Petitioner underwent preoperative procedures. He was admitted for surgery on October 5, 2012, at St. Alexius Medical Center and the physicians at Suburban Orthopaedics opined a postoperative diagnosis of: (1) right shoulder significant large anterior labral tear; (2) large paralabral cyst; (3) Grade III-IV chondromalacia of the glenoid with loose body formation.

The operative procedure included: (1) right shoulder arthroscopy with debridement of labrum; (2) resection of the paralabral cyst; (3) repair of the significant large anterior labral tear with a micro fracture to the anterior glenoid with removal of loose bodies.

Petitioner testified that he stopped working in mid-May 2012, but did not receive any workers' compensation benefits until after the surgical procedure performed October 5, 2012. Petitioner did not receive any correspondence or communication advising that the claim had been denied. He sought legal counsel and filed a claim with the Commission.

Based on the stipulation sheets Respondent paid TTD for 75 & 3/7ths weeks totaling $44,960.68. These TTD benefits were apparently paid from the cessation of work on May 12, 2012 through approximately December 22, 2013, however, these TTD benefits were not paid weekly as required by the Act between the date of accident on May 10, 2012 and the October 5, 2012 surgery per the testimony of the Petitioner.

On November 5, 2012, the medical records from Suburban Orthopaedics reflect the doctor's opinion that the condition of ill-being was work related and Petitioner remains unable to work with follow up in four weeks.

In December of 2012, Petitioner continued therapy at Suburban Orthopaedics with follow up on December 5, 2012. At this juncture, due to the significant complaints of pain, the doctor recommended additional diagnostic studies and again opined the condition of ill-being is work related and that Petitioner remains unable to work.

In January of 2013, Petitioner returned to Suburban Orthopaedics for multiple visits to their physical therapy department. On January 9, 2013, Suburban Orthopaedics records reflect the doctor's opinion that the Petitioner's condition of ill-being is work related and that he should be off work.

On January 18, 2013, Suburban Orthopaedics referred Petitioner to Dr. Novoseletsky for consultation concerning the complaints of neck pain. Petitioner was examined by Dr. Novoseletsky on January 18, 2013, who opined chronic neck pain with a differential diagnosis of cervical radiculopathy, cervical degenerative disc, cervical facet syndrome and ordered diagnostics.

In February of 2013, Petitioner returned on multiple occasions for physical therapy at Suburban Orthopaedics and follow up care on February 13, 2013. At that time he still complained of pain in the neck and right shoulder which radiated down the arm. The doctor recommended additional medication, cryotherapy, immobilizer and home exercises. The attending physician opined that Petitioner's condition was work related and Petitioner was unable to work for the next five weeks.

In March of 2013, Petitioner continued physical therapy at Suburban Orthopaedics and followed up with Suburban Orthopaedics on March 25, 2013. At this time, Petitioner reported that his shoulder was getting better but he was still experiencing numbness. The treating physician's impression was status post shoulder debridement with anterior Bankart repair, cervical radiculitis with C5-6, degenerative disc disease. The attending physicians recommended EMG and medication, with follow up in five weeks. At that time the treating physician continued to opine the condition is work related and that Petitioner was medically unable to work.

On April 2, 2013, Petitioner, at the direction of his attending physician, underwent an EMG/NCV which was interpreted by the attending physician as consistent with mild to moderate bilateral carpal tunnel syndrome involving sensory and motor fibers. Incidental mild sensory ulnar neuropathy at the wrist and mild C5-6 radiculopathy.

Petitioner continued to treat with Suburban Orthopaedics in May of 2013. At this juncture he advised no change in his complaints and again provided a consistent history of his work injury. The doctors recommended additional care including cervical epidural steroid injections based on clinical presentation. On

May 22, 2013, a cervical epidural steroid injection was performed at the C7-T1 interlamina midline approach by Dr. Novoseletsky.

On June 13, 2013, Petitioner submitted to an independent medical examination with Dr. Jay Levin. Petitioner testified that the exam consisted of a brief discussion with the doctor's assistant and approximately 20 minutes with the doctor who then performed a physical examination.

On July 2, 2013 the second cervical epidural steroid injection was given by Dr. Novoseletsky. On July 19, 2013, Petitioner followed up with Suburban Orthopaedics and indicated that the cervical epidural steroid injection resulted in a 40% decrease in symptoms for five days, but these symptoms thereafter returned. The staff at Suburban Orthopaedics recommended a third epidural steroid injection and follow up in two weeks.

On July 25, 2013, Petitioner followed up with Suburban Orthopaedics and continued to complain of numbness and tingling in the right shoulder, right arm and into the fingers. The doctor's impression was: (1) status post right shoulder debridement, anterior Bankart repair; (2) cervical radiculitis at C5-6 and degenerative disc disease; (3) bilateral carpal tunnel. The doctor recommended additional medication, home therapy, and that Petitioner consider surgical repair for the cervical condition on ill-being. The doctors at Suburban Orthopaedics continued to opine that the condition of ill-being was work related and that Petitioner could not return to work.

On August 14, 2013, Dr. Novoseletsky performed the third epidural steroid injection. Petitioner returned for follow up care and Dr. Novoseletsky recommended that since the epidural steroid interventional plan did not provide the hoped for result, Petitioner should be evaluated by Dr. Malek and discuss surgical options.

On September 5, 2013, Petitioner returned to Suburban Orthopaedics who opined that Petitioner was status post right shoulder debridement with anterior Bankart repair, cervical radiculitis with C5-6 degenerative disc disease, and bilateral carpal tunnel syndrome. The doctors at Suburban Orthopaedics also opined that the conditions of ill-being are work related and that Petitioner could not return to work.

It should be noted that the Petitioner is making no claim for carpal tunnel syndrome arising out of the injury of May 10, 2012, but he is claiming that the condition of ill-being diagnosed and treated by the attending physicians for the cervical spine and right shoulder are conditions that are causally related to the work injury of May 10, 2012.

On September 10, 2013, Dr. Freedberg of Suburban Orthopaedics who had been the treating physician for the shoulder condition, referred Petitioner to Dr. McNally, an associate in the practice. Dr. McNally, who concentrates in the area of spinal surgery, recommending an evaluation for the cervical conditions of ill-being. At a visit with Dr. McNally on September 10, 2013, the doctor's treatment recommendations were closed MRI of the cervical spine and he provided a handout on cervical disc surgery. He recommended that plans be set in motion for a C5-6 anterior discectomy and fusion.

On October 2, 2013, a cervical MRI was performed and the report revealed a two millimeter retrolisthesis C5 on C6 which was unchanged, and that vertebral heights were well maintained. Anterior osteophytes at C5-6 and moderate loss of the intervertebral disc height at C5-6 were noted. The overall impression was multilevel

degenerative changes as detailed above, greatest at C5-6 with areas of mild spinal canal stenosis unchanged at least moderate bilateral foraminal stenosis which has not significantly changed.

On October 10, 2013, Petitioner met with Dr. Freedberg at Suburban Orthopaedics and discussed his ongoing problems. Dr. Freedberg recommended a return to Dr. McNally for spine care management. Dr. Freedberg continued to opine that the condition of ill-being was work related and that the Petitioner was medically unable to work.

On October 17, 2013, Petitioner returned to Suburban Orthopaedics and met with Dr. McNally concerning the cervical spine. He recommended a C5-6 anterior fusion and discectomy. Petitioner is not making any claim with respect to the carpal tunnel condition of ill-being.

Temporary total disability benefits were terminated in late December 2013. Petitioner did not recall receipt of any letter or communication from the insurance carrier that benefits were to be terminated. Respondent claimed credit for temporary total disability benefits of 75 & 3/7ths weeks from May 12, 2012 through December 22, 2013 when benefits were terminated.

In 2014, Petitioner continued to treat with Suburban Orthopaedics. On February 6, 2014,he met with Dr. McNally of Suburban Orthopaedics and complained of neck and shoulder pain including numbness, tingling, and radiating pain. Dr. McNally again recommended a C5-6 anterior discectomy and fusion and provided medications. The doctors of Suburban Orthopaedics continued to opine that Petitioner was medically unable to work.

On March 19, 2014, Petitioner returned to Suburban Orthopaedics and met with Dr. Freedberg. They reviewed the independent medical examination of the insurance carrier's expert. Dr. Freedberg opined that his impression at that point in time was status post right shoulder debridement with anterior Bankart repair, cervical radiculopathy with C5-6 degenerative disc disease and bilateral carpal tunnel syndrome. The doctor continued to opine that the conditions of ill-being were work related and that Petitioner was not able to work.

On May 1, 2014, Petitioner underwent an EKG as a pre-op study for the upcoming cervical spinal surgery. On May 6, 2014, Petitioner followed up with Dr. McNally and presented a consistent history. The doctor did a physical exam, reviewed diagnostic studies, and continued to recommend a C5-6 anterior cervical discectomy and fusion with structural allograft and instrumentation. The doctor continued to opine that Petitioner was unable to work.

On May 6, 2014, another cervical spine MRI was performed. The overall impression of the physicians at Suburban Orthopaedics were: (1) moderate degeneration at C5-6 intervertebral disc with disc bulge and spurring leading to mild central or bilateral foraminal stenosis unchanged; (2) mild uncovertebral spur at C3-4, mild left foraminal stenosis unchanged; (3) minimal disc bulge C6-7. On that same date, pre-op clearance was given by the physicians at Presence Medical Group.

On May 21, 2014, Petitioner was admitted to Alexian Brothers Hospital under the care of Dr. McNally. The surgical procedure performed that date consisted of: (1) decompressive C5-6 anterior discectomy through the posterior longitudinal ligament with removal of posterior osteophytes and decompression of marrow segment; (2) C5-6 anterior cervical spinal interbody fusion; (3) insertion of structural allograft bone graft to C5-6 intervertebral biomechanical space with spinal fusion; (4) insertion of anterior cervical spinal instrumentation

Atlantis Vision Titanium Instrumentation from Sofamor Danek; (5) local allograft bone graft harvest and preparation for the use in spinal fusion; (6) special monitoring.

On July 1, 2014, Petitioner visited Suburban Orthopaedics and followed up with Dr. McNally concerning the cervical surgery. Petitioner indicated he was 60% improved from his severe pre-operative pain, but he did have some trouble swallowing and some numbness on the left side of his chin. Petitioner indicated that he still had some pain in the neck and shoulder blade, but it was much improved subsequent to the surgery. He also indicated he had pain upon movement of his head.
The doctor's diagnosis was cervical spinal stenosis status post C5-6 anterior cervical discectomy and fusion. The doctor's recommendations were: (1) Orthofix E-Stimulator for improving spinal fusion rate which had been denied by the workers' compensation carrier because of the single level surgery but the doctor is appealing to hopefully override inhibition of fusion from tobacco use; (2) continued Miami J collar when out of home for two more weeks; (3) continue adding activities as tolerated; (4) keep incision protected from sunlight for a year post-op; (5) hold off on physical therapy for shoulders at this early post-op stage; (6) pain medications that would not affect the healing process of the fusion and follow up in one month. Dr. McNally opined in his notes of July 1, 2014 that the work related injury of May 10, 2012 did not cause the degenerative condition in Petitioner's cervical spine. To a reasonable degree of medical and surgical certainty, the work related injury of May 10, 2012 aggravated and accelerated the preexisting previously asymptomatic degenerative cervical spinal condition and caused him to become symptomatic and require treatment.

The records of Suburban Orthopaedics for July 1, 2014 also make a recommendation that Petitioner use an Orthofix E-Stimulator for improving the incorporation of the spinal fusion. This device had been denied by the workers' compensation carrier because of the single level of surgery. It is the doctor's opinion to override that refusal. Additional recommendations included continuing the Miami J collar when out of the house and increasing activities as tolerated, hold off therapy for the shoulders, and follow up in a month.

On August 7, 2014, Petitioner returned to Dr. McNally. He advised of ongoing physical complaints and pain including tingling in his hands. The doctor recommended that he continue physical activities as tolerated. The diagnosis at this juncture was cervical spinal stenosis status post C5-6 anterior cervical discectomy and fusion on May 21, 2014.
The doctor's recommendations continued: (1) continued use of the Orthofix E-Stimulator four hours a day for eight more months; (2) refer back to Dr. Freedberg for right shoulder, carpal tunnel and Guyon canal syndromes. Medications were refilled and narcotic pain medications were reduced. The doctor's assessment and plan at this juncture revealed two months status post C5-6 anterior cervical discectomy and fusion on May 21, 2014, after sustaining a work related injury on May 10, 2012. The doctor indicated the patient was doing well but continued to have tingling in the hands, likely related to carpal tunnel. The doctor opined that the Petitioner was medically unable to work.

On August 27, 2014, Petitioner followed up with Suburban Orthopaedics and Dr. Freedberg for the right shoulder condition. He complained of ongoing pain with the use of the shoulder brace and that he still experienced pain radiating down his arm on occasion, but no longer experienced numbness and tingling in his thumb. The doctor's impression was status post shoulder debridement with anterior Bankart repair, cervical radiculitis with C5-6 degenerative disc disease status post anterior cervical discectomy and fusion. The doctor recommended additional diagnostic options.

Dr. Freedberg reviewed the independent medical evaluation of Dr. Levin and disputed Dr. Levin's conclusions. Dr. Freedberg's dispute was based upon Dr. Levin's comment that Petitioner did not sustain an injury at work. Yet in Dr. Levin's report on Page 2, Dr. Levin discusses a visit to Excel Occupational Medicine on May 10, 2012. The care at Excell documented work related cervical spine and right shoulder issues. Dr. Levin felt that at most Petitioner sustained a shoulder strain. Dr. Freedberg commented, "Considering I am the operating surgeon, I disagree based on the intraoperative findings". Dr. Freedberg also stated that "the degenerative joint disease of the cervical spine is of significance and has produced problems for the patient and is still an issue." The doctor goes on to indicate further medical care is needed from the accident sustained at work.

As of the date of hearing, Petitioner continues to wear the electronic stimulator to help the cervical fusion consolidate. He has been wearing it four hours a day seven days a week since the summer of 2014 at the direction of his attending physician.

The Petitioner commenced an additional course of physical therapy at Athletic & Therapeutic Institute on September 8, 2014, the day before the hearing.
Petitioner reiterated that workers' compensation benefits stopped in late December 2013 and he has had no monies paid to him since that time. His attending physicians continue to treat him and have not released him to return to work as of the date of hearing. The attending physicians have made additional recommendations for ongoing treatment which they feel is needed to cure and/or alleviate the effects of the work related injury of May 10, 2012.

Petitioner testified that he desires to continue treating per the recommendations of his attending physicians at Suburban Orthopaedics. He had a follow up visit scheduled for September 9, 2014, the date of hearing which he cancelled so as to appear before the Commission for his hearing. The appointment is now scheduled for October 24, 2014, with Dr. McNally on the cervical condition and October 19, 2014, with Dr. Freedberg on the shoulder condition.

Prior to the work related injury of May 10, 2012 Petitioner testified he did not have any prior injuries to his neck, shoulder or right arm. He did have a work related injury in the early 2000's when he was struck in the face by a chain binder. He received medical care and described the condition as stitches in his tongue, headaches, and whiplash. As part of the treatment for this injury, Petitioner underwent cervical spine X-rays in April of 2003 and a cervical spine MRI on June 17, 2003 which the treating physicians at Suburban Orthopaedics reviewed and commented on in their treatment records as being a normal MRI in 2003. When compared to the current MRI, there were significant changes.

Petitioner identified Petitioner's Exhibit No. 1 as a compilation of medical bills submitted by the medical providers rendering care in conjunction with this claim.

At the present time, Petitioner complains of ongoing pain on the right side of his neck that goes down into the shoulder. During the night he notes pain in the right shoulder, as well as numbness and tingling in the fingers. He is only able to sleep two to three hours a night before he is awakened by the pain. He notes additional pain in the back near the scapula, and his difficulty is currently is on the left and right. It is his understanding that the current prescription for therapy at Athletic & Therapeutic Institute has to do with these ongoing problems.

On cross-examination Petitioner described the injury sustained at work in 2003 as a whiplash. When questioned by counsel for Respondent, he indicated that he considered whiplash to be soft tissue/muscular condition. Respondent's counsel discussed prior injuries to the low back in the late 1990's which did not include injury, care or treatment to the cervical spine or right arm or shoulder.

Petitioner confirmed he had last worked on May 11, 2012, and has not received any unemployment benefits since the cessation of work.

Petitioner indicated that current treatment revolves around both his neck and right shoulder conditions of ill-being. Petitioner testified that he has never been released to return to work, nor has Petitioner ever had a functional capacity evaluation. Petitioner testified that his attending physicians have not given him any indication as to when he may be returned to work. Petitioner also testified and that he no longer sees Dr. Novoseletsky and that all treatment is being rendered by Dr. McNally and Dr. Freedberg of Suburban Orthopaedics with Dr. McNally treating the cervical condition and Dr. Freedberg treating the shoulder condition.

On re-direct, Petitioner indicated that he plans to maintain his CDL which requires a physical examination and drug testing every two years. He also believes that the requirements recently changed with respect to driving inter versus intra state. Additionally, Petitioner also indicated that as soon as he is released by his attending physicians he plans to continue his normal profession and vocation as a truck driver, complying with any regulatory requirements with respect to physical and/or medical examinations and the like.

CONCLUSIONS OF LAW

WHETHER PETITIONER SUSTAINED AN ACCIDENTAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT ON MAY 10, 2012

The Arbitrator observed the Petitioner, the only witness to testify, and he is deemed credible. The Arbitrator adopts the unrebutted testimony of the Petitioner of the events that occurred at work on May 10, 2012. Petitioner's testimony is supported by the historical information contained in the records of Excel Occupational Health, the employer's selected medical provider. On May 10, 2012, shortly after the event, Excel Occupational Health records reveal complaints of aching right shoulder radiating to the right side of the neck, upper right side of the back, down the right arm, burning in fingers and hands. States while picking up 95-pound brick from floor level experienced a burning sensation in the right shoulder region down the right arm. States no prior injury to right shoulder. The physician's assessment is right shoulder strain, cervical strain, cervical radicular symptoms and released to modified duty.

The subsequent medical history as given to Petitioner's attending physicians is consistent throughout the course of care.

Wherefore, the Arbitrator concludes that the Petitioner sustained an accidental injury arising out of and in the course of his employment on May 10, 2012.

WHETHER PETITIONER'S CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY OF MAY 10, 2012

Having found favorably for Petitioner with respect to the issue of accident, the Arbitrator now turns to the question of causation.

Respondent presented no witnesses to rebut any of the Petitioner's testimony. Respondent relies on the independent medical evaluation of Dr. Jay Levin.

Dr. Levin initially indicated a consistent history of a reported injury. Thereafter, Dr. Levin indicated that with respect to the current diagnosis he noted "discrepant histories". Dr. Levin opines that, "possibly he sustained no injury at all to the cervical spine or right shoulder based on the treatment at Occupational Health and negative findings in exam, but did have findings of preexisting condition."

The Arbitrator examined and scrutinized the treating records in this case and finds the histories contained therein to consistent. The records of Excel Occupational Health indicate complaints of aching in the right shoulder radiating to the right side of the neck, upper right side of back, down right arm, and burning in fingers. The records reflect a history of Petitioner picking up 95-pound bricks from floor level and then experiencing a burning sensation right shoulder region down the right arm. Petitioner testified he had no prior injury to the right shoulder. The employer's physician, Excel Occupational Health, assessed the condition as right shoulder strain, cervical strain, cervical radicular symptoms and released the Petitioner to work with modified duties.

The Arbitrator adopts the findings and opinions of the attending physicians at Suburban Orthopaedics who consistently opined that the conditions of ill-being in Petitioner's cervical spine and right arm are causally related to the work injury of May 10, 2012.

Wherefore, the Arbitrator concludes that there is a causal relationship between the events occurring at work on May 10, 2012, and the subsequent condition of ill-being in Petitioner's cervical spine and right shoulder.

With respect to the findings and diagnosis of carpal tunnel syndrome, the Arbitrator concludes that this condition of ill-being is not causally related to the events at work on May 10, 2012.

WHETHER RESPONDENT IS LIABLE FOR MEDICAL INDEBTEDNESS AS SET FORTH IN PETITIONER EXHIBIT NO. 1

Having found favorably for the Petitioner with respect to the issues of accident and causation, the Arbitrator finds that Respondent is liable for medical care rendered with respect to the cervical spine and right shoulder and right arm. Liability shall attach per Section 8 and 8.2 of the Act and the applicable provisions of the Fee Schedule.

Respondent is entitled to credit for medical indebtedness tendered and paid, including but not limited to payments as set forth in Petitioner Exhibit No. 1. Respondent did not claim any credit for benefits pursuant to Section 8(j) of the Act and no credit is allowed herein.

The Arbitrator finds that Respondent shall pay for medical indebtedness as set forth in Petitioner Exhibit No. 1 pursuant to Section 8 and 8.2 of the Act. Respondent shall not be liable for any treatment associated with the diagnosis of carpal tunnel syndrome, but shall be fully responsible for treatment related to the cervical spine, right shoulder, and right arm.

WHETHER PETITIONER IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS

Having found favorably for Petitioner with respect to the questions of accident and causation, the Arbitrator now turns to the question of temporary total disability.

The Arbitrator adopts the opinions of Petitioner's attending physicians at Excel Occupational Health (to whom Petitioner was referred and transported to for care by his supervisor) and Petitioner's selected medical providers at Suburban Orthopaedics. The physicians opined that Petitioner was under active medical care and unable to return to work from May 12, 2012, through the date of hearing. Petitioner claims temporary total disability benefits commencing May 12, 2012, through the date of hearing, September 9, 2014, for a total of 121 & 1/7ths weeks. Respondent shall pay Petitioner temporary total disability benefits at a weekly rate of $596.06 for said 121 & 1/7ths weeks.

Respondent is entitled to a credit for TTD paid in the amount of $44,960.68 representing 75 & 3/7ths weeks of TTD benefits paid.

WHETHER PETITIONER IS ENTITLED TO PROSPECTIVE MEDICAL

Having found favorably with respect to the issues of accident and causation, the Arbitrator adopts the opinions of the treating physicians at Suburban Orthopaedics as well as the unrebutted testimony of the Petitioner that he remains under active care by his attending physicians for the sequelae of his work related injury. Petitioner's unrebutted testimony and medical exhibits support the fact that he has never been released to return to work, nor has his condition of ill-being reached maximum medical improvement. It is clear from the evidence contained in the record that additional treatment is needed to cure and/or alleviate the effects of Petitioner's work related injury. Petitioner is entitled to the care prescribed by the staff at Suburban Orthopaedics.

Wherefore, Petitioner is entitled to prospective medical for the cervical spine, right shoulder and right arm as recommended by his attending physicians at Suburban Orthopaedics.

WHETHER PETITIONER IS ENTITLED TO ADDITIONAL COMPENSATION PURSUANT TO THE PROVISIONS OF SECTION 19 (k), Section 19 (l) AND ATTORNEY FEES PURSUANT TO THE PROVISIONS OF SECTION 16.

The Arbitrator declines to enter a finding with respect to fees and/or penalties.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
MCHENRY

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeffrey Joe Imburgia,

Petitioner,

vs. NO: 13 WC 00232

Custom Nardi Systems, Inc.,

Respondent.

15IWCC0517

DECISION AND OPINION ON REVIEW

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

Petitioner was 36-years-old and employed as a carpenter on the date of accident, December 12, 2012. Petitioner felt severe pain in his left shoulder while moving heavy garbage containers and sought treatment on December 18, 2012 at Aurora Medical Center. Dr. Kohli performed surgery on February 15, 2013; a SLAP tear and partial rotator cuff tear were repaired and extensive debridement was required. Petitioner was released to full duty work on July 22, 2013. He testified that he was able to resume his regular work activities. Dr. Kohli opined that Petitioner reached maximum medical improvement on September 9, 2013. Respondent obtained an independent medical examination with AMA impairment rating by Dr. Stephen Weiss. The Arbitrator awarded 15% of the person as a whole pursuant to §8(d)2 of the Act. On review, Respondent argued that the Arbitrator's award was not supported by a preponderance of the evidence.

According to §8.1(b) of the Act, for injuries that occur after September 1, 2011 and with respect to 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 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.

15IWCC0517

On February 17, 2014 Dr. Weiss opined that Petitioner sustained permanent impairment to the extent of 11% of the left upper extremity or 7% of the person as a whole. Both Petitioner and Respondent offered Dr. Weiss's report into evidence at arbitration. Dr. Weiss examined Petitioner and found that Petitioner obtained an overall good result from surgery. Petitioner reported the he was able to resume his regular work duties without restrictions, although he asks for help on occasion with lifting and overhead activities. At rest he has no pain but he notices discomfort or pain with any lifting. Dr. Weiss found that Petitioner had limited range of motion in the left shoulder compared to the right shoulder on flexion, extension, abduction, and external rotation; adduction and internal rotation were equivocal. Dr. Weiss noted that Petitioner's loss of range of motion was the most prominent residual effect of his surgery. No supraspinatus or infraspinatus atrophy was noted. Impingement signs were positive on the left but the crank, apprehension and sulcus tests were negative.

Petitioner's occupation is carpentry. The Arbitrator concluded that Petitioner's job duties could be classified as medium to heavy. The injury affected Petitioner's non-dominant left upper extremity, although Petitioner testified that he considers himself almost ambidextrous. Petitioner was 36-year-old on the date of accident. It appears that he recovered from surgery relatively quickly, which may be a benefit of his young age. Petitioner's earnings were not reduced as a result of the injury, and in fact he began working additional hours after he returned to work. However, he testified that he no longer accepts informal side jobs. As corroborated by the treating medical records, Petitioner's primary residual complaint is decreased range of motion; he has good strength and his subjective pain complaints are manageable and only occur with lifting. After considering all of the evidence, we modify the Arbitrator's award of permanent disability to 12.5% of the person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 25, 2014 is hereby modified and Respondent shall pay to Petitioner the sum of $687.61 per week for a period of 62.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused 12.5% permanent disability.

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: JUL 8 - 2015
o-5/20/15
RWW/plv
46

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

IMBURGIA, JOE JEFFREY
Employee/Petitioner

Case# 13WC000232

CUSTOM NARDI SYSTEMS INC
Employer/Respondent

15IWCC0517

On 8/25/2014, 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 0.05% 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:

1858 MARKHAM M JEEP & ASSOC PC
200 N MARTIN L KING JR AVE
1ST FLOOR
WAUKEGAN, IL 60085

1408 HEYL ROYSTER VOELKER & ALLEN
BRAD ANTONACCI
120 W STATE ST 2ND FL
ROCKFORD, IL 61105

15IWCC0517

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

☐ 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

JOE JEFFREY IMBURGIA
Employee/Petitioner

v.

CUSTOM NARDI SYSTEMS, INC.
Employer/Respondent

Case # **13** WC **00232**

Consolidated cases: **N/A**

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 **George Andros**, Arbitrator of the Commission, in the city of **Woodstock by agreement of parties**, on **7/02/14**. 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 **Admissibility of Petitioner's Exhibit No. 3.**

FINDINGS

On **12/12/12**, 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**59,593.04**; the average weekly wage was $**1,146.02**.

On the date of accident, Petitioner was **36** years of age, ***single*** with **1** dependent child.

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 $**20,351.83** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**20,351.83**.

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

ORDER

Respondent shall pay Petitioner the sum of $687.61/week for a further period of 75 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused 15% permanent disability.

Respondent shall pay Petitioner compensation that has accrued from 12/12/11 through 7/02/14, and shall pay the remainder of the award, if any, in weekly payments.

The arbitrator rejects the offer Petitioner's Exhibit No. 3, the Triune Health Group Nurse Case Manager reports.

The Petitioner is additionally entitled to a TTD underpayment of $3,114.19, pursuant to a stipulation between the parties.

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.

#01 George J. Andros
Signature of Arbitrator

August 12, 2014
Date

AUG 25 2014

FINDINGS OF FACT 13 WC 232

Petitioner was 36 years old on the date of accident and has worked as a carpenter using both arms since the age of 19. He is ambidextrous. He has always used his right arm and hand to write and throw. He sustained a compensable injury to his left shoulder as alleged. Treatment ensued on 12/18/12 at Occupational Health Center at Aurora Medical Center. An MR arthrogram was read as a possible SLAP tear, focal high-grade partial rotator cuff tear, subluxation of the long head of the biceps, partial tears of the supraspinatus, and rotator cuff tendinopathy.

Upon referral from the company clinic an orthopedic surgeon On 2/15/13 during arthroscopy Dr. Kohli observed fraying of the biceps tendon, which was debrided. There was a clear subscapularis tear and a partial supraspinatus tear. Injuries to the biceps tendon were repaired as well as the partial rotator cuff tear. An "abundant" amount of bursa was removed as well as a large inferior bone spur. Subacromial decompression and debridement of the labrum were performed. (Px. 1 Part I, p. 25, operative report).

Physical therapy began February 18, 2013. (Rx. 1). Work conditioning began on June 11, 2013 and continued through July 19, 2013. Discharge summary from July 19, 2013 shows Petitioner was having difficulty sleeping and was concerned about overhead lifting in the work place. (Px. 2, p. 163). Petitioner exhibited deficits in weight lifting. Notes indicate only three out of ten of the weight lifting activities were marked as "met job demand." (Px.2etitioner's Ex. No. 2, p. 163). Mr. Imburgia had an increase in pain following the last session of work hardening. (Px.2. p. 163). He was still having difficulty with overhead lifting tasks. Final assessment recommended continued occupational therapy to increase overhead lifting ability.

On July 22, 2013, Petitioner returned to see Dr. Kohli and was released to return to work in a full-duty capacity. The notes of Dr. Kohli's examination revealed continuation of limited internal rotation of the left shoulder, though strength was good. Dr. Kohli indicated that there was continued "mild impingement in left shoulder." (Px. 1, Part II, p. 7). He denied having any pain at the time of the exam. At hearing he testified that he was able to resume full-time work activities as a carpenter after July 22, 2013.

Petitioner saw Dr. Kohli for the last time on September 9, 2013 seven months post-left shoulder surgery and denied having pain but continued to lack internal rotation, though his strength was good. He continued to have positive impingement sign. On September 9, 2013, Dr. Kohli stated that Petitioner was at the point of maximum medical healing & released PRN.

He testified that the nature of his work as a carpenter requires him to utilize hand tools. He works with shelving, cabinetry, and drywall. He is called upon to use common hand tools and electrical saws and drills. Moreover, since returning to work, he experiences pain with overhead lifting with his left shoulder. He experiences aching in his left shoulder after the work day. He continues to apply ice and takes Ibuprofen. Petitioner testified that work causes irritating pain in his left shoulder, but it is not of an overbearing nature. He described his pain level as 1 or 2 on a 10 point scale. He testified that since returning to work in July of 2013, he has not missed any time from work as a result of his injury, but has experienced flare-ups of increased pain. He described a recent flare-up within 90 days of hearing. He denied shoulder pain on the hearing date. Yard work, dressing left handed and positional pain sleeping are painful. He testified that he occasionally is required to ask for help in overhead lifting or with lifting heavy items. Much lighter weights now require him to call for help. This involves "binders" into an overhead position which are large box shelving units.

He has not experienced a diminution in earning capacity via Union scale. He has no formal work restrictions and is working in full-duty capacity. He has no pending medical appointments and does not utilize prescription pain medications, but rather uses over-the-counter pain medications several times per week. Respondent witness-James Kern who is a foreman for Respondent corroborated Petitioner is a carpenter and that he has continued to perform full-time duties without formal restrictions. He also corroborated that the nature of the work involved the various tasks testified to by Petitioner. Mr. Kern stated that he has only worked with Mr. Imburgia a handful of times, maybe once every couple of months. Petitioner never told him of any difficulties or pain. Petitioner is a good employee, performing assigned tasks well.

On re-direct, Mr. Imburgia testified that he was instructed by another supervisor, Eric Paul, that his return to work must be at 100% without any restrictions; otherwise, his return to work would be jeopardized. This is the reason why Mr. Imburgia pushed for a full release from Dr. Kohli without formal restrictions.

Dr. Stephen Weiss performed an AMA impairment rating for Respondent on February 17, 2014. (Rx. 1). Dr. Weiss determined that Petitioner's impairment rating according to the AMA guides equals 11% of the left upper extremity, or 7% of the whole person.

As to evidentiary issues, Petitioner has proffered as Exhibit No. 3, the records of Triune Health Group, being the record of activities of LouAnn Piwko, RN, BSN. This Exhibit was proffered at the time of hearing pursuant to Section 16. The objection posed at the time of hearing was that the documents contained in Exhibit No. 3 are hearsay statements.

It is clear from that document that Ms. Piwko, a registered nurse, performed professional medical services on behalf of the Petitioner and as intermediary between the insurance carrier and Petitioner's counsel. The Arbitrator finds no legal authority to admit the records over a hearsay objection. The Commission has ruled in the past that physical therapists performing FCE and vocational counsellors, CRC, are not physicians under the section 12 of the Act. The Arbitrator finds no legal precedent from Appellate Court or IWCC deeming case managers

treating providers. The Arbitrator following precedent does not admit the records as records of treatment given the facts at bar. The substantive legal issue under the Act follows.

(L) THE NATURE AND EXTENT OF THE INJURY

According to Section 8.1(b) of the Act, for injuries that occur after September 1, 2011, 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) [AMA Guidelines];
(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.

1) The reported level of impairment pursuant to subsection (a) [AMA Guidelines].

Both Petitioner and Respondent submitted the "independent medical evaluation report" of Dr. Stephen Weiss. (Px.1 and Rx. 1.) Dr. Weiss stated that Petitioner "sustained a full thickness supraspinatus tear" and underwent suprascapularis repair on February 15, 2013." He confirms that Petitioner sustained "partial rotator cuff tears of the subscapularis and supraspinatus, as well as a possible SLAP tear and medial subluxation of the biceps." 2). Physical examination revealed winging of the left scapula and atrophy on the left side with a mild restriction of motion. Dr. Weiss also noted that Mr. Imburgia is "performing full work activities without formal restrictions, although on occasion, he indicates that he does ask co-workers for assistance with lifting and with overhead activities." Mr. Imburgia "indicated that he does not have pain when at rest, but lifting away from the plane of his body or with overhead lifting, he does have pain." He reported pain when "cradling his newborn child in his left arm." The examination by Dr. Weiss, revealed significant limitation of motion of the left arm in extension and external rotation, with lesser loss of range of motion in flexion and abduction. The impingement sign remained positive on the left arm. Measurements of Petitioner's arms and forearms revealed that the left side was smaller than the right side. (Petitioner's Ex. No. 4/Respondent's Ex. No. 1, at p. 4). Emphasis added. The Arbitrator concludes physical findings and complaints recorded by Dr. Weiss are consistent with Petitioner's testimony.

2) The occupation of the injured employee.

The evidence clearly shows as a carpenter, Petitioner's is called upon to demonstrate physical strength, flexibility and dexterity in a job that demands the use of both hands. Petitioner asserts he is ambidextrous. The Arbitrator notes that the nature of carpentry requires heavy and moderate lifting, often in the overhead position, throughout the work day. Thus, the physical demand level of Petitioner's occupation is moderate to heavy.

Accordingly, the Arbitrator concludes that Petitioner's occupation has a very significant bearing upon the determination of permanent partial disability in this case. Its weight is great.

3) The age of the employee at the time of the injury.

Petitioner was 36 years old on the date of accident. The Arbitrator deems that young. Arbitrator infers as a younger worker, the pain testified to by Petitioner will persist for a longer time and through the duration of his career and that this is a significant factor in weight of evidence for determining the extent of his disability.

4) The employee's future earning capacity.

The evidence adduced at trial concludes that Joe Jeffrey Imburgia has participated in all pay raises since returning to work from his injury and has missed no time from work or decrease in his hours of employment. However, Petitioner explained avoidance and or inability to perform "side jobs". The Arbitrator finds fear of injury doing side jobs is not of significance in assessing benefits against a Respondent for which the Petitioner is working full time albeit with help with heavy overhead lifting.

5) Evidence of disability corroborated by the treating medical records.

The Arbitrator finds that the shoulder injury suffered by Petitioner, Joe Jeffrey Imburgia, was very significant and required the placement of anchors and sutures to repair a SLAP tear and partial rotator cuff tear suffered on December 12, 2012. The Arbitrator also notes that the AMA Impairment Rating performed at the request of Respondent and submitted by both parties documents atrophy, loss of range of motion, and loss of strength in the left upper extremity. The Arbitrator also notes that the Petitioner testified credibly to experiencing an increase in pain with work activities and the activities of daily living. The Arbitrator notes that Petitioner credibly complains of increasing pain with weather changes, overhead movement, and extended forceful reaching. The Arbitrator notes that Petitioner has discontinued recreational activities due to increased pain as well as apprehension for causing re-injury without formal doctor order. Over-the-counter pain relieving mediations and occasional icing his shoulder after work are reported.

The Arbitrator notes that Petitioner has been released to full duty without formal restrictions but that there is undisputed testimony that he is required to seek help with overhead lifting and extended forceful reaching. This seems to be part of the trade before injury as well.