STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IN THE MATTER OF:
CARL ATTEBERRY,

Petitioner,

vs. NO. 12 WC 24458 & 12 WC 39241

JIM'S WELL SERVICE,

Respondents.

ORDER

This matter comes before the Commission on a "Verified Motion for Sanctions and Motion to Dismiss with Prejudice the Second Motion for Fee Petition Enforcement & Sanctions" filed by attorney Heidi Hoffee, attorney for Petitioner, against the law firm of Dworkin & Maciariello. A hearing was held in Mt. Vernon before Commissioner White on August 6, 2015. Ms. Hoffee appeared on her own behalf, and Mr. Dominic Maciariello appeared on behalf of law firm of Dworkin & Maciariello. A record was taken.

On March 3, 2015, the underlying claim was settled for $22,188.29 representing loss of 25% of Petitioner's left hand. At that time Mr. Maciariello had pending a fee petition seeking a percentage of the attorney fees for his alleged representation of Petitioner. Mr. Maciariello's petition for fees was denied by Arbitrator Nowak at the time he approved the settlement contract. Mr. Maciariello filed a Petition to Enforce the Fee Petition and to Impose Sanctions against Ms. Hoffee for failure to honor the fee petition. Mr. Maciariello did not appear when his motion was heard on review, but Ms. Hoffee did. Mr. Maciariello's motion was denied by Commissioner Luskin on May 29, 2015. Mr. Maciariello filed yet another petition to enforce the fee petition which was up on the date of the instant review hearing date. Ms. Hoffee responded with the instant motion to dismiss the fee petition with prejudice and for sanctions against Mr. Maciariello for filing frivolous pleading pursuant to Illinois Supreme Court Rule 137.

At the beginning of the hearing, Mr. Maciariello represented that all matters besides Ms. Hoffee's instant petition had been withdrawn. No such withdrawal appeared in the official records of the Commission. Ms. Hoffee then moved that Mr. Maciariello's fee petition be dismissed with prejudice. When asked by Commissioner White whether that was agreeable with him, Mr. Maciariello responded, "as an office of the Court, I will say I will not file a fee petition again." Thereafter, Commissioner White verbally dismissed Mr. Maciariello's fee petition with prejudice.

In her petition and at hearing, Ms. Hoffee alleged that Mr. Maciariello's firm filed duplicate Adjustments of Claim for accidents for which she had already filed Applications on behalf of the claimant. She also alleged that Mr. Maciariello's fee petition was denied twice and therefore was clearly barred by *res judicata* and therefore frivolous, the actions of Mr. Maciariello in sending numerous communications to her and the insurer's attorney amounted to harassment, and his petition included false and/or misleading factual allegations deserving sanctions. She seeks sanctions pursuant to Illinois Supreme Court Rule 137 in the amount of $6,452.00 representing the time she spent and expenses she incurred in defending Mr. Maciariello's petitions.

At the review hearing, Mr. Maciariello acknowledged that a client of Ms. Hoffee "hired" his firm but that eventually the claimant kept Ms. Hoffee as his attorney. He also acknowledged that he sent Ms. Hoffee numerous electronic correspondences and telephone messages. He claimed that he did not receive any "Court order" denying his fee petition and that he filed the petition for sanctions because he felt Ms. Hoffee was simply ignoring his inquiries.

Initially, the Commission finds the behavior of Mr. Maciariello to be unprofessional. Apparently, he filed duplicate Adjudications of Claim for a client of Ms. Hoffee in violation of Commission rules. While the Commission is not implying that Mr. Maciariello was specifically aware of the fact that the claimant had retained Ms. Hoffee and that she already filed the Applications on his behalf, it would have seemed reasonable for him to inquire whether the claimant had seen a lawyer previously and he certainly could have determined whether a claim had been filed through the Commission website. Likewise, while it is perhaps conceivable that Mr. Maciariello did not receive the Commission orders denying his fee petitions, it is incumbent on him to determine the status of those petitions before he files petitions for enforcement and sanctions regarding a petition that had been denied twice.

While, the Commission in no way condones the actions of Mr. Maciariello, the Commission concludes that we have no authority to impose sanctions under Supreme Court Rule 137. That rule allows a "court" to impose sanctions against attorneys who file bad faith pleadings in court proceedings. However, the Commission is an administrative agency and not a court, and pleadings at the Commission are not pleadings in a court. In addition although Commission Rule 7090.10 does provide a mechanism for the Commission to impose sanctions against lawyers appearing before it, not inconsistent with the authority of the Supreme Court to sanctions attorneys, that rule does not endow the Commission with authority to impose sanctions pursuant to Supreme Court Rule.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Petition for Enforcement of Fee Petition and Sanctions filed by Mr. Dominic Maciariello is hereby dismissed with prejudice.

IT IS FURTHER ORDERED BY THE COMMISSION that the "Verified Motion for Sanctions and Motion to Dismiss with Prejudice for the Second Motion for Fee Petition Enforcement & Sanctions" filed by attorney Ms. Heidi Hoffee is hereby denied.

DATED: SEP 2 3 2015

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-8/6/15
46

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jill Finney,

Petitioner,

vs. NO: 13 WC 13669

15IWCC0753

State of Illinois - Secretary of State,

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, 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 March 27, 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.

DATED: SEP 29 2015
TJT:yl
o 9/21/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

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

FINNEY, JILL
Employee/Petitioner

Case# **13WC013669**

SOI/SECRETARY OF STATE
Employer/Respondent

15IWCC0753

On 3/27/2015, 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 0.10% 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:

1727 LEE, MARK N LAW OFFICE
ALLEN C MUELLER
1101 S SECOND ST
SPRINGFIELD, IL 62704

0988 ASSISTANT ATTORNEY GENERAL
GLISSON, RICHARD C
500 S SECOND ST
SPRINGFIELD, IL 62706

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

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST 8M
PO BOX 19208
SPRINGFIELD, IL 62894-9208

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

MAR 27 2015

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

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
19(b)

Jill Finney
Employee/Petitioner

Case # 13 WC 13669

v.

Consolidated cases: n/a

[State of Illinois] Secretary of State
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 February 23, 2015. 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. [ ] 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 (manifestation), April 18, 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.

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

In the year preceding the injury, Petitioner earned $43,420.00; the average weekly wage was $835.00.

On the date of accident, Petitioner was 44 years of age, married with 2 dependent child(ren).

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 $0.00.

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 Exhibit 5 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.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, bilateral carpal tunnel and cubital tunnel surgeries as recommended by Dr. Michael Neumeister.

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)

March 23, 2015
Date

MAR 27 2015

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained a repetitive trauma injury arising out of and in the course of her employment for Respondent. The Application alleged a date of accident (manifestation) of April 18, 2013, and that, as a result of "Repetitive duties" Petitioner sustained "Carpal tunnel and bilateral cubital tunnel" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment. Respondent disputed liability on the basis of accident and causal relationship.

Petitioner worked for Respondent for over 15 years as an Operations Assistant. Petitioner testified that her job duties required her to perform a significant amount of keyboarding at a computer. In addition to keyboarding, Petitioner also answered telephones, processed applications, did titles/registrations, issued license plates, etc. These job duties also required data inputting on the computer. Many times, Petitioner would talk on the telephone and keyboard at the same time. Petitioner stated that her normal workday was from 8:00 AM to 4:30 PM and that she had two 15 minute breaks and one hour for lunch.

Petitioner testified that her workstation consisted of an old metal desk that did not have a shelf at a lower level for the keyboard. Because of the location of the keyboard, Petitioner had to type a level that caused her wrists to be extended and flexed upward. Petitioner introduced into evidence three photographs of her workstation which showed the keyboard directly in front of her chair (Petitioner's Exhibit 1; Deposition Exhibits 4, 5 and 6).

Petitioner had two prior workers' compensation claims involving her hands/elbows. In 2006, Petitioner underwent a right carpal tunnel release and bilateral cubital tunnel releases. She recovered and was able to return to work but had a reoccurrence of bilateral cubital tunnel syndrome in 2008. Petitioner subsequently underwent bilateral ulnar nerve transposition surgeries. Petitioner again recovered and was able to return to work.

On April 3, 2013, Petitioner was seen by Bethany Tschantz, a nurse practitioner who worked for Dr. Michael Neumeister, a plastic surgeon. At that time, Petitioner complained of pain, numbness and tingling in both hands/arms. Petitioner also stated that the symptoms increased when she was at work. Petitioner informed NP Tschantz of her prior surgeries and she ordered that Petitioner undergo nerve conduction studies (Petitioner's Exhibit 2).

Petitioner was seen by Dr. Edward Trudeau on April 18, 2013 (the manifestation date alleged in the Application) and he performed nerve conduction studies at that time. The nerve conduction studies were positive for bilateral carpal tunnel and cubital tunnel syndromes (Petitioner's Exhibit 3).

Dr. Neumeister examined Petitioner on May 9, 2013, and he reviewed the nerve conduction studies. Dr. Neumeister diagnosed Petitioner as having bilateral carpal tunnel and cubital tunnel syndromes and recommended that surgeries be performed. He recommended that he proceed with the right side first (Petitioner's Exhibit 3).

Dr. Neumeister was deposed on June 23, 2014, and his deposition testimony was received into evidence at trial. Dr. Neumeister reaffirmed his opinion that Petitioner had bilateral carpal tunnel and cubital tunnel syndromes and that Petitioner was in need of corrective surgeries (Petitioner's Exhibit 1; p 12).

At the time he was deposed, Dr. Neumeister reviewed photographs of Petitioner's work station and a written job description of Petitioner's job duties (Petitioner's Exhibit 1; Deposition Exhibits 3-6). The written job description stated that Petitioner typically worked eight hours a day five days per week; she typed fairly continuously through her eight hour workday and that she would typically only break when she answered the phone or wrapped applications around license plates (Petitioner's Exhibit 1; Deposition Exhibit 3). Based on the preceding, and the history Petitioner provided to Dr. Neumeister regarding her job duties, he opined that Petitioner's work activities aggravated the carpal tunnel and cubital tunnel conditions to where they became symptomatic requiring surgical intervention. On cross-examination, when Dr. Neumeister was asked if Petitioner's job description of doing data entry of eight hours a day five days a week was not completely accurate he stated: "I still believe that if she's doing activities, despite the duration or the quality or quantity of work, if that work brings on those symptoms, then it probably is aggravating her condition" (Petitioner's Exhibit 1; pp 17-18; 28).

At the direction of Respondent, Petitioner was examined by Dr. Lawrence Li, an orthopedic surgeon, on August 28, 2014. Dr. Li was deposed on November 17, 2014, and his deposition testimony was received into evidence at trial. When deposed, Dr. Li agreed that Petitioner had bilateral carpal tunnel and cubital tunnel syndromes and that the surgical treatment recommended by Dr. Neumeister was reasonable and necessary; however, in regard to causality, Dr. Li opined that Petitioner's upper extremity conditions were not related to her work activities. He stated that typing/mousing would not cause either carpal tunnel or cubital tunnel syndrome conditions. He attributed Petitioner's conditions to other risk factors including perineural fibrosis that resulted from scar tissue that occurred as a result of Petitioner's prior surgeries; the fact that Petitioner was an insulin dependent diabetic; and the fact that Petitioner was 5'6" tall and weighed 240 pounds (Respondent's Exhibit 1; pp 10-14).

On cross-examination, Dr. Li agreed that the ergonomics of a workstation could have an impact or an aggravation of the development of carpal or cubital tunnel syndrome. He specifically noted that the position of the wrist was very important and that it would impact the development of carpal tunnel syndrome. Further, he agreed that if the elbow was bent at 90° over one half of the time at work, then it could be a factor and contribute to the development of cubital tunnel syndrome (Respondent's Exhibit 1; pp 17-19).

Sara Robinson, Respondent's Workers' Compensation Coordinator testified on behalf of the Respondent at trial. Robinson reviewed Petitioner's attendance records for 2011, 2012 and 2013 and prepared grids of Petitioner's attendance for those years which were received into evidence (Respondent's Exhibit 8). Robinson testified that, based on the information contained in the records, Petitioner had numerous FMLA leaves and other absences from work during those years. Specifically, Robinson testified that in 2011, there were 261 scheduled work days of which Petitioner was absent in some manner for 115 days or 44% of the time. In 2012, there

were 261 work days of which Petitioner was absent in some manner for 150 days or 57% of the time. In 2013, Petitioner was absent in some manner for 119 days or 46% of the time.

A review of Petitioner's attendance records also revealed that Petitioner missed a significant amount of work because of other health issues. However, a significant portion of Petitioner's "absences" from work were only for partial days some of which were only for 15 or 30 minutes (Respondent's Exhibit 8).

At trial, Petitioner testified that her upper extremity symptoms are getting progressively worse, especially by the end of the workweek. She wants to proceed with the surgical procedures that have been recommended by Dr. Neumeister.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury arising out of and in the course of her employment for Respondent that manifested itself on April 18, 2013.

In support of this conclusion the Arbitrator notes the following:

While Petitioner had both carpal tunnel and cubital tunnel syndrome conditions that required surgery prior to the manifestation date, Petitioner recovered from those prior procedures and had returned to work.

Petitioner's workstation required her to type at a level that caused her wrist to be extended and flexed upward. The photographs of Petitioner's workstation received into evidence at trial were consistent with Petitioner's testimony regarding same.

Petitioner's treating physician, Dr. Neumeister, opined that Petitioner's work activities aggravated both the carpal tunnel and cubital tunnel syndrome conditions to where they became symptomatic requiring surgery. While this opinion is based, in part, on Petitioner's working 40 hours a week performing such repetitive activities and the time Petitioner actually spent performing said duties was a lesser amount, Dr. Neumeister still opined that if Petitioner was still performing these repetitive activities that, irrespective of their quality or quantity, that they would still constitute an aggravating factor of the conditions.

While Dr. Li opined that Petitioner's work did not cause the carpal tunnel or cubital tunnel syndrome conditions and they were related to other risk factors, he agreed on cross-examination that the ergonomics of Petitioner's work could impact or aggravate the carpal tunnel and cubital tunnel syndrome conditions.

While Respondent provided a grid outlining Petitioner's attendance records, on cross-examination it was noted that a significant number of the "days" in which she was absent were partial days.

The Arbitrator finds the opinion of Dr. Neumeister to be more persuasive than that of Dr. Li.

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.

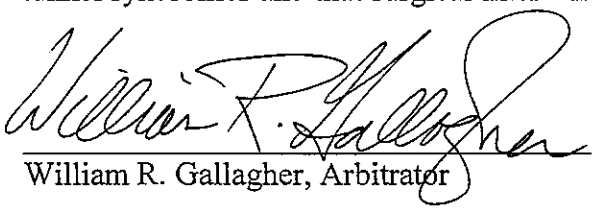
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold 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 issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to prospective medical treatment including, but not limited to, the bilateral carpal tunnel and cubital tunnel surgeries recommended by Dr. Neumeister.

In support of this conclusion the Arbitrator notes the following:

Both Dr. Neumeister and Dr. Li agree that Petitioner has bilateral carpal tunnel and cubital tunnel syndromes and that surgical intervention is reasonable and necessary.



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 Causal connection Left carpal tunnel syndrome	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

David Riess,

Petitioner,

vs. NO: 13 WC 41156

15IWCC0754

United Airlines, Inc.,

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 and prospective medical as it pertains to Petitioner's left hand and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below. 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 Commission reverses the Arbitrator's decision and finds that Petitioner's left carpal tunnel syndrome has been aggravated by the accident on January 21, 2013.

On that date, Petitioner slipped on a piece of ice causing him to fall. He fell onto his left side and noticed pain in his left shoulder, left elbow, and tingling and numbness in his left hand

and wrist area. The Petitioner sought treatment on January 26, 2013 with Take Care Clinic. He complained of pain in his left shoulder, elbow and tingling in his hand. He next saw Dr. Freedburg on January 28, 2013 with the same complaints. Dr. Freedburg recommended carpal tunnel syndrome injections and wrist splints on March 19, 2013. (Petitioner Exhibit 1)

Respondent had Petitioner evaluated by Dr. Heller on May 14, 2013. Petitioner continued to complain of numbness and swelling in his left hand predominantly in the ulnar aspect of palm and ring and small finger. It was his opinion that the bilateral carpal tunnel syndrome diagnosed by Dr. Freedburg had no relationship to the accident on January 21, 2013. (Respondent Exhibit 1)

Dr. Freedburg performed another EMG on Petitioner's left wrist. The new EMG provided evidence of ulnar neuropathy on the left side of with reinnervation of the ulnar innervated muscles. There was also evidence of mild to moderate carpal tunnel syndrome on the left. (Petitioner Exhibit 1) On June 17, 2013, Dr. Heller reviewed the new EMG and additional records from Dr. Freedburg. Dr. Heller recommended surgery of the left ulnar transposition. (Respondent Exhibit 2) However, he was still of the opinion that this was not related to the accident of January 21, 2013 because he felt the accident involved the upper arm and shoulder rather than the wrist and hand. He felt that there was no specific hand trauma that would lead to cause or aggravate the carpal tunnel syndrome. (Respondent Exhibit 3)

The Commission finds the testimony of Dr. Freedburg more persuasive than that of Dr. Heller. On January 29, 2014 his opinion, based on a reasonable degree of medical certainty, was there had been an exacerbation of the pre-existing carpal tunnel on his left side. He believed that surgery was warranted and was related to the accident on January 21, 2013. He testified that Petitioner had persistent and continuous problems with his left hand since first seeing him on January 28, 2013. (Petitioner Exhibit 2) Take Care Clinics medical records, where Petitioner first went following the accidents, also show that he had complaints to his left shoulder, elbow and tingling in his left hand.

The Commission therefore finds that there is a causal connection between Petitioner current left carpal tunnel syndrome and the accident on January 21, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay Petitioner for all prospective medical expenses under §8(a) of the Act and 8-2 as they relate to a left carpal tunnel release and subsequent physical therapy.

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 $5,000.00. 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: SEP 3 0 2015

Charles J. DeVriendt

Ruth W. White

Joshua D. Luskin

HSF
O: 8/11/15
049

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

RIESS, DAVID
Employee/Petitioner

Case# **13WC041156**

UNITED AIRLINES INC
Employer/Respondent

15IWCC0754

On 9/5/2014, 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:

0222 GOLDBERG WEISMAN & CAIRO LTD
JAMES NAWROCKI
ONE E WACKE DR SUITE 3900
CHICAGO, IL 60601

0560 WIEDNER & McAULIFFE LTD
RAFAL DOBEK
ONE N FRANKLIN ST SUITE 1900
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
8(A)19(B)

David Riess
Employee/Petitioner
v.
United Airlines, Inc.
Employer/Respondent

Case # 13 WC 41156

15IWCC0754

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 **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. [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. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other

FINDINGS

On the date of accident, **1/21/13**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $66,906.47; the average weekly wage was $1,286.66.

On the date of accident, Petitioner was 47 years of age, ***single*** with **0** dependent children.

The issue of medical expenses has been reserved by the Parties.

Respondent shall be given a credit of $45,264.45 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $45,264.45. Parties stipulate that all TTD benefits have been paid with the remainder paid as "stat pay" pursuant to the collective bargaining agreement.

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

ORDER

Petitioner's request for prospective surgery for the left carpal tunnel release is hereby 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.

David A. Kane
Signature of Arbitrator

September 5, 2014
Date

ICArbDec19(b)

SEP 5 - 2014

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

David Riess,	)	
	)	
Employee/Petitioner,	)	Case No. 13 WC 41156
v.	)	
United Airlines,	)	**15IWCC0754**
Employer/Respondent.	)	

I. FINDINGS OF FACT

Background

Petitioner, David Riess, was employed at United Airlines as a ramp serviceman for 15 years. Petitioner testified that his daily duties included loading and unloading cargo out of aircraft and receiving and dispatching flights at O'Hare International Airport.

Petitioner first testified that he saw Dr. Freedberg in 2008 and underwent a right shoulder surgery as a result of a work injury. Prior to his January 21, 2013 date of accident, petitioner stated he had no left arm treatment for his shoulder, elbow or wrist/hand.

With regard to the date of accident, petitioner testified that on January 21, 2013, he completed loading baggage for an international outbound flight and was heading back to the "ready room" for the next assignment. As he was walking back with a co-worker, he slipped on ice and fell on his left side including his hand, elbow, and shoulder. He indicated that it happened so quickly he was unable to brace himself for impact. However, he also explained that he braced himself with his left hand and came down

in a way that he injured his hand, then elbow and then shoulder in that sequence.

Petitioner explained that he had keys in his left pocket that cut his left leg when he collided with the ground. He could not remember if his hip/left leg came into contact with the ground before his left arm. Petitioner explained that his primary injury was to the left shoulder and elbow and that he did not seek treatment on the day of accident. No witness testified to corroborate petitioner's version of events.

Petitioner testified that he weighed approximately 285 pounds at the time of the accident, and is five foot nine inches. Currently petitioner weighs over 300 pounds. Petitioner testified that initially he had left shoulder and elbow pain and numbness and tingling in his hand and wrist. He could not recall if he sought treatment on the day of accident, but indicated that on January 26, 2013, he went to Take Care Clinic and complained of shoulder, elbow, and wrist/hand pain.

Petitioner next testified that he presented to Dr. Freedberg on January 28, 2013. Dr. Freedberg recommended a left shoulder MRI, which petitioner underwent on February 7, 2013. Thereafter, Dr. Freedberg recommended an EMG study for his left arm for carpal tunnel syndrome. Petitioner testified that he found out about the bilateral carpal tunnel after the date of accident and he was aware of the fact that his right carpal tunnel syndrome was worse than his left. Petitioner explained that Dr. Freedberg has not treated his right hand for carpal tunnel because it is stable and requires no treatment at this time.

On April 8, 2013, Dr. Freedberg reviewed the EMG and recommended that petitioner undergo ulnar nerve transposition surgery. Petitioner testified that he was seen by Dr. Heller on May 14, 2013 for an

independent medical evaluation. Thereafter, he underwent an updated EMG and had the ulnar nerve transposition surgery on August 16, 2013 with Dr. Freedberg. Petitioner testified that after the surgery, his elbow felt fine but the numbness, tingling, and burning sensation in his hand/wrist continued and continue to this day. Petitioner explained that Dr. Freedberg placed him in physical therapy.

Petitioner then testified that by October 2013, Dr. Freedberg recommended the left carpal tunnel release and opined that it was causally related to his work accident. On January 16, 2014, petitioner returned to Dr. Heller for a second independent medical evaluation. Dr. Heller opined that petitioner's carpal tunnel syndrome was not related to the work injury and was therefore denied.

Petitioner testified that he was released to full-duty work by Dr. Freedberg on June 30, 2014, but that he still recommended the left carpal tunnel release. Petitioner testified that his last visit with Dr. Freedberg was on August 4, 2014. Petitioner still complains of numbness and tingling in his hand and that these symptoms never existed prior to the date of accident. Petitioner also showed the Arbitrator and parties a small bump on his left wrist that appeared after his date of accident and which increases in size after working a full day. At this time, petitioner testified that his left hand does not have the same strength as his right hand and therefore, he must use his right hand more often. Petitioner wishes to undergo the left carpal tunnel surgery at this time.

Medical Treatment

The medical evidence confirms petitioner first presented to Take Care Health Systems and was treated by Dr. Robert Noven on January 26, 2013. Petitioner reported that he was walking outside when he slipped and fell on ice landing on his left side. Petitioner presented with complaints of left shoulder pain with some numbness and tingling to the left hand. However, Dr. Noven's examination revealed minimal swelling on the left hand. Examination of the left shoulder revealed a visually normal shoulder with limited range of motion with forward flexion, resisted flexion, abduction, and resisted abduction with the remainder of the arm being normal. Dr. Noven placed petitioner's left arm in a sling and prescribed Medrol dose pack for possible radiculopathy. (Rx. 5).

Petitioner saw Dr. Freedberg on January 28, 2013 with complaints of left shoulder and left hand pain. Petitioner reported a history of slipping and falling on ice that happened so quickly that he was unable to brace himself and he landed on his left side, and his entire arm was sore. He had cuts on his leg from his keys. Petitioner reported current symptoms of pain in the front joint and numbness in the hand. X-rays of the left shoulder revealed normal alignment with no fractures or dislocations, and minimal degenerative changes. Dr. Freedberg diagnosed petitioner with left shoulder rotator cuff strain and a left hand contusion. (Px. 1).

Petitioner returned to Dr. Freedberg on March 11, 2013, and reported feeling better with the physical therapy helping his range of motion and strength. However, he indicated numbness at the bottom of his palm and numbness in his fingers during the night, as well as pain in the elbow, which depended on the activity. Dr. Freedberg reviewed the MRI of the left

shoulder, which revealed no acute osseous abnormality, mild AC joint osteoarthritis, no clear evidence of labral tearing, and no clear evidence of rotator cuff tearing. Dr. Freedberg diagnosed petitioner with a left rotator cuff strain and left hand contusion, and ordered an EMG to rule out carpal tunnel syndrome. (Px. 1).

The EMG was performed on March 19, 2013, and revealed evidence of bilateral carpal tunnel syndrome, moderate in severity on the right, involving the sensory and motor fibers; mild to moderate on the left involving sensory and motor fibers. The mild left ulnar neuropathy at the elbow with associated denervation changes in the first distal interosseous muscle. (Px. 1).

On April 8, 2013, Dr. Freedberg reviewed the EMG and diagnosed petitioner with a left shoulder rotator cuff strain, left hand contusion, left cubital tunnel syndrome, and bilateral carpal tunnel syndrome. Petitioner elected to undergo the left ulnar nerve transposition. (Px. 1).

On May 14, 2013, petitioner presented to Dr. William Heller for an IME. Petitioner indicated left shoulder pain as well as numbness and tingling in his left hand. Dr. Heller noted petitioner was morbidly obese. Dr. Heller diagnosed petitioner with left shoulder and arm contusions as well as left elbow ulnar neuritis. He agreed that the mechanism of injury, as well as the initial treatment notes from Take Care Health center, confirm this diagnosis. However, he opined that the diagnosis of bilateral carpal tunnel syndrome did not have any relation to the January 21, 2013 date of accident. In support of this opinion, Dr. Heller referenced the fact that the right upper extremity was not injured on the date of accident and had greater carpal tunnel syndrome than the left. Moreover, petitioner did not have any subjective complaints or physical examination findings supporting

a diagnosis of left carpal tunnel syndrome. He opined that these were coincidental findings that did not have any relationship to the work accident. (Rx. 1).

On May 28, 2013, petitioner underwent an updated EMG, which revealed moderate retro-epicondylar ulnar neuropathy on the left side with evidence of re-innervation of the ulnar innervated muscles. There was also evidence of a mild to moderate carpal tunnel syndrome on the left. (Px. 1).

On August 16, 2013, petitioner underwent the left submuscular ulnar nerve transposition with release of the arcade of Struthers, flexor fascia, ulnar nerve neurolysis, and excision of medial intermusculature septum. (Px. 1).

On August 27, 2013, petitioner presented for an initial plan of care for physical therapy. Petitioner reported that, since the surgery, his numbness and tingling had decreased in intensity; however, he continued to feel that his fingers were numb at the fourth and fifth digits. He noted increased swelling and pain along the left wrist and hand, and noted significant sensitivity to contact of his left medial elbow. (Px. 1).

Petitioner returned to Dr. Freedberg on September 16, 2013, and reported improvement but still had numbness and tingling that radiated into the left pinky and ring finger. On October 17, 2013, petitioner reported soreness in his elbow and numbness on the medial side of his left arm from the elbow up to the side of the left pinky. At this time, Dr. Freedberg recommended a left hand carpal tunnel release and petitioner elected to undergo the same. (Px. 1).

On December 12, 2013, petitioner reported to Dr. Freedberg that his left wrist continued to have tightness and pulling, and frequent tingling and numbness that comes and goes. He indicated that he had a hard time

making a fist with the left hand. Dr. Freedberg opined that the left hand carpal tunnel release is causally related to the work accident and requested authorization of the same. (Px. 1).

On January 22, 2014, petitioner underwent a second IME with Dr. Heller. Dr. Heller again opined that the ulnar neuropathy was causally related to the work accident; however, the bilateral carpal tunnel was not causally related. Dr. Heller based this on the mechanism of injury involving the upper arm and shoulder rather than landing on the hand and wrist, and there was no specific hand or wrist trauma that would be expected to cause or aggravate a diagnosis of carpal tunnel syndrome. (Rx. 3).

On January 29, 2014, Dr. Freedberg opined that petitioner had a traumatic event to the elbow as well as to the wrist that resulted in the numbness and tingling in the hand. The numbness and tingling was not only the ulnar, but also in the median nerve distribution. Dr. Freedberg admitted that petitioner had bilateral carpal tunnel syndrome as there were preexisting electrical findings that predated the accident in question; however, the incident certainly exacerbated the preexisting condition. (Px. 2).

Petitioner returned to Dr. Freedberg on February 13, 2014, reporting some soreness in the left elbow with some minor swelling. Petitioner's left hand was still painful and he continued to have numbness, tingling, and stabbing pain. Petitioner followed up with Dr. Freedberg from March 13, 2014 through August 4, 2014, with no significant changes in petitioner's condition. Dr. Freedberg continues to opine that petitioner's left carpal tunnel syndrome is causally related to his work accident. (Px. 1).

II. CONCLUSIONS OF LAW

As to Issues "F" and "K", is petitioner's current condition of ill-being causally connected to his injury and is petitioner entitled to prospective medical care, the Arbitrator finds the following:

The Arbitrator finds that petitioner's left carpal tunnel condition is not causally connected to his injury and in so finding relies upon Dr. Heller's IME reports (Rx. 1, 2, and 3) and the cumulative medical records from Take Care Clinic on January 26, 2013 (Rx. 5) and Dr. Freedberg (Px. 1 and 2), which demonstrate that petitioner's current condition is not causally connected to his work injury of January 21, 2013.

The Arbitrator notes that petitioner sustained a left shoulder and arm contusions as well as left elbow ulnar neuritis as a result of the January 21, 2013 work injury. Moreover, the Arbitrator notes the following facts in denying causation for the left carpal tunnel syndrome.

First, petitioner presented to Take Care Health Systems and was treated by Dr. Robert Noven on January 26, 2013, five days after the accident. Petitioner reported that he was walking outside when he slipped and fell on ice landing on his left side. He reported left shoulder pain with some numbness and tingling to the left hand. However, Dr. Noven's examination revealed minimal swelling on the left hand. The examination of the left shoulder revealed injuries consistent with a direct impact with limited range of motion with forward flexion, resisted flexion, abduction, and resisted abduction with the remainder of the arm being normal. Dr. Noven placed petitioner's left arm in a sling and prescribed Medrol dose pack for possible radiculopathy. (Rx. 5).

Second, the extent of this injury is confirmed by the medical records of Dr. Freedberg. Petitioner reported slipping and falling on ice that "happened too fast to brace himself" and he "landed on his left side, whole arm was sore." Petitioner also sustained cuts on his left leg from his keys. (Px. 1).

Third, petitioner also testified that the fall happened so quickly he was unable to brace himself for impact. However, in contradiction to his prior testimony, he also explained that he braced himself with his left hand and came down in a way that he injured his hand, then elbow and then shoulder in that sequence. Then he testified he could not remember if his hip/left leg came into contact with the ground before his left arm. Petitioner explained that his primary injury was to the left shoulder and elbow and that he did not seek treatment on the day of accident. No witness testified to corroborate petitioner's version of events.

Fourth, the Arbitrator notes the EMG studies from March 19, 2013 and May 28, 2013, which not only indicated the mild left ulnar neuropathy at the left elbow, but also the bilateral carpal tunnel, which was greater on the right than left. (Px. 1).

Finally, the Arbitrator notes Dr. Heller's IME reports. Of particular importance is the fact that petitioner has bilateral carpal tunnel syndrome and the fact that the right upper extremity was not injured on the date of accident but still had greater right carpal tunnel symptoms than the left side. Moreover, petitioner did not have any subjective complaints or physical examination findings supporting a diagnosis of left carpal tunnel syndrome. He opined that these were coincidental findings that did not have any relationship to the work accident. (Rx. 1). Additionally, Dr. Heller based his opinion on the mechanism of injury involving the upper arm and

shoulder rather than landing on the hand and wrist, and there was no specific hand or wrist trauma that would be expected to cause or aggravate a diagnosis of carpal tunnel syndrome. (Rx. 3).

In conjunction with the above mentioned facts, the Arbitrator relies upon the more credible findings of respondent's IME, Dr. Heller, whose opinion is consistent with petitioner's treating medical records supporting no causal connection for the left carpal tunnel syndrome. The Arbitrator specifically notes the series of events that lead to petitioner's slip and fall. Petitioner testified to and was supported by Dr. Freedberg's January 28, 2013 medical record reflecting that the fall happened so quickly that he was unable to brace himself for impact. This series of events is consistent with the medical findings by Dr. Noven, revealing minimal swelling on the left hand and reduced range of motion of the left shoulder. Additionally, Dr. Freedberg's initial evaluation revealed cuts to petitioner's left leg from keys in his pocket. Such an injury would only be supported by a direct impact to the thigh region and also explains petitioner's complaints of left shoulder problems and the later finding of left elbow ulnar neuritis. The Arbitrator also notes that this is consistent with Dr. Heller's findings.

Moreover, petitioner testified that he could not remember if his left leg/hip came into contact with the ground before his left arm, but as noted above, the medical records indicate a strong likelihood that the first impact was to the left leg/thigh with a secondary impact to the left shoulder and elbow. This would also be consistent with petitioner's testimony and medical records that the fall happened too fast for him to brace himself.

Finally, the Arbitrator notes that petitioner has pre-existing bilateral carpal tunnel, which is worse on the right than the left. At the time of injury,

petitioner weighed approximately 285 pounds on a 5'9" frame, and currently weighs over 300 pounds.

Petitioner has the burden to prove his case by preponderance of the evidence, and has failed to do so in this case. After reviewing the evidence submitted, the Arbitrator notes petitioner's history of the mechanism of injury has evolved over time and the Arbitrator cannot reconcile petitioner's testimony with the treating records. Greater weight is apportioned to the most contemporaneous medical histories, finding them more credible and persuasive as to the truth of the matter. The Arbitrator also finds petitioner's own testimony at arbitration internally inconsistent. Therefore, the Arbitrator finds that petitioner's left carpal tunnel condition is not causally related to the alleged work injury of January 21, 2013.

Additionally, the Arbitrator finds that petitioner has failed to prove entitlement to prospective medical care. The Arbitrator relies on Dr. Heller's IME reports (Rx. 1, 2, and 3) and the cumulative medical records from Take Care Clinic on January 26, 2013 (Rx. 5) and Dr. Freedberg (Px. 1 and 2), in denying petitioner's request for the left carpal tunnel release.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Holmes,

Petitioner,

vs. NO: 13 WC 34006
15 IWCC 701

Elite Staffing,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Order of the Commission dated September 10, 2015, having been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order dated September 10, 2015, is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

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

DATED: OCT 1 2015
TJT:yl
51

Thomas J. Tyrrell

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Holmes,

Petitioner,

vs. NO: 13 WC 34006
15 IWCC 701

Elite Staffing,

Respondent.

CORRECTED 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, 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).

The only award in this case, and the only benefit requested by Petitioner per the Request for Hearing (Arbitrator's exhibit 2), is prospective medical treatment. Because the Commission has no basis to determine a monetary value for this treatment, the bond required for appeal to the Circuit Court is the minimum of $100.00.

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 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: OCT - 1 2015
TJT:yl
o 8/24/15
51

Thomas J. Tyrrell

Kevin W. Lamborn

Michael J. Brennan

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

HOLMES, MICHAEL
Employee/Petitioner

Case# **13WC034006**

ELITE STAFFING
Employer/Respondent

15IWCC0701

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:

3068 SCROGGINS LAW OFFICE
MORGAN SCROGGINS
1506 JOHNSON RD SUITE 200
GRANITE CITY, IL 62040

2396 KNAPP OHL & GREEN
L DAVID GREEN
6100 CENTER GROVE RD BOX 446
EDWARDSVILLE, IL 62025

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
19(b)

MICHAEL HOLMES
Employee/Petitioner

v.

ELITE STAFFING
Employer/Respondent

Case # **13** WC **34006**

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 **Belleville**, on **September 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. [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. [ ] 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, **August 2, 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 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 $**17,166.00**; the average weekly wage was $**330.10**.

On the date of accident, Petitioner was **47** years of age, 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 $ 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 provide Petitioner with worker's compensation benefits to include prospective medical treatment for Petitioner's right shoulder injury pursuant to Section 8(a) 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

12/12/14
Date

ICArbDec19(b)

JAN 5 - 2015

ARBITRATOR FINDS THE FOLLOWING FACTS:

Petitioner, MICHAEL HOLMES, now age 48, was employed by the Respondent, ELITE STAFFING, on August 2, 2013, and was working as a laborer.

On August 2, 2013, Petitioner was working as a laborer on the line. On the day in question, his shift started at 6:00 p.m. After returning to the line from lunch, a supervisor stopped Petitioner and told him to get a pair of safety glasses from the office. He was told to hurry because the line is stopped until he returned. He went to the restroom before returning. While in the restroom, Petitioner slipped and fell when he turned around on the wet floor. As a result of the fall, he injured his right shoulder.

The Petitioner slipped on a wet floor. This particular bathroom was the only one available to employees. It contained five urinals and three stalls. Since the employees had just returned from their lunch break, the floors were in more disarray. There was water and urine all about the floors from multiple employees urinating and washing their hands. Employees must wash their hands prior to returning to the floor. The janitor, Ed Harris, was notified of the incident when Mr. Dressler came to the break room to get him. The last time the bathroom was cleaned was 7:30 p.m., prior to the 8:00 p.m. break. The employees, per Mr. Harris, like to destroy a bathroom.

Further, the Petitioner testified that he was working on an "assembly line". The "line" stopped while he was getting his glasses and using the restroom. As a part of his working condition, the Petitioner had to hurry in and out of the bathroom, to return to the line so it could keep running.

When Petitioner returned to the line, his right shoulder hurt really bad. He then reported the incident to the line supervisor. The supervisor sent him to the office and they had him clock out and fill out the incident report. The main supervisor then took him back to the bathroom and showed him the floor. The floor was damp but had been cleaned. You could still see the mop streaks.

The Petitioner was transported by Ambulance to Anderson Hospital. They took X-rays of his shoulder. He was diagnosed with right shoulder pain, bruise, and degenerative at the glenohumeral joint. The Petitioner had delays in medical treatment because the Respondent would not approve treatment. On October 24, 2013, Petitioner was directed to obtain an MRI of the right shoulder due to the continuous pain. On November 21, 2013, the MRI revealed a rotator cuff tear with soft tissue edema. On December 12, 2013, Petitioner's doctor agreed with the MRI and felt the tear was acute in nature.

The Arbitrator finds the Petitioner still requires medical treatment for his right shoulder and accordingly orders Respondent to pay for such reasonable and necessary prospective medical benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GREATHOUSE, THOMAS Case# **13WC010680**

Employee/Petitioner

PERU ELEMENTARY SD #124

Employer/Respondent

On 10/1/2015, 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 0.10% 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:

2748 PERONA PETERLIN ANDREONI ET AL
GARY L PETERLIN
PO BOX 35
OGLERBY, IL 61348

1109 GAROFALO LAW
LAURA HRUBEC
55 W WACKER DR SUITE 1000
CHICAGO, IL 60601

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

Thomas Greathouse
Employee/Petitioner

v.

Peru Elementary SD #124
Employer/Respondent

Case # **13** WC **10680**

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 **Ottawa**, on **July 29, 2015**. 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. [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 February 19, 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 $46,666.36; the average weekly wage was $897.43.

On the date of accident, Petitioner was 54 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 as explained *infra*.

Respondent shall be given a credit of $22,339.63 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $22,339.63. *See* AX1. Also as agreed, no overpayment or underpayment of temporary total disability benefits is being claimed by either party. *Id.*

Respondent is entitled to a credit of $2,908.51 under Section 8(j) of the Act. *See* AX1.

ORDER

Medical Bills

As explained in the Arbitration Decision Addendum, Respondent has paid all reasonable and necessary medical expenses. Petitioner's claim for payment of medical bills for treatment rendered after April 10, 2013 is denied.

Permanent Partial Disability Benefits

As explained in the Arbitration Decision Addendum, Respondent shall pay Petitioner permanent partial disability benefits of $538.46/week for 325 weeks, because the injuries sustained caused 65% loss of use 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

September 29, 2015
Date

OCT 1 - 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Thomas Greathouse
Employee/Petitioner

Case # **13** WC **10680**

v.

Consolidated cases: **N/A**

Peru Elementary SD #124
Employer/Respondent

FINDINGS OF FACT

The only issues in dispute are Respondent's liability for certain medical bills and the nature and extent of Petitioner's injury. AX1. The parties have stipulated to all other issues, including causation through April 10, 2013, the date on which the parties agree Petitioner reached maximum medical improvement. *Id.*

Background

Thomas Greathouse ("Petitioner") testified that he was employed by Respondent as a custodian and he also worked part-time at HyVee grocery store. He had a pre-existing low back condition and underwent three back surgeries in 1997, 1998 and in 2007 before his accident at work on February 19, 2013. Petitioner underwent medical treatment with Drs. Tracy and Olivero for this condition. However, Petitioner was working 40 hours per week regularly before his accident as well as another 15-20 hours at his part-time job.

Accident & Medical Treatment

On February 19, 2013, Petitioner testified that he was moving tables in the cafeteria. He took a folding table and felt a pain in his back. Petitioner reported the injury to a secretary, Stephanie Lippert, and Sarah McDonald, the principal.

Petitioner then presented to Illinois Valley Community Hospital on February 19, 2013 reporting an injury to his back while lifting a lunch table to fold it. He was diagnosed with lumbago and directed back to his surgeon, Dr. Tracy, with whom he had treated in the past for his low back. He was placed on work restrictions and referref for physical therapy. Petitioner then underwent x-rays on February 23, 2013 for pain after his lifting accident, which showed laminectomy defects from L1-L3 and scattered spurring and facet arthropathy that was little changed from his May 7, 2011 x-rays.

On March 20, 2013, Petitioner returned to Dr. Tracy, a physician with whom he had treated for about 20 years. Dr. Tracy's records reveal he was initially seen for low back pain and sciatica, some episodes of which were related to lumbar disc herniation. Then, a few years ago, Petitioner was seen when he developed symptoms from a myxopapillary ependymoma of the filum terminale. Petitioner underwent a laminectomy between L1 and L3, which was performed for removal of a tumor.

Petitioner reported to Dr. Tracy that he was lifting a lunch table at work for the Peru School System on the date of accident and had a recurrence of low back pain with left posterior thigh pain as well as pain in his back that was initially at a pain level of 10/10 and now 7/10. He also reported that he was off of work order by the occupational health clinic and undergoing physical therapy. Dr. Tracy noted that, with his history of cauda equina ependymoma and especially with his acute symptoms, an MRI was appropriate.

On April 3, 2013, Petitioner underwent the recommended MRI at Illinois Valley Community Hospital. The interpreting radiologist noted: (1) no residual or recurrent tumor, resection of spinous processes from L1 through L3 without abnormal enhancing scar tissue; and (2) mild disc bulging, L3 4 through L5 S1 that appeared unchanged in comparison with prior exams.

On April 10, 2013, Petitioner returned to Dr. Tracy for follow-up of his MRI results. He was recently seen for an increase in back and lower extremity pain that the doctor felt was probably a lumbar sprain and strain due to his history of a myxopapillary ependymoma of the filum terminale. However, there was no evidence of any new structural abnormalities such as a disc herniation or instability, or neural compression, evident in the recent MRI. Consequently, Dr. Tracy attributed Petitioner's symptoms to a sprain and strain and indicated that his prognosis was quite good. Petitioner was released from care with instructions to return if any new neurosurgical problems arose with a plan to undergo an enhanced MRI in about five years for continued follow-up of the tumor.

Petitioner testified that he also sought treatment with Dr. Alexander Ghanayem ("Dr. Ghanayem") on June 27, 2013. The record reflects that Petitioner reported a back injury occurring at work in February of 2013 while lifting a table when he felt a strain in his lower back and a pop as well as an inability to walk at that time. Dr. Ghanayem reviewed Petitioner's post-accident MRI and diagnosed him with a condition called arachnoiditis, which is a clumping of nerve roots. Petitioner testified that he understood this to be his condition as diagnosed by Dr. Ghanayem. He also testified that he complained of pain in his back radiating down his leg to his buttocks.

Petitioner has not followed up with Dr. Ghanayem since the summer of 2013 and there is no evidence that he has sought any treatment for the low back since 2013. He testified that no surgery was recommended, however a spinal cord stimulator was recommended as well as back injections. Petitioner declined both treatment modalities and testified that he has not returned to Dr. Ghanayem since 2013.

Deposition Testimony – Dr. Ghanayem

On June 25, 2014, Petitioner called Dr. Ghanayem as a witness. He gave testimony about his medical treatment of Petitioner and rendered opinions about Petitioner's condition of ill-being in the low back and its relatedness to the accident at work. Ultimately, Dr. Ghanayem opined that Petitioner's arachnoiditis condition was probably aggravated by the injury at work.

Dr. Ghanayem indicated that the condition of arachnoiditis was pretty uncommon, but that it could cause pain in a patient while moving or bending because the clumping prevents proper nerve function and the clumped nerves could become inflamed causing neuropathic pain. With regard to Petitioner in particular, Dr. Ghanayem testified that Petitioner's arachnoiditis condition pre-dated his accident, but became symptomatic because of the accident. He recommended pain management to address Petitioner's continued pain and symptoms.

On cross examination, Dr. Ghanayem testified about other factors that might contribute to Petitioner's overall condition, including smoking and diabetes. But, he maintained that Petitioner's arachnoiditis condition which predated the accident at work became symptomatic because of the accident with symptoms that would wax and wane after that point.

Section 12 Examination & Deposition Testimony – Dr. Lewis

On June 11, 2013, Petitioner presented for an evaluation at Respondent's request with Dr. Michael Lewis ("Dr. Lewis") of Illinois Bone and Joint. Dr. Lewis was later called as a witness by Respondent on July 7, 2014 and gave testimony about his examination of Petitioner on June 7, 2013, his review of Petitioner's prior treatment records dating back to 1996, and his conclusions about Petitioner's condition of ill-being in the low back and its relatedness, if any, to Petitioner's accident at work.

Dr. Lewis testified that although Petitioner had an arachnoiditis condition evident in his MRI, such a condition could stem from significant symptoms or no symptoms at all. With regard to Petitioner in particular, Dr. Lewis indicated that he required no treatment for arachnoiditis because his physical examination of Petitioner did not support such a conclusion. Specifically, Dr. Lewis testified that he would have expected pain to be reproduced in the spine with certain movements, which did not occur in Petitioner, and that Petitioner exhibited multiple inconsistent findings on exam that were not corroborated by objective medical evidence.

Ultimately, Dr. Lewis diagnosed Petitioner with a lumbar strain. He indicated that it was difficult to determine causal connection between Petitioner's accident and low back condition given that his findings at the time of Petitioner's physical examination included multiple positive Waddell signs with no objective evidence of orthopedic pathology. Dr. Lewis also noted that Petitioner's post-accident MRI revealed no new structural abnormality such as disc herniation or instability.

However, Dr. Lewis also testified on direct and cross-examination about Petitioner's arachnoiditis condition. He maintained that it was an extremely unlikely occurrence, but conceded that its presence could be increased by multiple operations and become symptomatic in certain situations.

Additional Information

Regarding his current condition, Petitioner testified that he is not currently receiving medical treatment for his back. He explained that he experiences back pain for which he takes Oxycontin and Hydrocodone medication. He localized his pain to be from the belt-line going down the leg. Petitioner testified that he has difficulty sitting and sleeping, and explained that he uses a cane. On cross examination, Petitioner testified that he has not had any other injuries since February of 2013 and no follow up appointments with any doctors.

However, Petitioner also testified that he has not worked for Respondent or HyVee or sought work after his accident. He explained that he would not be able to return to work as a custodian because he cannot bend, lift over 10 pounds, walk far or stand for any length of time.

CONCLUSIONS OF LAW

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.

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).

The Arbitrator notes the parties' stipulation that Petitioner reached maximum medical improvement by April 10, 2013 when Dr. Tracy released him from care. While the deposition testimony of Dr. Ghanayem and Dr. Lewis are at odds with regard to diagnosis and whether Petitioner's arachnoiditis condition was aggravated by the lifting accident at work, both physicians indicated that there were no structural changes visible on Petitioner's post-accident MRI. Moreover, the record reflects Petitioner's extensive prior treatment history for decades before the accident at work which was acknowledged by both physicians.

Accordingly, the Arbitrator finds that the medical bills claimed by Petitioner are not related to the accident of February 19, 2013, but instead related to Petitioner's pre-existing condition. Respondent shall receive a credit, if any, as agreed by the parties.

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.

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 by either party. Thus, the Arbitrator considers the parties to have waived their right to do so and assigns no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator finds Petitioner's testimony regarding his duties at work requiring lifting, bending and climbing on the date of the accident to be credible. This evidence is uncontroverted. As a result, the Arbitrator gives significant 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. As a result, the Arbitrator gives significant weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there is evidence reflecting Petitioner's diminished physical capabilities (i.e., Petitioner's own testimony). No specific evidence was introduced regarding a calculable diminishment in Petitioner's future earning capacity such that an analysis under Section 8(d)1 of the Act is appropriate, but Petitioner's testimony viewed in light of the medical evidence and Dr. Ghanayem's plausibly articulated opinions establish that he could not return to work as a custodian, in part, because of his injury at work. As a result, the Arbitrator gives significant 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's treating physician, Dr. Ghanayem, maintained that Petitioner sustained an aggravation to his pre-existing arachnoiditis condition as a result of his accident at work. While Petitioner's condition had reached maximum medical improvement as of April 10, 2013, the evidence shows that it continued to wax and wane as indicated by Dr. Ghanayem. The Arbitrator finds the opinions of Dr. Ghanayem to be more persuasive than those of Dr. Lewis, who acknowledged that Petitioner had arachnoiditis. Moreover, Petitioner credibly testified about his inability to perform certain physical activities such as bending, lifting over 10 pounds, or walking or standing for any length of time. As a result, the Arbitrator gives significant weight to this factor.

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 has established that his injury at work partially incapacitated him from pursuing the duties of his usual and customary line of employment as a custodian and awards permanent partial disability to the extent of 65% loss of use of the person as a whole pursuant to §8(d)2 of the Act.

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

GADE, PAOLA Case# **14WC032889**

Employee/Petitioner

STEPHEN WALLACE DDS INC

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

5317 JOHN J CASTANEDA PC
47 Du PAGE COURT
ELGIN, IL 60120

0507 RUSIN & MACIOROWSKI LTD
MARK P RUSIN
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Paola Gade
Employee/Petitioner

Case # 14 WC 32889

v.
Stephen Wallace DDS, Inc.
Employer/Respondent

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 Arbitrator Thompson-Smith, Arbitrator of the Commission, in the city of Chicago, on 8/18/2015. 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. [ ] 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, 7/31/2013, 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 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 $17,160.00; the average weekly wage was $330.00.

On the date of accident, Petitioner was 36 years of age, married, with 3 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 $2,828.57 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 has not proven, by a preponderance of the evidence, that there is a causal relationship between the accident and her current state of ill-being therefore, no benefits are awarded, pursuant to the Act.

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 of 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.

FINDINGS OF FACT

The disputed issues in this matter are: 1) accident; 2) causal connection; 3) medical bills; 4) temporary total disability; 5) penalties; 6) attorney's fees; and 7) is Petitioner entitled to prospective medical treatment. *See,* AX1.

Petitioner's testimony

On July 31, 2013, Petitioner was employed as a dental hygienist for Respondent, with duties of setting up her tools, greeting patients and performing teeth cleanings. She would initially perform an oral examination on patients and obtain x-rays, if necessary. She would then perform the cleanings. Petitioner also testified that her duties occasionally involved lifting dental supplies shipped to the office.

Petitioner testified that she began working for Respondent on January 7, 2013 and that she had obtained her dental hygienist certification seven months prior. Before this employment, she had one temporary job as a dental hygienist, at a different dental office, which had lasted two weeks.

Petitioner testified that on July 31, 2013 she was taking x-rays of a patient, when that patient started gagging. Petitioner ran back to help the patient and tripped on a cord, striking her left knee. Petitioner testified she continued working and she saw one more patient for treatment following the incident. She did not identify any witnesses to the accident or state whether the patient witnessed the incident. Petitioner reported the incident to her supervisor, Maria Haryasz, the same day.

Petitioner testified that she pursued no medical treatment for her left knee in the days and weeks following the alleged accident. She continued to perform her normal work, which she testified occasionally involved lifting boxes of dental supplies. She did not complain to her employer about any difficulty performing her work or experiencing knee pain. However, she testified she "favored her left leg" because of pain she was experiencing and took over-the-counter medication. She did not offer into evidence receipts related to over the counter medication. Petitioner testified that she worked continuously and did not take any time off between July 31, 2013 and December 8, 2013. Petitioner also testified that she never saw a doctor during this time for any treatment related to her knee. She never contacted her physician, Dr. Rusco, to complain about a left knee problem. She testified that Dr. Rusco had been her family doctor since 2002.

Petitioner had been reprimanded for some disciplinary issues on the job, including excessive absenteeism and use of a cell phone at work. She denied being reprimanded for swearing on the job.

Petitioner requested a meeting with management on December 3, 2013 regarding a reduction in her work hours. Petitioner denied that her hours were being reduced due to absenteeism. The managers advised petitioner she was unreliable and that they were going to reduce her work schedule. Petitioner believed another hygienist was being brought on staff. December 3, 2013 was the last day

petitioner worked for Respondent. December 8, 2018 was a Sunday. On Monday, December 9, 2013, Petitioner called her workplace and stated that her left knee had been treated the day before due to the incident occurring in July.

On December 8, 2013, Petitioner saw Dr. Garett-Hauser at Christ Advocate Hospital, complaining of left knee pain as a result of a fall. Petitioner complained of knee pain the past two months which was worse with bending or walking. Dr. Garett-Hauser's notes indicate it could not be determined whether the knee problem was work-related. Petitioner was examined and discharged on this date. The records from Christ Hospital indicate a knee problem of unknown etiology and some of the records indicate the problem relates to a fall that occurred two months earlier, which would be approximately October 8, 2013. The alleged work accident occurred at the end July, 2013. Thus, petitioner's physical complaints by history would not be consistent with the timeline of the alleged work accident. The hospital records also reflect that it could not be determined whether the knee problem was work-related. Petitioner was prescribed pain medication. PX1.

Petitioner presented to Dr. Chaudri on December 12, 2013 complaining of both left knee and left foot pain, which she related to an accident at work on July 31, 2013. Petitioner complained of left knee pain, instability, giving way and swelling. She reported her left foot pain started suddenly, but did not state the specific date or time this pain began. Petitioner was examined and diagnosed with left patellofemoral syndrome and peroneal tendonitis. Petitioner was prescribed medication and physical therapy. She was authorized off work and instructed to follow-up with her family physician, Dr. Rusco. She was instructed to return to see Dr. Chaudri in four weeks.

Petitioner saw Dr. Chaudri for a follow-up visit on January 9, 2014 with complaints on pain. Dr. Chaudri ordered MRIs of both the left knee and left foot. An MRI of the left knee performed January 17, 2014 was essentially negative. Specifically, the MRI showed the ligaments and menisci were intact. The MRI was normal with the exception of thinning of the articular cartilage surface of the patella. Petitioner subsequently saw Dr. Chaudri on January 22, 2014. The doctor advised her to continue physical therapy. Petitioner saw Dr. Chaudri sporadically through April 2, 2014, at which point Petitioner ceased seeking treatment with this doctor. PX4.

Petitioner saw Dr. Wehner on February 26, 2014, at the request of Respondent. At the time of Dr. Wehner's examination, Petitioner was wearing a walker boot on the left foot and a Neoprene knee brace. An examination of the left foot showed some mild pain with motion and some tender areas. An examination of the left knee was normal with the exception of mild tenderness. Dr. Wehner reviewed the recent MRI results of both the foot and knee and did not find any significant abnormalities. In addition, Dr. Wehner reviewed pertinent medical records. Dr. Wehner opined that petitioner's condition or complaints were not related to the July 31, 2013 alleged fall, given the 4-1/2 month delay in treatment. Petitioner did not report a left foot injury. Dr. Wehner stated petitioner's

foot and knee problems were due to conditions that frequently appear in the general population and are not the result of any specific trauma. RX2.

Petitioner retained an attorney on September 23, 2014. At that time, she had not seen a doctor in approximately six months. Her attorney referred Petitioner to Dr. Dworsky of Hinsdale Orthopedics, whom she subsequently saw on October 6, 2014. On that date, he reviewed an x-ray of Petitioner's left knee that showed a thinning of the kneecap. Dr. Dworsky ordered an updated MRI since he believed the MRI conducted at Christ Hospital was poor. An October 11, 2014 MRI showed no significant internal pathology, only a mild amount of chondromalacia or fissuring of the patella. On this basis, Dr. Dworsky ordered physical therapy for Petitioner at ATI Oak Lawn, Illinois twice a week. The records of Petitioner's attendance indicate that she did not attend physical therapy consistently. PX3 & 5.
She presented to Dr. Dworsky for left knee complaints on October 6, October 24, November 21 and December 19, 2014. Dr. Dworsky initially stated that Petitioner's problem appeared to be a soft tissue inflammatory type problem. After Petitioner's continued complaints, Dr. Dworsky diagnosed patellofemoral syndrome and suggested arthroscopic surgery, i.e., a lateral retinacula release. Dr. Dworsky's notes of December 19, 2014 indicate Petitioner is to decide whether to have the surgery. Petitioner is not actively pursuing further medical treatment with Dr. Dworsky and has not returned to see the doctor since December 19, 2014.

Deposition of Dr. Bradley D. Dworsky, dated March 24, 2015
Dr. Dworsky testified regarding Petitioner on March 03, 2015. Dr. Dworsky testified that he had not seen any of Petitioner's previous medical records at the time of treatment, and that he was unaware that she had not sought treatment for her injury immediately. He also testified that someone who suffered an acute traumatic event would be expected to have suffered immediate symptoms. Dr. Dworsky further testified that he was unaware Petitioner had ceased to attend physical therapy as of her last visit on December 19, 2014. Further, Dr. Dworsky testified in Petitioner's social history that she was a smoker and did not exercise regularly. Dr. Dworsky then testified as to the negative effects of a lack of physical exercise and how this may impact someone's overall health. Dr. Dworsky also admitted that the fitting of the surface of the joint as seen on the x-ray may also be associated with degenerative changes. PX5.

Petitioner testified she has not worked or applied for work in any capacity since December 2013. She has not collected unemployment compensation or applied for Social Security disability. She testified that she wants surgery by Dr. Dworsky approved in the hopes it will improve the condition of her knee. She denied having any contact with Respondent since on or about October 2014.

Respondent's witness
Ms. Haryasz, the officer manager, testified that the office was small with only five employees, and that she oversaw the other employees. Ms. Haryasz has held the position of office manager since the

practice opened 19 years ago. She testified petitioner was initially hired to work two days a week, as a dental hygienist. In addition, Petitioner did report an accident July 31, 2013, wherein she state that she fell and injured her left knee. Petitioner did not report any injury to her left foot.

Ms. Haryasz identified an accident log prepared on the date of the alleged incident that states that "Employee tripped over cord of x-ray...knee injured...area red...no apparent injury." It lists the location of the event as "back of office." The log also documents an August 01, 2013 visit by Petitioner to the office to pick up her paycheck in which Petitioner reported her knee was "messed up" and that Petitioner was seeing a doctor. Ms. Haryasz testified that she saw Petitioner chasing her kids around the office on subsequent dates. Ms. Haryasz testified that she did not believe Petitioner had an ongoing problem. In the weeks and months that followed, Petitioner was not limping or having any apparent problems with her knee. Ms. Haryasz reported that Petitioner did not miss any time from work and that she continued to perform her normal duties as a dental hygienist without incident or complaint. Petitioner never voiced any complaint of ongoing knee problems during this time. RX4.

Ms. Haryasz testified regarding the disciplinary issues concerning Petitioner and that Petitioner had an absentee problem and was disruptive around the office. Ms. Haryasz testified that Petitioner requested a meeting with Dr. Wallace and herself on December 3, 2013. During this meeting, Petitioner was advised that her work hours were going to be reduced. Ms. Haryasz testified that Petitioner became rude and upset during their meeting and complained that it was Ms. Haryasz who was a problem around the office. Ms. Haryasz confirmed that Petitioner has not returned to work since December 3, 2013. Ms. Haryasz testified that she observed the petitioner working and taking care of her children over the next several months. By her observations, petitioner did not appear to be in pain or limited in her movements, regarding her left knee and that Petitioner did not voice any knee or foot problems during the December 3, 2013 meeting.

CONCLUSIONS OF LAW

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

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. Id. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission*, 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission*, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).

The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. *Caterpillar Tractor vs. Industrial Commission*, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. *Neal vs. Industrial Commission*, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of all facts and circumstances support the decision. *See generally, Gallentine v. Industrial Commission*, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), *see* also *Seiber v Industrial Commission*, 82 Ill.2d 87, 411 N.E.2d 249 (1980), *Caterpillar v Industrial Commission*, 73 Ill.2d 311, 383 N.E.2d 220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence, and assign weight to the witness' testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v Workers' Compensation Commission*, 397 Ill.App. 3d 665, 674 (2009).

Based on the testimony of Petitioner, the testimony of Petitioner's Manager, Ms. Haryasz, and the injury log in evidence, the Arbitrator finds petitioner sustained accidental injuries which arose out of and in the course of her employment July 31, 2015. However, the Arbitrator finds petitioner failed to prove her left leg and foot conditions and alleged need for medical treatment commencing December 8, 2013, is causally related to the accident of July 31, 2013.

Petitioner reported striking her left knee that date. She did not report an injury to her left foot or any other part of the body. On July 31, 2015, the injury log notes some redness to the knee, but no apparent injury noted. Although Petitioner reported on August 1, 2015 that her knee was "messed up" and she planned to see her doctor, no swelling or bruising was noted on observation. Petitioner stated she planned to see a doctor on August 2, 2015, but she never did so. The records of Dr. Rusco are in evidence. Dr. Rusco is Petitioner's family doctor. His records do not show Petitioner ever contacted him with a complaint of left knee pain on or around the July 31, 2013 accident date. However, the Arbitrator relies on the respondent's log and the petitioner's testimony and finds that the petitioner has proven, by a preponderance of the evidence, that an accident occurred, which arose out of and in the course of her employment by Respondent.

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

It is not enough that the petitioner is working when an injury is realized. The petitioner must show that the injury was due to some cause connected with the employment. *Board of Trustees of the University of Illinois v. Industrial Commission*, 44 Ill.2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v Industrial Commission*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991).

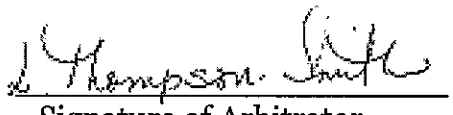
Petitioner admitted that she never pursued treatment for her left knee or any other part of the body allegedly related to this accident in the weeks and months following July 31, 2013. She continued to perform her normal work. She did not request assistance or any modification in her work duties during this time. Petitioner's manager, Ms. Haryasz, observed Petitioner working over the subsequent months and at times with her children. Petitioner moved about and worked without any apparent difficulty. Petitioner never voiced any complaint of ongoing knee problem to Ms. Haryasz after August 1, 2015.

There has been testimony that Petitioner's work performance was poor in late 2013 and she was apparently reprimanded by management due to issues related to absenteeism and disruptiveness around the office. Her work schedule was to be reduced. In a meeting December 3, 2013, when Petitioner was advised that her work hours were to be reduced, she became rude with her manager during this conversation and accused the manager of being the problem around the office. Petitioner has not returned to work since December 3, 2013, nor has she sought work.

Petitioner has sought treatment for left knee and left foot conditions of patellofemoral syndrome and tendonitis. These are not traumatically induced conditions. The Arbitrator relies on the opinions of Dr. Wehner that petitioner's left leg and foot conditions and need for treatment commencing December 8, 2013, is unrelated to the accident of July 31, 2013.

Petitioner has not proven, by a preponderance of the evidence, that her current condition of ill-being is causally related to the accident, therefore, no benefits are awarded, pursuant to the Act. As the petitioner has not proven causation, all other issues are moot and will not be addressed.

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
14WC32889
SIGNATURE PAGE



Signature of Arbitrator

October 7, 2015
Date of Decision

OCT 8 - 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

VAN DE WARKER, DAVID Case# **14WC021124**

Employee/Petitioner

VACTOR MANUFACTURING

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

0190 LAW OFFICES OF PETER FERRACUTI
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OTTAWA, IL 61350

1120 BRADSY CONNOLLY & MASUDA
MARK VIZZA
10 S LASALLE ST SUITE 900
CHICAGO, IL 60602

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

- [ ] 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 VAN DE WARKER
Employee/Petitioner

v.

VACTOR MANUFACTURING
Employer/Respondent

Case # **14** WC **21124**

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 **Kankakee**, on **September 14, 2015**. 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. [x] 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 the date of accident, **3/26/2013**, 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 in part*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**27,465.64**; the average weekly wage was $**773.68**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **no** dependent children.

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

Respondent is entitled to a credit of $**9,880.24** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $464.20/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

10/6/15
Date

OCT 8 2015

FINDINGS OF FACT

This case involves a petitioner alleging injuries to his left arm sustained while working for the Respondent on March 26, 2013. (See. Arb. Exh. 2) At hearing, the issues in dispute were the following: 1) causation, 2) average weekly wage, 3) medical expenses and 4) nature and extent. (See Arb. Exh. 1)

The petitioner testified that in March 2013 he worked at respondent for 24 years. He was a welder. On March 26, 2013 he was pulling an air hose attached to a grinder when it jerked and pulled his shoulder. He felt a snap in his shoulder. It started aching. The Petitioner testified he reported this to his supervisor, Art Zimmerman. He was able to continue working that day. He was sent to see Dr. Garg the next day or the day after that. He was released to full duty by Dr. Garg. He still had an aching. The pain varied and got worse. He was prescribed physical therapy and a home exercise program.

In August 2013 he went to McLean Orthopedics. He believes his arm got worse before he went to McLean. Dr. Norris at McLean Orthopedics tried an injection. His shoulder did not improve with the injection. In January 2014 he underwent an MRI and Dr. Norris performed surgery in February 2014. He felt better after the surgery. After the surgery he retired.

The Petitioner testified he worked full duty from the time of the injury until he went off work for the surgery on February 14, 2014. The Petitioner testified he used to golf before the injury but no longer golfs. He testified that he owns a thrift store and works at the thrift store. Between the time of the accident and the surgery, he worked at the thrift store and sometimes he would have to move objects at the thrift store.

The Petitioner testified that he did his job standing up and welded objects on a table that was approximately waist height. He testified that when he was pulling the air hose, he was pulling at approximately shoulder level. After the accident he had no problem performing his regular duties. He didn't miss any time from work between the date of the accident and the date of his surgery. The Petitioner testified he was seen by Dr. Lieber for a Section 12 examination. He testified that Dr. Podzamsky is his family doctor and he treated with Dr. Podzamsky in September and December of 2013, but not for his shoulder.

Dr. Joseph Norris testified through deposition. He testified he is a board certified orthopedic surgeon who specializes in sports medicine and arthroscopy. He testified that he first saw the Petitioner on August 12, 2013. At that time, the patient was complaining of left shoulder pain and thought he strained his shoulder while at work. He was complaining of weakness, popping and clicking. The doctor felt there was a problem with the biceps tendon and subacromial impingement. He injected the biceps tendon in the subacromial space. He recommended home exercise program and physical therapy. He next saw the petitioner January 28, 2014 and the patient stated he had no relief from the injections. The doctor recommended an MRI which was done that showed the full thickness tear of the supraspinatus, SLAP tear, which is a tear of the superior labrum. He recommended subacromial decompression, rotator cuff repair and biceps tendonotomy. That surgery was performed on February 14, 2014. The patient saw the doctor on April 28, 2014 and was complaining of some persistent discomfort, but its motion was progressing. The doctor injected the biceps groove at that time.

On June 2, 2014 the patient was doing excellent and he was back to his former activities. Dr. Norris' records indicate that the date of onset was March 27, 2013 when the patient strained his shoulder at work. The fact that the patient continued to work for five months afterwards would not affect his decision regarding causal connection. What would be of interest to him was whether or not the Petitioner had any symptoms or

complaints before the accident and what his symptoms were between the date of the accident and the first time he saw him. Certain tests were performed by Dr. Norris which were negative, but those are only accurate 60% of the time.

Lawrence Lieber, M.D. testified through deposition. He testified that he specializes in orthopedic surgery and did a fellowship in sports medicine, as well as in arthritis and total joint replacement surgery. As part of his practice, he normally operates on the shoulder and the arm. He performed an independent medical evaluation of petitioner. He took a history from the petitioner. He was given a history of the work-related injury on March 26, 2013. The petitioner stated he was pulling an air hose with a grinder attached, the hose snapped, and he felt pain and a pop in his left shoulder. The petitioner told the doctor he was pulling the air hose at chest level and his arm was jarred with the activity. He told the doctor he had no further treatment until approximately five months later when he saw Dr. Norris in August. He had an injection and eventually surgical intervention by Dr. Norris. At the time Dr. Lieber saw the petitioner, he had no discomfort in his shoulder and no swelling and no stiffness or difficulty with overhead activities. He did complain of occasional weakness in his left shoulder, as well as pain at night. The petitioner indicated that his employment was that of a welder which required him to stand, bend, push, pull heavy objects, lift up to 100 pounds on a consistent basis, as well as overhead. His examination of the petitioner showed he was doing quite well concerning functional abilities in his left shoulder and he did show stiffness at the extremes in motion, but otherwise had a basically normal exam. Dr. Lieber testified he reviewed the medical records of St. Mary's Hospital and Dr. Norris. After his examination of the patient and his review of the medical records, it was his opinion that the patient was status post arthroscopy subacromial decompression rotator cuff repair, AC joint resection and biceps tendonotomy of the left shoulder. Based upon his review of the records, the history and his physical examination, he found that there was no relationship between the March 2013 work activity and the patient's present left shoulder complaints and surgical intervention that was performed in February 2014. He felt there was no objective evidence that the isolated rotator cuff repair and subsequent surgery had any relation to the March 2013 work event.

Dr. Lieber felt the mechanism of injury did not appear to have been significant enough to cause a rotator cuff tear. His opinion was based on the lack of treatment, other than initial evaluation in the Emergency Room, for up to five months due to the lack of significant symptoms about the left shoulder. He also testified that the MRI showed evidence of pre-existing degenerative abnormalities of the shoulder that showed no evidence of any acute injury that would be associated with the March 2013 event.

Regarding the mechanism of injury, Dr. Lieber felt that since the patient told him he was pulling the air hose at chest level, he didn't feel the force across the arm and just jarring in that manner would not have been significant enough to cause the damage that was present during the operative report. As to the lack of treatment, Dr. Lieber noted this was significant because if the rotator cuff tear and SLAP tear were in direct association with the March 2013 event, then those conditions would have caused significant pain, swelling, dysfunction and disability that would not have allowed the petitioner to carry on his activities in most of all daily living, and certainly his work activities would have been affected. The fact that the petitioner worked five months after the event supported his opinion. It is his testimony that nothing that was found in Dr. Norris' operative report would be related to the incident in March 2013.

The records of St. Mary's Hospital from 8/20/13 show that the patient injured himself on March 27, 2013 when pulling a hose. The patient reports aching a few months prior to the injury.

CONCLUSIONS OF LAW

1. With regard to the issue of causation, the Arbitrator finds that the Petitioner's current condition of ill-being is in part due to the undisputed March 27, 2013 work accident. Specifically, the Arbitrator finds that as a result of his work accident, the Petitioner sustained a strain to his left arm. Furthermore, the Arbitrator finds that the surgery performed by Dr. Norris on March 14, 2014 is not related to any accident arising out of and in the course of the Petitioner's employment with the Respondent. These findings are supported by the Petitioner's testimony and the medical evidence. The Petitioner testified that when the accident occurred, he was pulling the air hose at shoulder level or slightly below. He told Dr. Lieber that he was pulling the air hose at chest level. Dr. Lieber's opinion (Respondent's Exhibit 5) was that pulling an air hose at chest level would not cause or aggravate a rotator cuff tear. (Respondent's Exhibit 5) Both Dr. Norris and Dr. Lieber testified that if the patient had complaints prior to this incident, it would show that the accident on March 26, 2013 did not cause or contribute to the Petitioner's rotator cuff injury. Respondent's Exhibit 3 shows that the Petitioner was having aching in the shoulder a few months prior to the injury. The Petitioner testified he was able to work his full job from the date of the incident through the date of the surgery, March 14, 2014. Dr. Lieber testified that the patient told him he did pulling and lifting up to 100 pounds and did overhead work. It was Dr. Lieber's opinion that if the patient had a torn rotator cuff, he would not be able to do these activities. (Respondent's Exhibit 5) Dr. Norris testified that people have a different threshold of pain, but Dr. Norris did not address the issue of whether or not the Petitioner would have been physically capable of doing those activities with a torn rotator cuff. Based on these facts, the Arbitrator finds persuasive the opinions of Dr. Lieber and concludes that the Petitioner sustained a strain to his shoulder on the alleged accident date.

2. Regarding the issue of average weekly wage, the Arbitrator concludes that the Petitioner's average weekly wage at the time of his accident was $773.68. On this issue, the only evidence presented was Respondent's Exhibit 7 which were wage records for the year preceding the accident. Those records show that the Petitioner's average weekly wage was $773.68. The Petitioner offered no documentary evidence or testimony regarding the average weekly wage.

3. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment was not all related to his condition. The Arbitrator finds that the bill from Oak Lawn Radiology Imaging for a date of service March 28, 2013, a bill from St. Mary's Hospital from March 28, 2013 and April 4, 2013 to be related to the accident arising out of and in the course of Petitioner's employment with Respondent on March 26, 2013. Those bills show a zero balance as they were paid by the Respondent. The remaining bills contained in Petitioner's Exhibit 1 are not related to the accident arising out of and in the course of the Petitioner's employment with the Respondent and therefore are not the responsibility of the Respondent.

4. Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (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. Applying this standard to this claim, the Arbitrator first notes the following:

(i) no permanent partial disability impairment report and/or opinion was submitted into evidence, therefore the Arbitrator gives no weight to this factor;

(ii) petitioner was employed as a welder at the time of the accident, retired from this employment for reasons not related to this injury, and because the Petitioner no longer works as a welder, the Arbitrator gives little weight to this factor;

(iii) the petitioner was 59 years of age at the time of the accident and because of the petitioner's subsequent retirement, the Arbitrator gives some weight to this factor;

(iv) no evidence was presented regarding petitioner's future earning capacity as he had retired following this injury, and therefore the Arbitrator gives no weight to this factor; and

(v) there was some evidence of disability corroborated by the treating medical records, which show the Petitioner sustained a sprain to his left shoulder, after which the petitioner was released to return to work full duty and has made an excellent recovery – all of which the Arbitrator gives greater weight in factoring the petitioner's permanent partial disability.

Based on the above, the Arbitrator finds that the petitioner sustained permanent partial disability to the extent of 1% loss of use of man as a whole pursuant to Section 8(d)(2) of the Act.

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

Carmen Lampert,

Petitioner,

vs. NO: 12 WC 43965

Ferrell Hospital,

15IWCC0756

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 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 16, 2015 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.

Bond for 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: OCT 2 - 2015

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
o:8/6/15
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LAMPERT, CARMEN
Employee/Petitioner

Case# **12WC043965**

15IWCC0756

FERRELL HOSPITAL
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:

1239 KOLKER LAW OFFICES PC
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0693 FEIRICH MAGER GREEN & RYAN
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2001 W MAIN ST SUITE 101
CARBONDALE, IL 62903

15IWCC0756

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

Carmen Lampert
Employee/Petitioner

v.

Ferrell Hospital
Employer/Respondent

Case # **12** WC **43965**

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. [ ] 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. [ ] 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 **11-26-12**, 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 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 $**57,657.32**; the average weekly wage was $**1,140.93**.

On the date of accident, Petitioner was **59** 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 for wages paid to Petitioner during her initial absence from work, **$0** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**49,617.92** for other (non-occupational indemnity disability) benefits.

Respondent is entitled to an additional credit of **$0** for any medical bills paid through its group medical plan for which credit is allowed under Section 8(j) of the Act.

ORDER

Petitioner failed to prove she sustained an accident on November 26, 2012 that arose out 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

October 11, 2014
Date

OCT 16 2014

ICArbDec p. 2

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner has filed an Application for Adjustment of Claim for an alleged injury she sustained on November 26, 2012, while employed by Respondent as a floor nurse. (AX2). Petitioner alleges injury to her left ankle after slipping and falling on steps outside the hospital as she was exiting the building following the completion of her shift. (AX2). At the hearing, testimony was offered by Petitioner, Terri Debose, Kaylee Owen, and Caleigh Bruce. At the hearing the parties agreed that they would submit a written Stipulation as to an additional amount to be credited against any award of temporary total disability benefits. That Stipulation was received by the Arbitrator, marked as "Arbitrator's Exhibit 5" and has been included in the record.

The Arbitrator finds:

On November 26, 2012, Petitioner was employed as a floor nurse for Respondent. Petitioner's shift ended at approximately 8:00 p.m. At the end of her shift, Petitioner clocked out at a time clock located near the center of the hospital. She then proceeded down a hallway towards a door (the "Grant Street door") located on the south end of the hospital at the end of a hallway containing patient rooms. Petitioner was not required to use the Grant Street door. Petitioner chose the Grant Street door to exit the hospital because she had parked her car in a lot to the southwest of the hospital on this date (the "laundry parking lot"). (RX1).

Immediately outside the Grant Street door there are five (5) steps, as well as an immediately adjacent wheelchair ramp, either of which can be used to reach the street level. (PX6-2; 6-4; RX3-C; 3-D; 3-G). Petitioner chose to use the steps.

Petitioner testified that when she exited through the Grant Street door, but before she encountered the steps, she noticed that it was dark. She claimed the weather conditions were misty and a little sleety. Petitioner testified she grabbed handrails on either side of the steps with both hands, and then attempted to walk down the steps. Petitioner slipped at the very top of the steps and fell. She was still attempting to hold onto the handrail with her right hand when she slipped. She testified she swung around and landed with all of her weight on her left foot, injuring her left ankle.

Petitioner did not have anything in her hands at the time. She had only her personal shoulder bag with her, which was over her shoulder. She testified she was holding the handrails on both sides of the steps. She was not performing any job duties at the time of the occurrence. She was not hurrying.

After she fell, Petitioner located her shoulder bag, crawled to it, and retrieved her cell phone. She called the nurses' station inside the hospital. She was taken inside to the emergency room, where she was diagnosed with a trimalleolar fracture of her left ankle, and was transferred to Deaconess Hospital in Evansville, Indiana. (PX1 at 3-21).

The following day, November 27, 2012, Petitioner underwent an open reduction internal fixation of the lateral and medial malleolar components of the left ankle trimalleolar fracture. (PX3 at 3).

The Grant Street Door

The Grant Street door is available for use by both Respondent's employees and the general public. The Grant Street door is located on the south end of the hospital at the end of a hallway containing patient rooms. Down the hallway leading to the Grant Street door are two overhead exit signs, with no indication that the exit is restricted or otherwise limited to employees. (RX3-A). The radiology department is also located immediately to the right after entering the hospital through the Grant Street door.

Petitioner was not required to use the Grant Street door to enter and exit the hospital. Petitioner testified she was never told to use the Grant Street door, and confirmed that employees were free to use several different doors to enter and exit the hospital. These doors were also available to the general public. Employees were not required to use the Grant Street door, or any other door.

At hearing, Petitioner identified at least nine (9) doors located all over the hospital which she could have used on that night, including two (2) doors Petitioner admits were closer than the Grant Street door to the time clock where she punched out following her shift. (See RX1). These doors included the main entrance to the hospital (the "front doors"), a kitchen door, a door at the back of the hospital used by hospital administration, the emergency room door, and one or two additional doors. (*Id.*)

Petitioner testified she used the Grant Street door because she had parked in the laundry parking lot, which was near the Grant Street door. She testified she was not required to park in this lot. She testified the Grant Street door was the door she generally used to enter and exit the hospital because she usually parked in the laundry parking lot. Petitioner admitted it was possible she had used other doors to exit the hospital prior to the date of the occurrence.

Petitioner gave a recorded statement to Eileen Cox of Illinois Compensation Trust the same week of the incident in which Petitioner stated she had only been using the Grant Street door to enter and exit the hospital in the two to three years prior to the incident. (RX6 at 5). Petitioner had been employed by Respondent for more than five years prior to the incident.

Terri Debose, a former employee, testified that employees use the Grant Street door to enter and exit the hospital to and from the laundry parking lot because it is easier than entering through the door in the emergency room, which is also located on the south end of the hospital. (RX1). She testified Respondent employs around 500 employees, but does not know where all 500 park. Ms. Debose agreed that the doors indicated by Petitioner with yellow "X"s on a diagram of the hospital indicated additional doors that were available to both employees and the general public to enter and exit the hospital. Ms. Debose also testified that the "front door" of the hospital was the entrance and exit most visitors to the hospital used and that the area where Petitioner fell was mostly used by hospital employees. She further testified that for over four years she had used that same door to exit the hospital and access her own car. (RX1).

Kaylee Owen, also a former employee, estimated that she and 75 percent of Respondent's employees use the Grant Street door to enter and exit the hospital. She testified it was her choice to use the Grant Street door, which she chose because it was closest to where she generally chose to park. She also agreed that the doors indicated by Petitioner with yellow "X"s on a diagram of the hospital indicated doors that were available to both employees and the general public to enter and exit the hospital. (RX1).

Caleigh Bruce, the vice-president of human resources for Respondent, also agreed that the doors indicated by Petitioner with yellow "X"s on a diagram of the hospital indicated doors that were available to both employees

and the general public to enter and exit the hospital. (RX1). Ms. Bruce testified there were even more doors available to employees than indicated on the diagram. She testified that Respondent has no restrictions on employees using any of the doors identified by Petitioner. The Grant Street door is available to both employees and the general public. There are no prohibitions on the general public using the Grant Street door.

The Laundry Parking Lot

Petitioner had parked in the laundry parking lot located across the intersection of Grant and Maple Streets from the southwest corner of the hospital. Petitioner marked this lot on a diagram of the hospital and the surrounding parking lots with an orange "X." (RX1; See also RX3-E; 3-L; 3-M; 3-N). Petitioner testified this parking lot was available to both employees and the general public.

Petitioner also identified several parking areas around the hospital with green "X"s on a diagram of the hospital and the surrounding area. (RX1). Petitioner testified these parking areas were also available to both employees and the general public. These areas included a lot to the north of the hospital across Benton Street, a lot to the northwest of the hospital, a lot across Maple Street to the south and west of the front doors, a lot across Glenwood Avenue from the Maple Street lot, a lot south of the hospital's emergency room, and an area at the beginning of Second Street extending for one to two blocks, and street parking on any of the adjacent streets to the hospital with the exception of Maple Street. (*Id.*).

Petitioner testified that employees were not required to park in the laundry parking lot. Petitioner was free to park in any of the areas she identified with a green "X". (RX1). She testified there were additional areas employees were able to park in that were not indicated on the diagram.

Terri Debose and Kaylee Owen both agreed that the areas indicated by Petitioner were areas where both employees and the general public were free to park.

Caleigh Bruce testified that Respondent does not require employees to park in the laundry parking lot, and that employees are not told they must park there. Ms. Bruce affirmed that the parking areas identified by Petitioner were all available to both employees and the general public, and that there was no prohibition on employees parking in any of the indicated areas.

The Condition of the Steps

The steps outside the Grant Street door are concrete, and are covered with outdoor carpeting. (RX3-F; 3-G; 3-H). There are handrails on both sides of the steps. (RX3-G). Immediately to the right of the steps is a wheelchair ramp. (RX3-B; 3-C; 3-E).

Petitioner testified there was nothing wrong with the condition of the steps or the adjacent ramp. The steps were not deteriorating, but were in good condition. Petitioner testified there was nothing wrong with the condition of the carpet on the steps, stating the carpet was not ripped, unraveling, or even worn. She testified at hearing that she did not know if the carpeting on the steps was new or not. However, Petitioner's recorded statement with Eileen Cox of Illinois Compensation Trust, made the same week of the occurrence, documents Petitioner stating Respondent had just re-carpeted the steps prior to the date of the incident. (RX6 at 5).

Petitioner testified she had walked up the steps earlier that day when entering the hospital. She noticed no problems with the steps or the carpet on the steps. She testified that if she had known there was any problem with the steps, she would not have used them when she exited the hospital. She testified that when she exited

the hospital there was nothing preventing her from choosing to use the adjacent ramp instead of the steps if she had any concern about the weather conditions.

Petitioner testified that the steps were wet on the night of the occurrence. Petitioner's recorded statement with Eileen Cox, made the same week of the occurrence, documents Petitioner stating that the carpet on the steps was not wet at the time of the occurrence. (RX6 at 5). Petitioner testified she does not know what she said to Ms. Cox, and claimed at hearing she was on pain pills and in pain when she gave her statement.

Caleigh Bruce testified she took photographs of the steps within one month following the incident. (RX3-F; 3-G; 3-H). She testified that she was not aware of any changes that were made to the steps from the date of the incident to the date she took the photos.

Kaylee Owen claimed that the carpet had a hole in it at the top of the steps, and the maintenance department laid new carpet on the steps after the incident.

All of the witnesses, including Petitioner, testified anyone exiting the Grant Street door has the choice of whether to walk down the steps or down the adjacent ramp to the street level. Employees are not required to use the steps, and are not prohibited from using the adjacent ramp.

Petitioner testified it was misting outside and was a little sleety when she left the hospital. Petitioner presented records regarding the weather on the date of the incident printed from a website. (PX8). These readings were taken at an unknown location in Harrisburg, Illinois. (*Id.*). The Arbitrator notes that Harrisburg is generally 9 miles to the southwest from the site of the incident. The record documents "rain" at 7:55 p.m. and "light rain" at 8:15 p.m. (PX8 at 3). There is no rain documented in the hour between 6:55 p.m. and 7:55 p.m. (*Id.*). The temperature is noted to have been 41 degrees at 7:55 p.m. and 8:15 p.m. (*Id.*).

Respondent also submitted weather records for November 26, 2012. (RX4). These records are certified records from the National Climatic Data Center. (*Id.*). The readings contained in the report were collected from a reporting station at Harrisburg-Raleigh Airport, which the Arbitrator notes is approximately 7 miles due west of the location of the incident. These records indicate no precipitation at any time either one hour before or one hour after 7:55 p.m. on the night of the occurrence. (RX4 at 3). The records document 0.06 in. of precipitation at 6:15 p.m., 6:35 p.m., and 6:55 p.m., but no precipitation before or after those times. (*Id.*). These records also document a temperature of 41 degrees at 7:55 p.m. and 8:15 p.m. (*Id.*).

Petitioner testified she noticed it was dark when she exited the hospital. She testified she observed the lights located above the Grant Street door on the side of the hospital were not on. There is a streetlight located on a utility pole at the corner of Grant and Maple Streets, which Petitioner estimated is 10 yards from the Grant Street exit. (RX3-E). Petitioner testified she does not know whether the streetlight was on or not at the time of the occurrence. There is no evidence that the electricity was ever out at either the hospital or in the town of Eldorado on the night of the occurrence. Every witness testified the electricity was on in and around the hospital on the night of the occurrence.

Terri Debose testified that when she went outside to smoke at approximately one hour after the occurrence, neither the lights above the Grant Street door nor the streetlight were on. Caleigh Bruce testified that one of the employees who went outside to tend to Petitioner following the incident informed her that the streetlight was on while she administered aid to Petitioner.

During the arbitration hearing Ms. Bruce provided testimony concerning Terri Debose's departure from Respondent's employment. At the hearing Ms. Bruce testified that Ms. Debose left work in the middle of a shift during her two week notice period and never returned to work. After the arbitration hearing the attorneys for both parties provided the Arbitrator with a "Joint Stipulation RegardingTestimony of Caleigh Bruce." That "Joint Stipulation" has been marked as "Arbitrator's Exhibit 6" and has been made a part of the record as requested by the attorneys. According to the "Joint Stipulation" Ms. Bruce returned to her office after the hearing and reviewed Ms. Debose's personnel file only to discover she had incorrectly testified concerning the circumstances of Ms. Debose' cessation of employment with Respondent. According to the "Joint Stipulation" Ms. Debose did not leave in the middle of a shift. On June 16, 2014 Ms. Debose tendered a two week notice of intent to leave with Respondent. Two days later she was asked by her supervisor to sign a written warning regarding alleged excessive absenteeism. Ms. Debose refused and left the hospital, never to return. After returning home, Ms. Debose authored a facebook post indicating she was no longer employed with Respondent and made a derogatory comment regarding her former boss. (AX 6)

Petitioner has not worked in any capacity since her accident and has undergone multiple conservative and surgical medical treatments to her left ankle since her accident. (PX 1 - 5) Respondent does not dispute that Petitioner's current condition of ill-being in her ankle is related to the accident. Respondent's dispute is over liability for the accident.

The Arbitrator concludes:

1. Issue "C"—Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

An injury is compensable under the Act only if it "arises out of" and "in the course of" employment. *Caterpillar Tractor Co. v. Industrial Comm'n.*, 129 Ill. 2d 52, 57, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989). The phrase "in the course of" refers to the time, place and circumstances under which the accident occurred. *Id.* Accidental injuries sustained on an employer's premises within a reasonable time before and after work are generally deemed to be in the course of the employment. *Id.*

Whether an employee's injury "arose out of" her employment may be determined under two different approaches. *Dodson v. Industrial Comm'n.*, 308 Ill. App. 3d 572, 575, 720 N.E.2d 275, 241 Ill. Dec. 820 (5th Dist. 1999). First, an injury arises out of the employment where its origin stems from a risk connected with, or incidental to the employment. *Caterpillar*, 129 Ill. 2d at 58. Second, an injury arises out of the employment where it is caused by some risk to which the employee is exposed to a greater degree than the general public by virtue of his employment. *Dodson*, 308 Ill. App. 3d at 576. Under either approach, an injury does not arise out of the employment where an employee voluntarily exposes himself or herself to an unnecessary personal danger solely for his own convenience. *Orsini v.Industrial Comm'n.*, 117 Ill. 2d 38, 57, 509 N.E.2d 1005, 109 Ill. Dec. 166 (1987).

In this case, Petitioner has failed to prove that her injury "arose out of" her employment with Respondent because she has not shown she was exposed to any risk to a greater degree than the general public. Petitioner had clocked out and voluntarily chose to use the Grant Street door, the laundry parking lot, and the steps outside the door, all of which were available to and used by both Respondent's employees and the general public. Accordingly, her injury is not compensable, and her claim must be denied.

Petitioner admitted she was not required by Respondent to use the Grant Street door, but rather she chose to use the Grant Street door. The Grant Street door is fully available to the general public. There are two overhead signs down the hallway from the center of the hospital to the Grant Street door indicating it is an exit. This hallway contains patient rooms. Visitors and other non-employees are free to use the Grant Street doors.

Not only was Petitioner not limited to the Grant Street door, every witness confirmed there were multiple doors through which Petitioner or any other employee could have chosen to enter or exit the hospital. Two of the doors identified by Petitioner were closer to the time clock where she punched out following her shift than the Grant Street door was. Neither of these doors had steps.

This is not a case where Petitioner was required or even directed to use a specific door. This case is, therefore, distinguishable from the line of cases where the claimant was not allowed to freely choose which door to use, but instead was required by their employers to use specific doors. *See, e.g., Bommarito v. Industrial Comm'n.*, 82 Ill. 2d 191, 196, 412 N.E.2d 548, 45 Ill. Dec. 197 (1980). Unlike *Bommarito*, this is a case where Petitioner freely chose to use a certain route, a certain door, a certain parking lot, and a certain set of steps, none of which she was required to use. *See Northwestern Univ. v. Industrial Comm'n.*, 409 Ill. 216, 221, 99 N.E.2d 18 (1951). The testimony that Petitioner and other employees normally used the Grant Street door is not, by itself, compelling in terms of whether Petitioner's accident arose out of and in the course of her employment. *See, e.g., Caterpillar*, 129 Ill. 2d at 56.

Additionally, Petitioner testified that she chose to use the Grant Street door because she had parked at the laundry parking lot, as she frequently did. However, like the Grant Street door, Petitioner was not required by Respondent to park in the laundry parking lot. Petitioner identified multiple parking lots and areas around the hospital where she was free to park, all of which were verified by the witnesses at the hearing. These parking lots and areas were open and available to both employees and the general public.

The Arbitrator notes that the laundry parking lot is a very small parking lot, able to accommodate only a few vehicles at a time. (RX1; RX3-E; 3-L; 3-M; 3-N). The diagram of the hospital and the surrounding area introduced by Respondent shows the laundry parking lot contains only 13 parking spaces. (RX1). There is testimony that there are as many as 500 employees at Respondent's facility. There are also claims that 75 percent of Respondent's employees use the Grant Street door because they all park in the laundry parking lot. Based on the size of the laundry parking lot and the size of Respondent's work force, the Arbitrator finds the testimony regarding employee usage of both the Grant Street door and the laundry parking lot to be highly exaggerated, and therefore not credible. The Arbitrator notes that at least five other parking areas (one to the north, one to the northwest, one to the south, and two to the west of the hospital) appear larger than the laundry parking lot. (RX1; RX3-R; 3-U; 3-V).

Petitioner also testified she had a choice after exiting through the Grant Street door to either encounter the steps or the adjacent ramp. There is no defect alleged in either the steps or the adjacent ramp. It is Petitioner's contention that upon exiting through the door, she observed it was both dark and sleety. She testified that for this reason, she grasped both available handrails on either side of the steps prior to encountering the steps.

Petitioner was not required by the Respondent to use the steps at all. She readily admitted she chose to use the steps despite her allegations that it was dark and sleety. She admitted that she knew the condition of the steps and that she did not have any concern about the condition of the steps or she would not have used them. She further admitted she could have used the adjacent ramp, which was available to her, the general public, and anyone else exiting through the Grant Street door.

Based on the foregoing, Petitioner was not exposed to any risk to a greater degree than the general public by virtue of her employment. Petitioner chose to exit through the Grant Street door. Petitioner chose to park in the laundry parking lot. Petitioner chose to encounter the steps instead of the adjacent ramp.

This case is similar to the case of *Burke v. The People Gas Lights and Coke Co.*, 99 IIC 485 (May 26, 1999). In *Burke*, the petitioner was on her way home when she fell on an escalator in the Prudential Building. The petitioner admitted the area was an area open to the general public, not reserved just for the respondent's employees. There was evidence that the petitioner could have also used stairs or an elevator to leave the building, but chose to use the escalator. No one from the respondent told the petitioner to use the escalator. The Commission affirmed the arbitrator's decision that the petitioner suffered no injury arising out of her employment.

Furthermore, Petitioner's actions in voluntarily choosing where she parked, where she exited the hospital, and how she attempted to get to the street level constituted an increased personal risk. As such, her injury is not compensable.

In *Dodson, supra*, the claimant had just clocked out, had exited through the properly designated door, and was walking to her car. *Dodson*, 308 Ill. App. 3d at 574. She proceeded down several steps of concrete sidewalk leading to the employee parking area. Because it was raining hard, she left the sidewalk and walked across a grassy slope to reach her car. *Id.* While walking on the grass, claimant fell backwards and broke her ankle. *Id.* The appellate court found that her injury did not arise out of her employment because she voluntarily chose to expose herself to an increased personal risk by walking on the grass instead of the stairs. *Id.*, at 576. The court rejected the argument that the injury arose out of her employment because other employees often walked across the same grassy slope and the employer was aware of the practice and did not stop it. *Id.*, at 577.

A similar result was found in *Hatfield v. Industrial Comm'n.*, 202 Ill. App. 3d 547 (4th Dist. 1990). In *Hatfield*, the claimant jumped over an accumulation of water at the base of an incline on his way to his car at the end of the day, injuring his leg and his back. *Id.*, at 548. The claimant acknowledged there was a walkway to the parking lot approximately 50 feet north of where he jumped. *Id.*, at 550. In affirming the denial of the claim, the appellate court stated as follows:

> While the claimant's injuries were incurred upon the employer's premises and were incurred within a reasonable time after leaving his work duties, nevertheless, it is apparent that the claimant's injuries occurred while he was engaged in an activity which only benefitted himself and not his employer. Therefore, we find that the Commission's determination that the claimant's injuries did not arise out of and in the course of his employment was not against the manifest weight of the evidence.

Hatfield, 202 Ill. App. 3d at 554.

In this case, it is clear that Petitioner's choice to park in the laundry parking lot, her choice to exit through the Grant Street door, and her choice to use the steps instead of the adjacent ramp all constituted voluntary choices to expose herself to an increased personal risk benefitting only herself. Petitioner was not required by Respondent to park where she parked, exit where she exited, or traverse the steps instead of the adjacent ramp. Rather, she did all those things by her own choice and for her own benefit. This is especially true with respect to Petitioner's decision to encounter the steps despite her testimony that prior to doing so she observed it was

dark and sleety. Petitioner could have walked down the adjacent ramp if she truly believed it was dark and sleety outside. Instead, she chose to use the steps. This was an increased personal risk, and accordingly, her injury did not arise out of or in the course of her employment. In fact, witness Terri Debose testified when she exited through the Grant Street door approximately one hour after the incident to smoke, she chose to use the adjacent ramp rather than the stairs.

Based on the foregoing, the Arbitrator concludes that Petitioner has failed to prove an accident arising out of and in the course of her employment because whatever risk Petitioner was exposed to was by her own choice, and was no greater than any risk to which the general public was exposed.

Further, the Arbitrator is not persuaded that the steps encountered by Petitioner on the date in question constituted anything other than Petitioner voluntarily encountering a neutral risk. Risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and (3) neutral risks that have no particular employment or personal characteristics. *Caterpillar*, 129 Ill. 2d at 59. By itself, the act of walking on steps does not expose an employee to a risk greater than that faced by the general public. *Baldwin v. Industrial Workers' Compensation Comm'n.*, 409 Ill. App. 3d 472, 477-78, 949 N.E.2d 1151, 351 Ill. Dec. 56 (4th Dist. 2011).

The Arbitrator has given very little, if any, weight to Petitioner's recorded statement. Sections were inaudible and Petitioner testified she was on pain medication when it was given. The Statement was not taken on the day of the accident as one can tell from Petitioner's responses to certain questions that she was recovering from surgery when the Statement was provided. As such, Petitioner's recollection may have been, understandably, a little "foggy."

Nevertheless, while Petitioner contends it was dark outside when she exited the hospital she doesn't attribute her slip and fall to the darkness. Petitioner testified multiple times that she slipped on the top step and fell. She did not testify she missed the step or was unable to see the step due to darkness. She admitted she was very familiar with the steps, and had in fact used the steps earlier that day when she entered the hospital.

Petitioner could see well enough to grasp both handrails on either side of the steps with both hands prior to encountering the steps. Petitioner could also see well enough to locate her shoulder bag and retrieve her cell phone to call for help. And, as stated above, Petitioner observed the alleged darkness when she exited the door, but chose to encounter the risk on the basis that she was already out the Grant Street door despite numerous other exits to the hospital and the existence of a ramp right next to the steps.

Finally, though Petitioner testified there was no defect whatsoever with the steps or the carpet on the steps, Kaylee Owen, another former employee, testified with purported certainty that there was a defect in the carpet on the top step that had been fixed by Respondent's maintenance staff after the incident. This contradicts every other witness, including Petitioner herself, who testified the carpet was free of any defects. The Arbitrator gives more weight to the testimony of Petitioner and others who believed there was no defect whatsoever with the steps or the carpeting on the steps.

Petitioner voluntarily encountered a neutral risk to which she was exposed in no greater degree than was the general public. Petitioner voluntarily used the Grant Street door, voluntarily parked in the laundry parking lot, and voluntarily encountered the steps.

The Arbitrator has considered the recent appellate court decision of *Brais v. The Illinois Workers' Compensation Commission*, 2014 IL App. 3d 120820WC but finds it distinguishable from the case herein as the Court in *Brais*

found a "special hazard" in that the sidewalk was cracked and uneven and "The cracked sidewalk was a contributing cause of the claimant's injury as her heel caught on the defective sidewalk causing her to fall." *Id.* No such hazard or defect is present in this case.

For these reasons, Petitioner's claim is denied.

2. 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?

3. Issue "K"—What temporary benefits are in dispute?

Given her decision on Accident, the foregoing issues are moot.

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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RIVERA, AWILDA Case# **09WC045322**

Employee/Petitioner

SOUTHWEST AIRLINES

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

0154 KROL BONGIORNO & GIVEN LTD
RANDALL W SLADEK
120 N LASALLE ST SUITE 1150
CHICAGO, IL 60603

0766 HENNESSY & ROACH PC
QUINN M BRENNAN
140 S DEARBORN ST 7TH FL
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Awilda Rivera
Employee/Petitioner

v.

Southwest Airlines
Employer/Respondent

Case # **09** WC **45322**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **September 21, 2015**. By stipulation, the parties agree:

On the date of accident, **7/30/2009**, 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 $**37,651.12**, and the average weekly wage was $**724.06**.

At the time of injury, Petitioner was **43** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit of $**73,096.29** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**73,096.29**.

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 permanent partial disability benefits of $434.44/week for 25.05 weeks, because the injuries sustained caused the 15% loss of the left foot, as provided in Section 8(e) of the Act.

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.

David A. Kane
Signature of Arbitrator

October 7, 2015
Date

OCT 8 2015

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Awilda Rivera	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 09 WC 45322
	)	
Southwest Airlines	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

STATEMENT OF FACTS

The Petitioner is a 49-year-old female who is presently employed with Southwest Airlines as a Center Operations Associate. She has been employed by Respondent for approximately 15 years. She describes her job as an administrative liaison. Her job responsibilities include taking care of Reservations Agents, such as scheduling and programming. She testified that her job responsibilities are clerical in nature.

At the time of all three of the Petitioner's accident dates, she was employed as a Customer Service Agent. Those job responsibilities included checking passengers into flights, and transferring customer luggage from check-in to the conveyor belt. The Petitioner received permanent work restrictions as a result of the 7/18/2015 work accident, which prevented her from returning to work for Respondent in the same capacity. She was subsequently placed into the new position as a Center Operations Associate at a lesser rate of pay. The new position is within said restrictions and the Petitioner continues to work in that capacity as of the trial date.

July 30, 2009 Accident

The Petitioner testified that on July 30, 2009, that she twisted her left ankle while running bags from the service area to the ticket counter. The Petitioner underwent an MRI of her left foot/ankle on 8/29.2009 which her treating physician, Dr. Johnny Lin, diagnosed as a posterior tibial tendon tear. He attempted to treat the condition with physical therapy, but when the Petitioner's pain persisted he recommended an updated MRI which Petitioner underwent on March 12, 2010.

The updated MRI revealed a calcaneal heel spur within the Archilles' insertion. Since Petitioner failed conservative treatment, he performed an arthroscopic Achilles tendon debridement, tendon transfer and excision of the bone spur on April 13, 2010. The operation provided relief for Petitioner's left foot.

The Petitioner underwent post-operative physical therapy and reported resolution of her pain but with discomfort. The Petitioner was undergoing physical therapy for her left wrist at the same time.

The Petitioner's left foot/ankle pain persisted, prompting Dr. Lin to perform a second surgery on Petitioner on April 27, 2012. The procedure was a gastrocsoleus recession to eliminate the pain over her Achilles tendon. The Petitioner underwent post-operative physical therapy. By July 11, 2012, she reported improve in her pain and function. Dr. Lin opined the Petitioner had reached maximum medical improvement and release the Petitioner from care.

The Petitioner has not pursued any medical treatment for her left foot/ankle since being released from Dr. Lynn's care. She testified that she continues to experience pain in her left foot/ankle, that her leg cramps, and that she no longer wears high heeled shoes.

CONCLUSIONS OF LAW

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING THE NATURE AND EXTENT OF THE PETITIONER'S INJURIES SUSTAINED AS A RESULT OF THE WORK ACCIDENT, THE ARBITRATOR FINDS THE FOLLOWING:

In regard to the left foot injury sustained as a result of the July 30, 2009 work accident (09 WC 45322), the Petitioner was diagnosed with a tear in the posterior tendon and a calcaneal bone spur in the heel, which required arthroscopic debridement and spur removal. The Petitioner had ongoing complaint in the left foot, and in 2012 underwent a second surgical procedure consisting of a gastrocsoleus recession to eliminate the pain over her Achilles tendon. The Petitioner reported improvement in her pain and received a full duty release for the left foot on July 22, 2012. The Petitioner has pursued no additional medical treatment since her release. The Arbitrator finds that the medical evidence considered in conjunction with Commission precedent, that the Petitioner incurred a permanent and partial disability to the extent of 15% loss of use of the left foot (25.05 weeks).

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RIVERA, AWILDA Case# **08WC036710**

Employee/Petitioner

SOUTHWEST AIRLINES

Employer/Respondent

On 10/8/2015, 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 0.06% 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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- [ ] 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

Awilda Rivera
Employee/Petitioner

v.

Southwest Airlines
Employer/Respondent

Case # **08** WC **36710**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **9/21/2015**. By stipulation, the parties agree:

On the date of accident, **7/18/2008**, 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 $**39,484.38**, and the average weekly wage was $**759.31**.

At the time of injury, Petitioner was **42** years of age, ***single*** with **1** dependent children.

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

Respondent shall be given a credit of $**113,316.48** for TTD, $**0** for TPD, $**0** for maintenance, and $**23,902.92** for other benefits, for a total credit of $**137.219.40**.

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

Respondent shall pay Petitioner permanent partial disability benefits, commencing 11/16/2012, of $248.30 per 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 all causally related and submitted medical bills as submitted by Petitioner pursuant to Section 8(a) of the Act as well as Respondent's stipulation to the same on record.

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.

David A. Kane
Signature of Arbitrator

October 7, 2015
Date

OCT - 8 2015

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Awilda Rivera,	)	
	)	
	)	
vs.	)	**No. 08 WC 36710**
	)	
	)	
Southwest Airlines,	)	

Findings of Fact – 08 WC 36710

Petitioner was employed as a customer service agent with the respondent on July 18, 2008. On that date, petitioner attempted to lift a duffle bag off of the carousel. Unbeknownst to her, this bag actually contained two bowling balls. As she began lifting the bag, she felt immediate and intense pain in her left hand, wrist and arm. She described it as her hand separating from her arm.

When she sought treatment with Dr. Gorovits at the Clearing Clinic on July 23, 2008 she described a snapping in her left wrist. Her pain was shooting and made worse with twisting. X-rays were negative.

Two days later, July 25, 2008, the pain had increased and worsened with grasping and bending of the wrist. She was placed in a left hand splint and advised to avoid grasping. On August 5, 2008, she underwent an MRI of the left wrist which found a ganglion cyst along

the palmar aspect of the distal ulna as well as mild prominence of the median nerve. She was subsequently placed in physical therapy.

She sought treatment with Dr. Fernandez on October 23, 2008. By that time, she had undergone injections and participated in physical therapy. She described pain along the ulnar aspect of the wrist, particularly with rotation and ulnar deviation and also palmarly along the distal radius and forearm. She had pain radiating to the elbow. Dr. Fernandez identified a possible avulsion tear. He believed petitioner's condition was causally related to the work accident.

Over the next few months, petitioner continued treatment with Dr. Fernandez and was kept off of work. On February 17, 2009, she underwent an injection to the wrist. When she returned on April 14, 2009, she reported that the injection decreased pain along the ulnar aspect of the wrist. Petitioner elected to continue conservative treatment.

By May of 2009, petitioner had completed 18 sessions of work conditioning. Dr. Carroll conducted an IME on May 15, 2009. He noted that petitioner had residual pain in the left triangular fibrocartilage complex. He expected petitioner should be able to return to full duty work after work conditioning was completed.

Petitioner's symptoms appeared to have temporarily subsided until September 2009. She sought treatment with Dr. Fernandez on

December 1, 2009 and requested another injection. The doctor ordered another MRI.

On December 30, 2009, petitioner underwent an MRI of the left wrist which showed complex tearing of the triangular fibrocartilage. Dr. Fernandez subsequently recommended surgery.

Dr. Carroll conducted a second IME on May 12, 2010. He diagnosed left wrist triangular fibrocartilage complex tear and ulnocarpal impaction. He opined that the ganglion cyst was resultant of the cartilage tear. He also agreed that the condition was causally related to the July 18, 2008 work accident and that surgery was reasonable and necessary.

On November 29, 2010, Dr. Fernandez performed arthroscopic repair of the left wrist—TFCC debridement and left wrist ulnar shortening osteotomy. Following surgery, petitioner was placed in physical therapy and restricted from use of the left arm. As of January 13, 2011 she was restricted from lifting over 10 lbs.

As her pain persisted, she underwent a second surgery on December 5, 2011—left wrist revision arthroscopy and debridement with removal of plate and screws. She thereafter continued with physical therapy and light duty restrictions.

On January 17, 2012, she advised Dr. Fernandez of numbness and tingling in the left ring and small finger which had intensified following

the second surgery. Dr. Fernandez evaluated the petitioner on February 21, 2012. Petitioner described residual complaints of left wrist pain with associated weakness and stiffness. Dr. Fernandez placed petitioner at maximum medical improvement at a light duty work capacity with 10 lbs of force maximum. He did not believe petitioner could return to baggage handling.

Petitioner returned to Dr. Fernandez on May 17, 2012 with ongoing pain in the left wrist. X-rays did not indicate evidence of fracture or dislocation. Dr. Fernandez prescribed a full time splint for four weeks and recommended petitioner avoid force over 10 lbs. One month later, on June 14, 2012, Dr. Fernandez performed a left wrist ulnar sided injection and recommended petitioner wear a splint full time.

On July 12, 2012, Dr. Fernandez agreed with petitioner undergoing an FCE. He also stated that petitioner may need fusion surgery if symptoms persisted in the left wrist. The FCE, completed on July 17, 2012, indicated petitioner was at a light physical demand capacity and unable to meet the requirements of her pre-injury job. On August 27, 2012, following the FCE, Dr. Fernandez prescribed six weeks of work conditioning.

Dr. Gleason conducted an IME on October 23, 2012 at the request of the respondent. In reviewing the FCE, Dr. Gleason found that petitioner could function at a light duty capacity and that to return to her previous work it would require a heavy duty capacity. He did not

believe petitioner could return to her full duty job. He opined that treatment of the left wrist had been reasonable.

On November 16, 2012, petitioner returned to work in an alternate position as a center operations associate. This position was a non-union in contrast with her pre-injury position and paid $17.56 per hour where as she would have been a union employee earning $26.88 per hour in her previous position. She has continued to work in this position and collect $248.30 (as stipulated by the parties at trial) in weekly Section 8(d)1 benefits.

Petitioner, on referral from Dr. Fernandez, has also continued pain management treatment at Rush Pain Clinic. On November 7, 2014, petitioner reported pain at 6-10/10 with lifting. She was utilizing Tramadol for pain control as well as compression. She was also prescribed Voltaren and Lyrica. Dr. Amin diagnosed left upper extremity neuropathic pain and recommended a stellate ganglion block. Following the first block, petitioner returned to Dr. Amin on February 3, 2015. She stated that pain subsided with medication but that exertion increased her symptomology. She underwent another block at that time.

On February 27, 2015, petitioner described improvement since the previous stellate ganglion block. Dr. Buvanendran issued a third block on March 13, 2015.

As of April 3, 2015, with petitioner's neuropathic pain in the left wrist continuing, Dr. Buvanendran diagnosed complex regional pain syndrome and administered a fourth stellate ganglion block.

On April 8, 2015, petitioner met with Dr. Lubenow for a pain management consultation. She described a sore throat, stiff neck and shoulders, trouble swallowing, and voice changes since the last injection. She did experience a 50% reduction in pain. Dr. Lubenow agreed with the diagnosis of complex regional pain syndrome and recommended a fifth stellate ganglion block which took place on April 17, 2015.

Petitioner had her sixth block on April 24, 2015 and was placed in physical therapy at that time. On May 8, 2015, petitioner described pain that felt like needles and a toothache in the left wrist. She last saw Dr. Buvanendran on August 5, 2015 and was advised to continue her pain management regimen.

During her testimony, petitioner became emotional and described significant difficulty with her ongoing condition. She experiences pain at night and has had to adapt her life to work around the left wrist condition. Currently she needs to see the pain doctor on an indefinite basis.

Conclusions of Law

Section 8(d)1 of the Act holds in pertinent part:

If, after the accidental injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in cases compensated under the specific schedule set forth in paragraph (e) of this Section, receive compensation for the duration of his disability, subject to the limitations as to maximum amounts fixed in paragraph (b) of this Section, equal to 66-2/3% of the difference between the average amount which he would be able to earn in the full performance of his duties in the occupation in which he was engaged at the time of the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.

In this case, petitioner's left wrist injury has prevented her from returning to her regular work as a customer service agent. With a lifting restriction as imposed by Dr. Fernandez and in conjunction with the FCE, petitioner has returned to work as a center operations associate. This position is essentially administrative and does not involve heavy lifting. Petitioner has received Section 8(d)1 benefits since November 16, 2012 at $248.30 (as stipulated by the parties at trial) per week. This number is indicated by her maximum hourly rate in her pre-injury position, $26.88, and her current hourly rate of $17.56.

The Arbitrator hereby awards petitioner weekly Section 8(d)1 benefits of $248.30 (per parties' stipulation at trial) for the duration of her disability.

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CARL HANSERD,

Petitioner,

vs. NO: 12 WC 35267

TAYLOR FREEZER,

15IWCC0759

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 causation, medical expenses, maintenance, vocational rehabilitation 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 finds that Petitioner is not entitled to temporary total disability after July 23, 2013, the date Dr. Marc Soriano issued his Section 12 examination report. The Commission vacates the Arbitrator's award of TTD after July 23, 2013, and also vacates the award of maintenance benefits from September 12, 2013 through May 21, 2014. The Commission finds that the parties indicated that the nature and extent of the injury was at issue per the Request for Hearing, and based on the Petitioner having reached maximum medical improvement prior to the hearing, we also vacate the Arbitrator's award of vocational rehabilitation benefits.

Dr. Soriano opined that Petitioner's current subjective condition was not related to the March 15, 2012 accident. While Petitioner had positive EMG findings, he indicated that, in and of themselves, they are not conclusive of the existence of cubital or carpal tunnel syndrome. Noting many people of his age will have similar EMG findings as the Petitioner, Dr. Soriano stated that such diagnoses should not be made where there is a lack of clinical findings, and a

15IWCC0759

lack of findings suggesting acute traumatic or repetitive injury. While Petitioner subjectively reported an inability to move his hand due to pain and difficulty moving his arm and forearm, there was no evidence of atrophy in these anatomical locations, which "raises interesting questions" about the level of disuse the Petitioner claimed. Dr. Soriano opined that Petitioner was capable of returning to work based on a lack of clinical correlation for cubital or carpal tunnel syndrome. (Rx2).

Dr. Soriano's opinion regarding a lack of causation of any cubital or carpal tunnel syndrome to the accident is supported by the September 11, 2013 opinion of Dr. Korcek. (Px1). Dr. Korcek opined that Petitioner had: "superimposed thumb CMC and MPC joint pain and cubital and carpal tunnel not work related but all contributing to inability to return to work." However, on October 15, 2012, Dr. Korcek opined that the right thumb arthritis was exacerbated by the work injury, with persistent to progressive right thumb MPC joint stiffness and pain. (Px1). Dr. Korcek referred Petitioner to Dr. Borchard for evaluation of DeQuervain's tenosynovitis and the ability to return to work. There is no evidence in the record indicating that Petitioner was evaluated by Dr. Borchard, or any other occupational medicine specialist. The Petitioner testified that he did not want to have a thumb fusion surgery, and Dr. Korcek indicated he thus had nothing more to offer Petitioner from a surgical standpoint, but continued his work restrictions. (Tr. 17-20).

Petitioner was subsequently examined by Dr. Atluri at the request of the Respondent on March 4, 2014. He reported that Petitioner had significant ongoing complaints of the right hand and wrist despite having undergone extensive treatment, including surgery and prolonged formal physical therapy. Following examination, Dr. Atluri believed that Petitioner's clinical findings were dramatically out of proportion to his subjective complaints, noting Petitioner's inability to tolerate even gentle passive thumb examination. He agreed with Dr. Soriano that Petitioner's subjective complaints and examination findings were not consistent with a diagnosis of cubital tunnel syndrome. He noted that while Petitioner might have carpal tunnel syndrome, his physical exam was not consistent with this diagnosis. Finally, he opined that the clinical notes did not document significant examination findings consistent with DeQuervain's tenosynovitis, and that this condition had resolved. He was "highly suspicious" of a significant component of symptom magnification. It was Dr. Atluri's opinion that no specific work restrictions were indicated. (Rx3).

Overall, based on these medical opinions, the Commission finds that Petitioner developed a right DeQuervain's tenosynovitis as a result of his work activities on March 15, 2010, but that all other claimed injuries and conditions are not causally related to his employment. Additionally, we rely on the opinions of Dr. Soriano, Dr. Atluri and Dr. Korcek that the Petitioner either did not have carpal or cubital tunnel syndrome, or if he did, that these conditions were not related to his employment. We do believe, based on the opinions of these physicians, and in agreement with the Arbitrator, that Petitioner's CMC and MCP joint arthritis was chronic and degenerative, but we rely on the opinion of Dr. Korcek to find that the arthritis was exacerbated by the work injury. While we question whether any condition of carpal or cubital tunnel existed clinically, we agree with Dr. Korcek with regard to the thumb arthritis, as there is no evidence that Petitioner had symptoms or was limited in thumb motion prior to the accident.

The Commission finds that the Petitioner sustained the loss of use of 35% of the right hand, pursuant to Section 8(e) of the Act. While the Petitioner initially requested a 19(b) hearing in this matter, the request for hearing form (Arbitrator's Exhibit 1, No. 10) indicates that the nature and extent of the Petitioner's injury was at issue. As such, the issue is properly before the Commission. Given the finding that Petitioner had reached maximum medical improvement with regard to his work related conditions prior to the hearing date, a permanency award is proper in this case.

The only physician who instituted work restrictions in this case was Dr. Korcek. He indicated on September 11, 2013 that Petitioner's thumb CMC and MCP joint pain and cubital and carpal tunnel all contributed to Petitioner's inability to return to work. Based on this, the Commission finds that the work restrictions instituted by Dr. Korcek are not completely due to work related conditions, as we find that Petitioner did not have work related carpal or cubital tunnel syndromes. However, the need for the restrictions may be in part due to ongoing sequelae from the work related DeQuervain's tenosynovitis, as well as the thumb joint arthritis. We believe that the work related conditions have resulted in the restrictions instituted by Dr. Korcek. That being said, the Petitioner also has chosen not to have any surgery for the thumb arthritis, and, as noted, we have no evidence that he attempted to seek further evaluation of his DeQuervain's tenosynovitis with Dr. Borchard, as recommended by Dr. Korcek.

The permanency award in this case is based on Section 8.1(b) of the Act.

With regard to subsection (i), neither party submitted evidence indicating a permanent partial disability impairment pursuant to the AMA guides.

As to subsection (ii), Petitioner worked for Respondent as a forklift driver. The evidence supports the fact that his condition of right DeQuervain's tenosynovitis did not restrict him from continuing to work as a forklift driver.

As to subsection (iii), the Petitioner was 61 years old at the time of his injury. He is therefore at an age close to the typical retirement age, and this could impact his ability to find similar employment in a negative fashion versus a younger worker.

As to subsection (iv), there is no evidence to indicate that the Petitioner's future earning capacity was impacted by his injury, as we have indicated above that the evidence does not support any causally related permanent work restrictions.

As to subsection (v), the evidence of the Petitioner's ongoing disability is not truly corroborated by the medical records, as the work related DeQuervain's condition is intertwined with non work related conditions of thumb joint arthritis, cubital tunnel syndrome and carpal tunnel syndrome. As such, the ongoing disability solely related to DeQuervain's tenosynovitis is difficult to discern.

As noted, since no AMA impairment rating was submitted by the parties, that factor does not come into play in our permanency analysis. The Petitioner underwent surgery for DeQuervain's tenosynovitis, and appears to have had a reasonably good result. He also had

degenerative joint conditions in the right thumb that were aggravated by the Petitioner's employment. Based on the totality of the evidence, we find that Petitioner has sustained the loss of use of 35% of the right hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's awards of TTD and/or maintenance after July 23, 2013, as well as the Arbitrator's award of vocational rehabilitation, are hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $435.76 per week for a period of 68-3/7 weeks, from March 26, 2012 through October 17, 2012 and October 24, 2012 through July 23, 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 $392.22 per week for a period of 71.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 35% of the right hand

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $124.00 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 of $31,128.57 for temporary total disability previously 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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $27,100.00. 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: OCT 8 - 2015
TJT: pvc
O 08/10/15
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

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

HANSERD, CARL
Employee/Petitioner

Case# **12WC035267**

15IWCC0759

TAYLOR FREEZER
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:

1131 GESMER LAW OFFICES PC
BRAD REYNOLDS
630 N CHURCH ST SUITE 201
ROCKFORD, IL 61103

2027 WIEDNER & McAULIFFE LTD
JEFFREY L SALISBURY
1639 N ALPINE RD SUITE 300
ROCKFORD, IL 61107

15IWCC0759

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

- [ ] 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)

Carl Hanserd
Employee/Petitioner

v.

Taylor Freezer
Employer/Respondent

Case # **12** WC **35267**

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 **Robert Falcioni**, Arbitrator of the Commission, in the city of **Rockford**, 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. [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 [x] Maintenance [x] TTD

M. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [x] Other **Vocational Rehabilitation**

FINDINGS

On the date of accident, **March 15, 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 $**33,992.40**; the average weekly wage was $**653.70**.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

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

Respondent shall be given a credit of $**31,128.57** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**31,128.57**.

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

ORDER

Respondent is ordered to pay TTD at the rate of $435.76 from 3-26-12 through 10-17-12 and then from 10-24-12 through 9-11-13 less a credit for all TTD previously paid.

Respondent is ordered to pay maintenance benefits from 9-12-13 through 5-21-14 at the rate of $435.76 per week.

Respondent is ordered to provide vocational rehabilitation pursuant to Section 8(a).

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.

Richard E. Mc

Signature of Arbitrator

May 30, 2014

Date

ICArbDec19(b)

JUN 5 - 2014

MEMORANDUM OF DECISION OF ARBITRATOR

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner Carl Hanserd worked for Respondent Taylor Freezer as a forklift operator for more than 6 years. Taylor Freezer manufactures ice cream machines. On March 15, 2012 while working, petitioner lifted a pan off a lop-sided skid and felt a pop his right wrist. Petitioner dropped the pan and felt pain in the area of his right wrist and right thumb. Petitioner reported the incident to his lead person. Respondent instructed petitioner to be seen at Physicians Immediate Care for medical treatment. Accident and notice are not in dispute. See Arbitrator's Exhibit 1.

Petitioner was initially seen by Dr. Gander at PIC on 3-19-12. There petitioner complained of right wrist pain over the thumb extensor tendons after lifting a pan at work on 3-15-12. Petitioner complained it hurt to move his right wrist and to flex his thumb across the palm. PX 1. Physical exam findings revealed tenderness to palpation over the right wrist. X-rays taken were normal. Preliminary diagnosis was right DeQuervain's tendonitis. PX 1. When seen for recheck on 3-26-12 petitioner reported pain 7 out of 10 with difficulty gripping- not even a pencil. PX 1. Physical exam revealed positive Finkelstein's on the right. Diagnosis remained the same. PX 1. MRI was ordered on 4-4-12 and physical therapy ensued. In the initial physical therapy evaluation dated 4-6-12, right wrist and right thumb ROM were substantially diminished along with grip strength when compared to the left upper extremity. PX 1. Gripping continued to make his pain worse. PX 1. On 4-14-12, petitioner continued to complain of right wrist pain and difficulty gripping. Physical exam that day revealed tenderness of the CMP joint of the right thumb with decreased strength on the right at 3/5 with flexion, extension, pronation, and supination. Petitioner was examined by Dr. Buzzard on 4-20-12. Dr. Buzzard noted petitioner's MRI revealed moderately severe DeQuervain's tendonitis. PX 1. Petitioner declined an injection at that time. On 4-26-12 Physical Therapy notes revealed limited ROM of the right wrist and thumb. Petitioner's thumb could only be extended to neutral. Grip strength was 5 pounds on the right compared to 80 pounds on the left. Pinch strength was 7 pounds on the right compared to 18.5 pounds on the left. PX 1.

Petitioner sought a second opinion with his family doctor Sheldon Weiss on 4-27-12. PX 1. There it was noted petitioner experienced swelling in his right wrist extensor surface and thumb following work injury with no improvement with conservative care. PX 1. Dr. Weiss referred petitioner to ROA for an orthopedic consultation. PX 1.

Petitioner was seen initially by Dr. Ken Korcek on May 5, 2012. PX 1. Dr. Korcek noted petitioner's injury while lifting a pan and hearing a pop at work on 3-15-12. PX 1. Pain was identified in the palmar side of the right wrist and thumb. Pain was rated 6 out of 10. PX 1. Physical exam revealed limited active ROM of the right wrist and thumb. There was a positive Finkelstein's test. MRI dated 4-11-12 was reviewed. Preliminary diagnosis was right DeQuervain's tenosynovitis due to work related injury. PX 1. A cortisone injection was performed. Work restrictions were issued. Occupational Therapy was ordered on 6-6-12. Slow improvement is noted in the records. PX 1. On 9-17-12 petitioner

discussed a progressive return to work with understanding petitioner would pursue surgery if his symptoms grew worse after an attempt to return to work. PX 1. On 10-15-12 physical exam continued to reveal limited ROM of the right wrist and thumb. There was increased tenderness over the right thumb joint. X-rays of the right thumb showed CMC arthritis. PX 1. Diagnosis at that time was DeQuervain's disease of the right hand and osteoarthritis of the right CMC joint. PX 1. On 10-24-12 petitioner's pain was noted at 7 out of 10 with pain in the radial aspect of his right wrist and thumb. Petitioner was elected to proceed with right wrist surgery in the form of first dorsal compartment release. Regarding petitioner's right thumb, surgical treatment of the CMC joint (fusion) was discussed but declined at that time by petitioner. PX 1. Dr. Korcek performed a right first dorsal compartment (DeQuervain's) release and right wrist mass excisional biopsy on 12-6-12. According to the operative report, the mass was consistent with a retinacular cyst. PX 1.

Following surgery, Petitioner participated in post-operative physical therapy. PX 1. When seen on 12-19-12, petitioner complained of radial right wrist and right thumb pain. Dr. Korcek noted some scar tenderness following surgery with a separate component of thumb CMC/MCP joint arthritis. Sutures were removed and petitioner was fitted with a thumb spica splint. PX 1. Occasional numbness and tingling was noted in the right long, ring, and small fingers. PX 1. On 1-23-13 petitioner rated pain 8 out of 10 with activity. Once again right wrist and thumb ROM was limited. Diagnosis remained DeQuervains and right thumb CMC and MCP arthritis. Meloxicam was refilled and PT was continued. PX 1. On 2-20-13 an EMG was ordered. A home exercise program for right thumb arthritis was commenced. EMG done 4-16-13 showed right CTS and right cubital tunnel syndrome. PX 1. When seen on 4-24-13 physical exam showed limited ROM in the right wrist and thumb. Tinel's sign at the right wrist and elbow were negative. Petitioner opted for splinting concerning his right CTS and right elbow symptoms. PX 1. Conservative treatment was continued following the 6-24-13 and 8-7-13 visits. Physical therapy was completed at the time of the visit on 8-7-12. Eight months post surgery, petitioner continued to complain of right wrist and right thumb pain. Work restrictions were continued. PX 1 and 2. Petitioner's final visit with Dr. Korcek was on 9-11-13. Dr. Korcek diagnosed some residual right wrist and right thumb pain with stiffness. PX 1. Petitioner declined to consider thumb surgery and was told he could follow up as needed with the surgeon for his symptoms. Permanent work restrictions were issued. PX 1 and 2.

Respondent disputes causal connection to any condition of ill-being other than right wrist DeQuervain's syndrome. See Arbitrator's Exhibit 1. Dr. Daniel Nagle, who performed IME on 6-12-12 pursuant to Section 12 of the Act, opined that petitioner irritated his right first dorsal compartment tendons when he lifted the pan on 3-15-12. RX 1.

Respondent denies that petitioner's EMG findings of carpal tunnel syndrome and cubital tunnel syndrome are work related. Respondent further denies that petitioner's arthritis of his right thumb are work related. In support of their denial Respondent offered the opinions of Dr. Soriano and Dr. Atluri.

Dr. Soriano performed an IME at the request of the Respondent on 7-23-13. Dr. Soriano reviewed the medical records and performed a physical exam. RX 2. Tinel's signs on that date at the

wrists and elbows bilaterally were negative. No atrophy was found at the wrists or elbows. Petitioner reported no night time awakening due to wrist or elbow symptoms on the date of the exam. Dr. Soriano opined that while petitioner had a positive EMG for carpal tunnel and cubital tunnel syndrome, that these conditions (which were non-clinical) were not related to the 3-15-12 work injury. RX 2. Dr. Soriano opined that petitioner's job as a fork lift operator did not involve highly repetitive motions to the hand or high impact to the wrist or elbow. Dr. Soriano felt the EMG findings were incidental and age related. RX 2. Dr. Soriano offered no opinions concerning petitioner's DeQuervain's and/or arthritis of his right thumb.

Dr. Atluri performed IME exam at the request of the Respondent on 2-25-14. See RX 3. Dr. Atluri noted petitioner's history of injury to his right wrist and hand on 3-15-12 while lifting pan at work. Dr. Atluri, like Dr. Soriano, noted petitioner developed elbow and hand pain with numbness/tingling after his surgery in December 2012. RX 3. Dr. Atluri's physical exam revealed no tenderness at the ulnar aspect of the elbow. There was no tenderness over the cubital tunnel. The ulnar nerve was stable at the cubital tunnel with a negative's Tinel's. No atrophy was identified in the right hand. There was a negative Tinel's over the carpal tunnel.

Dr. Atluri diagnosed petitioner with right wrist DeQuervain's tenosynovitis status post first extensor compartment release, possible CTS, and mild arthritis of the right thumb. RX 3. Dr. Atluri's diagnosis did not include cubital tunnel syndrome of the right upper extremity. RX 3. Dr. Atluri opined it was possible that petitioner had right CTS but stated his clinical exam was inconsistent with that diagnosis. RX 3. Regarding petitioner's right thumb, Dr. Atluri did document positive physical exam findings and diagnosed mild arthritis, basilar joint of the right thumb. RX 3. Dr. Atluri opined these findings regarding the right thumb were chronic and degenerative in nature and not related to the 3-15-12 work injury. RX 3.

In support of causation, Petitioner relies on the opinions of the treating hand surgeon Dr. Ken Korcek. Dr. Korcek opined petitioner's DeQuervain's disease was causally related to his 3-15-12 work injury in the office note dated 5-5-12. PX 1. Concerning petitioner's right thumb Dr. Korcek opined in his office note of 10-15-12 that petitioner's right thumb CMC arthritis was not directly caused by the 3-15-12 work injury but that the work injury exacerbated it causing persistent to progressive worsening of the underlying right condition. PX 1. Dr. Korcek opined that petitioner's positive EMG findings of right CTS and right cubital tunnel were NOT causally related to the 3-15-12 work injury in his office note dated 9-11-13. PX 1.

After reviewing the records and considering the opinions of the treating and various examining doctors, the Arbitrator finds petitioner sustained his burden of proving his right DeQuervains tenosynovitis and his right thumb CMC/MCP arthritis are causally related to his 3-15-12 work injury. The Arbitrator notes the following in support of this finding. First, all doctors who offered opinions in this matter conclude petitioner's right DeQuervain's tenosynovitis is work related. Furthermore, Respondent stipulated that petitioner's right DeQuervain's was causally related to the 3-15-12 work injury. See Arbitrator's Exhibit 1. Second, no doctor opined that petitioner's right CTS or right cubital tunnel syndrome (if indeed petitioner has such conditions) are causally related to the 3-15-12 work injury.

Regarding petitioner's right thumb, the Arbitrator does not find persuasive Dr. Atluri's opinion that petitioner's right thumb arthritis is strictly degenerative in nature and not causally related to the 3-15-12 injury. It is settled law that an injured worker need only prove a work injury aggravated, exacerbated or made symptomatic a pre-existing condition and need not be the direct cause of an injury in order to be compensable. Petitioner testified he had no previous medical treatment concerning his right thumb before the 3-15-12 injury. Petitioner's testimony on this point was not refuted by Respondent. None of petitioner's medical records revealed any past medical history concerning petitioner's right thumb prior to 3-15-12. Petitioner was symptom free and working without limitations for Respondent until he felt a pop and pain in his right wrist and thumb on 3-15-12 while lifting a pan at work. It is significant to the Arbitrator's finding concerning causation to the right thumb that the initial treating records show petitioner complained about his right wrist and thumb from the outset of his injury. At no time after the 3-15-12 injury did petitioner report to a treating physician that his right thumb symptoms resolved.

While it is true that Dr. Korcek opines the 3-15-12 work injury did not directly cause petitioner's right thumb CMC/MCP arthritis, Dr. Korcek clearly opines the work injury exacerbated the previously asymptomatic arthritis in petitioner's right thumb which caused his right thumb arthritis to progressively persist and worsen. Dr. Korcek placed work restrictions on petitioner in part due to the injury to his right thumb. Those work restrictions, which were not present prior to 3-15-12, were made permanent by the treating doctor on 9-11-13.

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?

Having found petitioner proved causal connection between his right wrist Dequervain's and right thumb conditions and the 3-15-12 work injury, the Arbitrator further finds all medical treatment rendered on account of the 3-15-12 work injury was reasonable and necessary to treat petitioner's condition of ill being. All bills are to be paid for treatment rendered as contained within Petitioner's Exhibit 1pursuant to the Illinois fee schedule with credit given to Respondent for all bills previously paid.

Respondent paid the medical bills to the various medical providers with the exception of the last visit with Dr. Korcek on 9-11-13 in the amount of $124.00. See PX 1 and PX 4. On that date, petitioner was seen by Dr. Korcek for right wrist and right thumb complaints. The Arbitrator finds this date of service to be related to the 3-15-12 injury. Respondent is ordered to pay this bill pursuant to the Illinois fee schedule.

L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

During the pendency of medical treatment following the 3-15-12 work injury, Respondent laid petitioner off pursuant to its written policy effective 9-26-12. See RX 4.

Arbitrator's Exhibit 1 shows Respondent stipulated to two periods of TTD from 3-26-12 through 10-17-12 and from 10-24-12- through 8-13-13. Respondent is ordered to pay TTD during this time period with a credit in the amount of $31,128.57 for all TTD paid previously.

Respondent disputes it owes any TTD beyond 8-13-13 on the basis of the opinions of Dr. Soriano and Dr. Atluri.

Respondent further disputes petitioner's claim for maintenance benefits from 9-12-13 through 5-21-14 on the basis of the opinions of their examining doctors.

Dr. Soriano opined that petitioner could return to work without restrictions as of 7-23-13. RX 2. Dr. Atluri's physical exam on 2-25-14 noted no instability at the first extensor compartment. Dr. Atluri's physical exam did not reveal any persistent DeQuervain's extensor tenosynovitis. Dr. Atluri opined petitioner's right wrist DeQuervain's had resolved and that no specific work restrictions were indicated on account of the 3-15-12 work injury. RX 3. Dr. Atluri opined petitioner's right thumb arthritis and possible carpal tunnel syndrome are not work related. RX 3.

Dr. Korcek opined that petitioner's right DeQuervain's tenosynovitis and the exacerbation of his right thumb arthritis were causally related to the injury of 3-15-12. On 9-11-13 Dr. Korcek noted significant pain in petitioner's right wrist and thumb status post DeQuervain's release. Right hand and right thumb ROM were limited due to pain. PX 1. Dr. Korcek specifically opined that petitioner continued to suffer residual pain from DeQuervain's tenosynovitis despite surgical release. PX 1. Dr. Korcek further found petitioner also was experiencing ongoing residual thumb pain and stiffness. Dr Korcek opined that the Dequervain's, superimposed CMC and MCP thumb joint pain, carpal tunnel, and cubital tunnel were all contributing to petitioner's inability to return to full work. PX 1. On 9-11-13 Dr. Korcek placed permanent work restrictions on petitioner of no lifting of any kind > 10 pounds with the right hand and no pinch or grip whatsoever. See PX 2.

The Arbitrator is persuaded by the opinions of Dr. Korcek and adopts those opinions over those offered by Dr. Soriano and Dr. Atluri concerning whether petitioner's condition of ill being from the 3-15-12 injury had resolved as of 8-13-13. The Arbitrator is not persuaded that petitioner's deQuervain's fully resolved as of 8-13-13 thus permitting petitioner to return to work full duty and without restrictions. The Arbitrator notes the following in support of this finding. First, when seen by Dr. Atluri on 2-25-14, petitioner reported inability to fully extend his right thumb. He also reported pain with pinching activities. RX 3. Difficulty with gripping/grasping were noted throughout petitioner's treatment at PIC and later at ROA. Dr. Atluri also noted swelling of the right thumb when compared to his left on physical exam. RX 3. These complaints (whose genesis was the 3-15-12 work injury) and positive physical exam findings show petitioner's DeQuervain's had not fully resolved. Such is the opinion of Dr. Korcek who found permanent residuals post first dorsal compartmental release and need for permanent work restrictions. Second, Dr. Atluri opined he was in agreement with petitioner's treating physician that petitioner had some mild arthritic changes at the carpometacarpal joint of his right thumb. RX 3. Dr. Atluri however did not find the thumb arthritis to be caused or aggravated by the work injury- a finding that has not been adopted by the Arbitrator for the reasons stated above.

The Arbitrator finds petitioner is entitled to TTD from 3-26-12- 10-17-12, and then from 10-24-12-through 9-11-13 less a credit for TTD already paid in the amount of $31,128.57.

The Arbitrator also finds petitioner is entitled to an award of maintenance benefits. Respondent terminated petitioner effective 9-26-12. See RX 4. When petitioner was last seen by Dr. Korcek on 9-11-13 he was released to return to work with permanent restrictions of no lifting > 10 pounds and no pinch or grip. Respondent's job description (offered as RX 5) lists simple grasp, lateral pinch, palmer pinch, and power grasp as specific job functions of a forklift operator. Petitioner cannot perform these tasks within

his work restrictions set by Dr. Korcek. PX 2. Dr. Atluri opined that "this patient's usual work activities do include some exposure to gripping and pinching". RX 3.

Since 9-26-12, Respondent has NOT offered petitioner a light duty job within the restrictions set by Dr. Korcek. Respondent has NOT offered petitioner assistance with job searching nor has Respondent offered vocational rehabilitation. Petitioner testified without contradiction that he has been searching for work on his own since being terminated by Respondent.

The Arbitrator finds petitioner is entitled to an award of maintenance benefits from 9-12-13 through 5-21-14 or 35 and 6/7th's weeks at the rate of $435.76 per week.

O. OTHER: IS PETITIONER ENTITLED TO VOCATIONAL REHABILITATION?

The Arbitrator incorporates by reference thereto the findings set forth above and further finds petitioner is entitled to an award of vocation rehabilitation pursuant to 8(a) of the Act. Ongoing maintenance benefits to be paid by Respondent during the pendency of vocational rehabilitation.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

TAMRAT, WOINSHET Case# **12WC028697**

Employee/Petitioner

HILTON WORLDWIDE INC

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

5271 LEADERS LAW CENTER LLC
OWOLABI ALABA
30 E ADAMS ST SUITE 400
CHICAGO, IL 60603

1139 NOBLE & ASSOCIATES PC
MICHAEL MAHAY
3387 SHUMAN BLVD SUITE 210E
NAPERVILLE, IL 60563

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

Woinshet Tamrat
Employee/Petitioner

v.

Hilton Worldwide, Inc.
Employer/Respondent

Case # **12** WC **28697**

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 **6/18/15 and 7/22/15**. 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 **June 26, 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 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 $**32,656.00**; the average weekly wage was $**628.00**.

On the date of accident, Petitioner was **42** 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 has not proven, by a preponderance of the evidence, that an accident arose out of and in the course of her employment with Respondent, therefore, no benefits are awarded pursuant to 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.

FINDINGS OF FACT

The disputed issues in this matter are: 1) accident; 2) causal connection; 3) medical expenses; 4) temporary total disability; and 5) the nature and extent of the injuries. *See,* AX1.

The Arbitrator notes that Ms. Tamrat is of Ethiopian descent and does not have a good grasp of the English language. The person who came with her is also of Ethiopian descent but could not act as a translator because she was not certified as such and also testified on the petitioner's behalf.

Ms. Woinshet Tamrat, ("Petitioner") testified she has been employed as a housekeeper by Hilton Worldwide, Inc., ("Respondent") for approximately eight (8) years and that her duties were to clean fifteen (15) rooms per day. She next testified she was working on June 26, 2012, cleaning a bathroom. and in the course of cleaning, she was using a sponge and a spray bottle to clean a wall. She testified that she, "... slipped, fell in wall and door hit me my back and my head, and then that happened." The arbitrator notes that although questioned on direct examination regarding the cause of her "slipping", petitioner did not testify to any defect as being the cause of the fall. Petitioner next testified that she felt dizzy after she fell. Tr. pp. 15-19.

Petitioner then testified she reported this injury to safety manager, Sylvia Zavala and was sent to Concentra Medical Center. The patient statement from Concentra dated June 26, 2012 indicates petitioner stated, "I fell at work hurting my back, shoulders, arms and right foot". Further, petitioner makes no complaints regarding her thumb. It also states under 'history of present illness' "The patient states that she was cleaning today when she started to shake and nearly passed out. The patient did not lose consciousness or fall over." She further stated, "She feels that her pain is due to the very long hours and consecutive days she has been working". The arbitrator notes this history does not corroborate petitioner's testimony regarding slipping and falling and indicates that the petitioner felt dizzy before she fell. PX2.

On July 12, 2012, Petitioner began treatment with her primary care doctor, James Diesfeld, at his office at Chicago Pain Medicine Center. Dr. Diesfeld authored three different consultation notes dated July 12, 2012. The original note appears at page 000073 of petitioner's exhibit #3 and was dictated on July 13, 2012. This note records a history of petitioner's illness and noted petitioner was being seen for evaluation and management of pain with insidious onset. Further, Petitioner denied any accident or injuries. Her chief complaint as recorded at this time is, "Right shoulder, low back, and right leg pain. There is radiation to both hands and fingers." There is no complaint of thumb pain or history indicating a work related accident occurred. The petitioner specifically denies an accident or trauma. PX3.

Dr. Diesfeld authored a second consultation note dated July 12, 2012 and it appears at page 000065 of petitioner's exhibit 3. This note is dictated on August 27, 2012 and the history of the present illness now reads, "...her symptoms began a few weeks ago when she was feeling dizzy at work and fell backwards hitting her head and back against the wall". Her chief complaints recorded at this time are, "Right thumb, wrist, neck and low back pain with right shoulder and right leg pain with radiation into

both hands and fingers." The chief complaints recorded in this note differ from the original consultation note authored by Dr. Diesfeld, on the date of the initial examination. There is no description of a cause of the dizziness or fall. Also, this history does not corroborate petitioner's testimony with regard to how the accident occurred. There is no mention of petitioner using a spray bottle or sponge. There is no mention of petitioner being in an awkward position to wipe the shower walls. There is no mention of a defect causing the petitioner to slip and fall.

Dr. Diesfeld authored a third consultation note dated July 12, 2012 and dictated on September 18, 2012. This note offers the chief complaints as being "Right shoulder and neck pain radiating into both hands and fingers, low back pain radiating into the right leg." Also, this note states petitioner, "... reports that she felt dizzy and fell backwards hitting her head against the wall." Again, this new incident description depicts petitioner having an idiopathic incident of feeling dizzy at work and falling backwards. There is no stated cause of the dizziness or the fall. Also, this history does not corroborate Petitioner's testimony with regards to how the accident occurred as there is no mention of petitioner using a spray bottle or sponge or being in an awkward position to wipe the shower walls. Also, there is no mention of any defect causing petitioner to slip. PX3, p. 000060.

Also, a review of the pain questionnaire contained in petitioner's exhibit # 3 at page 000099 states the following questions and answers:

> Q: How and when did it begin?
> A: 2 wks ago-Don't know
>
> Q: Work or accident related?
> A: N/A

The Arbitrator finds that the petitioner's testimony is not supported by the initial treating medical records regarding the mechanism of injury. At best, they document an idiopathic incident which has no relation to petitioner's work activities.

The petitioner testified that when she reported the incident to her supervisor, her supervisor, Sylvia Zavala, told her that if she reported a work-related accident and sought medical treatment for same; Respondent would terminated her employment. This case was bifurcated, over Petitioner's objection, so the Respondent could bring in Sylvia Zavala to testify.

Petitioner's witness

Kiros Tewolde-Gabriel, ("Kiros"), a leader within the Ethiopian community in the Chicago area, testified at trial. Kiros met Petitioner sometimes in August of 2012. She testified that she persuaded Petitioner to disclose to her doctors the facts of her injuries at work. She also testified that Petitioner told her that she feared Silvia Zavala, the Hilton Hotels Security Manager, because she had threatened her with the loss her job, if she disclosed facts of her injuries.

Kiros testified that she had recently retired after 28 years of working for the City of Chicago, in the office of Mayor Harold Washington and for the Chicago Police Department. Kiros testified that she felt that it was only by telling the truth of the injury that Petitioner could receive proper care from her doctors. Tr. pp. 78-94.

Respondent called Ms. Sylvia Zavala, who testified that she was the respondent's night and safety manager, at the time of this incident. She also was the person taking the workers' compensation claims for the respondent. Ms. Zavala testified that she met with petitioner on June 29, 2012 and had a conversation regarding the injury petitioner reported. This witness authored an email on June 30, 2012 confirming the conversation. Ms. Zavala noted in her email and testimony that petitioner "...reported she was experiencing pain in multiple areas of her body. Ms. Tamrat reports she did not have an injury but believes this pain to be caused by repetitive lifting, wiping, pushing, pulling." Tr. 26, RX18.

Ms. Zavala testified that she did not see Petitioner on the day of the injury. Zavala claimed she was out. Petitioner's testimony was that she talked to Ms. Zavala in her office, the day of the incident, Ms. Zavala threatened her; then called a cab that took her to Concentra. Ms. Zavala could not remember if she called a cab for the petitioner to go to Concentra.

Although, Zavala testified that she discussed with Petitioner, an injury sometimes after June 26, 2012, Zavala testified that she had no records of the actual discussion with Petitioner after the fall on June 26, 2012, save a certain email. Ms. Zavala remembered that she took notes during her discussions with Petitioner, but testified at trial that she did not keep those notes.

Ms. Zavala denied that she in any way attempted to direct or control petitioner's medical treatment and denied directing petitioner what to tell the doctor regarding this incident. Ms. Zavala testified to her extensive experience dealing with workers' compensation claims for respondent and the companies policies related thereto.

CONCLUSIONS OF LAW

C. Did an accident occurred that arose out of and in the course of Petitioner's employment by Respondent?

A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Commission,* Ill.2d 144, 265 N.E.2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of technology v. Industrial Commission,* 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation must be denied.

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission*, 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission*, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).

It is not enough that the petitioner is working when an injury is realized. The petitioner must show that the injury was due to some cause connected with the employment. *Board of Trustees of the University of Illinois v. Industrial Commission*, 44 Ill.2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v Industrial Commission*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991).
The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. *Caterpillar Tractor vs. Industrial Commission*, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. *Neal vs. Industrial Commission*, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of <u>all facts and circumstances</u> [emphasis added] support the decision. See generally, *Gallentine v. Industrial Commission*, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), see also *Seiber v Industrial Commission*, 82 Ill.2d 87, 411 N.E.2d 249 (1980), *Caterpillar v Industrial Commission*, 73 Ill.2d 311, 383 N.E.2d 220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence, and assign weight to the witness' testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009).

Although the Arbitrator does not disbelieve the petitioner's version of events regarding what was said to her about filing a worker's compensation claim, because the petitioner chose not to tell her doctors the truth as she testified, the medical records do not support a finding that the petitioner suffered a work-related accident. The Arbitrator finds that the petitioner has not proven, by a preponderance of the evidence, that her condition of ill-being arose out of and in the course of her employment with Respondent. Therefore, no benefits are awarded pursuant to the Illinois Workers Compensation Act. Having found that the petitioner has not proven an accident, the remaining issues are moot and will not be addressed.

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
12WC38697
SIGNATURE PAGE

L. Thompson

Signature of Arbitrator

October 7, 2015
Date of Decision

OCT 8 - 2015

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

Leon Torres,

Petitioner,

15IWCC0755

vs. NO: 12 WC 18964

City of Chicago,

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 issue(s) of temporary total disability, medical expenses, 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 July 31, 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.

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: OCT - 1 2015
KWL/vf
O-8/10/15
42

Kevin W. Lamborn

Joshua D. Luskin

DISSENT

I respectfully dissent from the majority decision. I would find that there is plainly a causal relationship between Petitioner's accidental injury of April 4, 2012 and his current condition of ill-being with respect to his right shoulder, and I would award the respective medical bills of ($128,064.99) and temporary total disability benefits until November 6, 2013 for said injury.

The Petitioner was working as a watchman when the undisputed accident occurred. Petitioner fell from approximately 12 to18 feet after attempting to render assistance to an unresponsive individual that was located in an inaccessible area. The fall caused him to sustain numerous injuries, including multiple tears to his right shoulder.

First of all, the Petitioner testified that he reported shoulder pain to MercyWorks the day after his accident. The Petitioner specifically recalled discussing his right shoulder pain with the treating doctor there because the Petitioner has a noticeable scar from a previous surgery in 1998 due to a separate work accident with the same employer. The Petitioner further denied having any shoulder complaints prior to his new accident and subsequent to his previous surgery. Importantly, the medical record report dated April 5, 2012 - the day after Petitioner's accident – indicates, "There is slight tenderness in the right paracervical area…and right trapezius." Therefore, there is evidence that Petitioner contemporaneously complained of right shoulder pain after his work accident.

Further, there is other considerable evidence that Petitioner complained of shoulder pain. A scapular evaluation notation by his examining physical therapist on April 12, 2012 (8 days after Petitioner's fall) states, "The patient...was extremely tender around the medial border of the scapulae, into the rhomboids, and levator scapulare muscle," areas that are composed of or located near the shoulder. Again, on April 24, 2012, the scapular evaluation notation by his examining physical therapist stated, "The patient...was extremely tender around the medial border of the scapulae, into the rhomboids, and levator scapulare muscle left side greater than right." Similar notations were made by the physical therapist on May 15th and July 25th, 2012.

Moreover, in a MercyWorks medical report dated May 21, 2012, it was annotated that the Petitioner "couldn't move his shoulders." Although Petitioner did complain of pain and symptoms in his left shoulder as well, it was ultimately determined that it was his right shoulder that was injured. After treating with MercyWorks, Petitioner treated with Dr. Mark Lorenz. Petitioner further reported pain to Dr. Lorenz on June 18, 2012, although the Petitioner self-reported it as pain in his neck and back. However, it is plausible that the Petitioner did not realize that his pain was actually emanating from his shoulder area. Indeed, an MRI arthrogram of Petitioner's right shoulder was ordered to determine where Petitioner's pain complaints stemmed from after Petitioner specifically gave a history of right shoulder pain to Dr. Lorenz on October 17, 2012. The MRI arthrogram results from November 7, 2012 showed that Petitioner had significant pathology in the right shoulder: "Moderate to high grade partial thickness articular surface tear involving the posterior tendon fibers of the supraspinatus...SLAP tear and mid posterior labral tear...Widened acromioclavicular joint space without edema probably relating to a remote AC joint separation."

The Petitioner was subsequently referred to and treated by Dr. Steven Chudik for ongoing treatment of his right shoulder condition after treatment with Dr. Lorenz for his neck and arm pain symptoms did not alleviate his symptoms. Dr. Chudik notated that with a reasonable degree of medical certainty, the Petitioner's right shoulder condition was causally related to Petitioner's fall. Petitioner underwent surgery for his right shoulder on August 13, 2013 to treat his right labral tear, right rotator cuff tear, and impingement among other related right shoulder issues. Post surgery Petitioner was in physical therapy, and was not released back to work by Dr. Chudik as of the date of the 19(b) hearing on November 6, 2013.

At the Respondent's behest, the Petitioner was examined by Dr. Howard An on January 11, 2013. Dr. An noted in his report, "Because of his pain in the shoulder and low back as well as persistent neck and arm symptom(s), [sic] I did not believe that he is capable of returning to full duty work as a watchman." But after the Petitioner completed an FCE on April 24, 2013, Dr. An was of the opinion that Petitioner could return to work. Of note, Dr. An's report pre-dated Petitioner's treatment for his shoulder condition with Dr. Chudik. Also, Dr. Preston Wolin, who completed a records review for Respondent

on September 3, 2013, was of the same opinion, but he did not examine the Petitioner. In fact, Dr. Wolin's one page report erroneously noted that the Petitioner first complained of symptoms in his right shoulder more than one year after the work accident when he first saw Dr. Chudik. In reality, the Petitioner complained of symptoms in his right shoulder the day after his accident.

Furthermore, in order for a claimant to have a successful workers' compensation claim, he must show that his injury arose out of and in the course of his employment. Sisbro, Inc. v. Indus. Comm'n (Rodriguez), 207 Ill. 2d 193 (Ill. 2003). "The 'arising out of' component is primarily concerned with causal connection. To satisfy this requirement it must be shown that 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." Caterpillar Tractor Co. v. Industrial Comm'n, 129 Ill. 2d 52, 58, (1989). The claimant's injury will arise out his employment if his acts were those that he "might reasonably be expected to perform incident to his assigned duties." Id. In this case, Petitioner was working as a watchman who believed it was his duty to render assistance to an unresponsive individual. The Petitioner severely injured his shoulder during a fall while attempting to render assistance to the unresponsive individual. Therefore, Petitioner's injury arose out of his employment because he was injured while engaging in an act that he 'might reasonably be expected to perform' as a watchman.

In conclusion, Petitioner proved that there was a causal relationship between his work accident and his right shoulder condition. Thus, for the aforementioned reasons I dissent from the majority's opinion and would award Petitioner the related medical bills and TTD.

Thomas J. Tyrrell

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

15IWCC0755

TORRES, LEON
Employee/Petitioner

Case# **12WC018964**

CITY OF CHICAGO
Employer/Respondent

On 7/31/2014, 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:

0365 BRIAN J McMANUS & ASSOC LTD
30 N LASALLE ST
SUITE 2126
CHICAGO, IL 60602

0766 HENNESSY & ROACH PC
DANIEL S WELLNER
140 S DEARBORN SUITE 700
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

15IWCC0755

Leon Torres
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # 12 WC 18964

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 **November 16, 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. [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. [x] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On the date of accident, **April 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*** causally related to the accident as it applies to his cervical spine.

Petitioner's current condition of ill-being is not causally related to the accident as it applies to his right shoulder.

In the year preceding the injury, Petitioner earned $**40,712.36,**; the average weekly wage was $**782.93**.

On the date of accident, Petitioner was **45** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**29,169.52** for TTD which has been previously paid.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $521.95/week for 52 weeks, commencing 6/28/12 through 6/28/13, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $29,169.52 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of ATI and Hinsdale Orthopedics, 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.

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.

Deborah L. Simpson
Signature of Arbitrator
ICArbDec19(b)

July 31, 2014
Date

JUL 31 2014

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Leon Torres,	)	**15IWCC0755**
Petitioner,	)	
vs.	)	**No. 12 WC 18964**
City of Chicago,	)	
Respondent.	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on April 4, 2012, 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 on that date the Petitioner sustained accidental injuries that arose out of and in the course of employment and that the Petitioner gave the Respondent notice of the accident which is the subject matter of the dispute within the time limits stated in the Act. They further agree that in the year preceding the injuries, the Petitioner earned $40,712.36, and that her average weekly wage was $782.93 and that the Respondent has paid $29,169.52 in TTD payments.

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; (2) Is the Respondent liable for the unpaid medical bills listed in Petitioner's Exhibit #11; (3) Is Petitioner entitled to TTD from June 28, 2012, through November 6, 2013 or June 28, 2012 through June 28, 2013; and (4) Is the Petitioner entitled to attorney's fees and penalties.

STATEMENT OF FACTS

Petitioner testified that on April 4, 2012 he was working for Respondent as a watchman pursuant to a light duty restriction from a prior injury. He had previously worked for the Respondent as an electrician/ lineman. He had a wage differential award from the prior claim. The restrictions which led to him working as a watchman included limits with respect to bending, lifting, kneeling and climbing. He began working as a watchman sometime in October of 2011.

On April 4, 2012, Petitioner was injured while working. He was working as a rover, driving around and doing odd security jobs for Respondent. He was notified that there was a nonresponsive individual in a car that was running and parked in a secured city lot near the Cook

County Jail. The individual was in the car parked in an area secured with a locked gate. The fence around the lot was a cyclone fence that had barbed wire on the top of it. The only way Petitioner could get to the person was to pull up a van along the fence and then using the van to climb the fence so that he could get onto a tree that was hanging over the inside of the fence. He climbed the fence, got in the tree and then fell from the tree, about 18 feet to the ground. He was hanging in the tree prior to falling. He stated that he could not go back up the tree and could not go down it any further so he had to drop from the tree. Petitioner fell into some sewer basins that he did not know were below the tree. A deputy sheriff stopped to see what they were doing and Petitioner's partner filled them in.

After the fall he responded to the person, and then the gate was opened. He reported the injury to his boss. The following day he returned to work and participated in a reconstruction of the accident. He was then taken to Mercy Works by Respondent. According to the Petitioner he told the doctor that his shoulder, back, elbows, ankle, knee and neck were hurting. He had a previous right shoulder injury in 1998.

The doctor ordered x-rays and prescribed pain medication for Petitioner. He was permitted to return to work. He also had physical therapy. Petitioner was seen at Mercy Works through June 25, 2012, and during that time they treated his right knee, right ankle, neck, thoracic spine, lumbosacral spine and both elbows.

Petitioner began seeing Dr. Mark Lorenz at Hinsdale Orthopedic Associates in June of 2012. He took him off of work on June 28, 2012. Dr. Lorenz treated symptoms in Petitioner's neck, which referred numbness and tingling through his shoulders to his hands. He referred Petitioner for a cervical spine MRI scan and pain management with Dr. Jain.

Dr. Jain performed epidural steroid injections in Petitioner's neck. A discogram was ordered by Dr. Lorenz, but not authorized by Respondent following a review by Coventry. Dr. Lorenz also recommended physical therapy. Petitioner had therapy for his ankle, knee, back, shoulders, and elbows. Dr. Lorenz also ordered an MRI arthogram of the right shoulder, which was performed in November 2012. Dr. Lorenz told Petitioner he had tears in the right shoulder, prescribed physical therapy and referred Petitioner to Dr. Steven Chudik.

Dr. Chudik is a shoulder specialist at Hinsdale Orthopedic Associates. Dr. Chudik took the Petitioner off of work and performed right shoulder surgery on August 16, 2013. The surgery was not authorized by Respondent.

Respondent stopped Petitioner's temporary compensation after June 28, 2013. Prior to that date, Respondent advised Petitioner that he had been released to return to work as a watchman by Dr. Howard An. He was told to return to work around June 5, 2013. He told Respondent that he was being kept off of work by Dr. Chudik and that Dr. Chudik was contemplating shoulder surgery.

Petitioner saw Dr. An on September 14, 2012, at the request of the Respondent. Petitioner testified that Dr. An indicated Petitioner might need surgery in the future because injections were not working for him. Petitioner has remained off of work since June 2013 per

Dr. Chudik's orders. Following surgery, Dr. Chudik has recommended physical therapy. The therapy has not been authorized and Petitioner is paying for it. He continues under the care of Dr. Chudik and Dr. Lorenz. According to the Petitioner, Dr. Lorenz was waiting for the shoulder to recover prior to providing additional neck treatment.

Petitioner had the FCE at ATI on April 24, 2013. He gave full effort but was in pain in his shoulders. Petitioner testified he is always in pain and is being treated for his shoulder and neck. He is taking Norco. He doesn't sleep well at night and gets numbness in his hands.

On cross examination, Petitioner testified that his restrictions when he obtained the watchman job were no lifting over 25 lbs., no pushing or pulling more than 45 pound and no kneeling or climbing. The job duties involved driving. He also monitored security cameras, receiving cases from other watchman in the field, and paperwork. The job duties did not involve lifting. He claimed that his right shoulder always hurt following the injury.

Petitioner testified that he climbed over the fence onto the tree to get to the unresponsive person. The fence was chain-link with barbed wire on it. The tree grew over the fence. It had no handrails on it. He could not grab onto the fence because of the barbed wire. He lost his footing and fell off the tree. He signed an accident report following the injury. The report indicated that as he climbed over the fence onto the tree he lost his footing and fell to the ground, hurting his ankle, knee, back and elbow.

The day after the injury he was seen at Mercy Works, he testified that he truthfully related his complaints to the doctor. He recalled being diagnosed with contusions and sprains of the right ankle, right knee, neck, thoracic spine and both elbows. He was allowed to return to work at that time. Mercy Works referred Petitioner to physical therapy, and his first visit was on April 5, 2012. He provided a history of injury and his complaints to the therapist.

Petitioner decided to see his own physician. He chose Dr. Lorenz, and saw him on June 18, 2012. Petitioner had a prior shoulder surgery in the 1990's. He previously saw Dr. Lorenz for neck back complaints related to prior workers compensation claims. Petitioner related his complaints to Dr. Lorenz and testified that he complained of pain in the shoulder. On June 18, he completed a pain drawing and filled out a patient assessment form. Dr. Lorenz took Petitioner off of work, and the Respondent began paying benefits beginning June 28, 2012.

He started treating with Dr. Jain in July 2012. According to the Petitioner he related his history of injury and symptoms to Dr. Jain. He followed up with Dr. Lorenz on August 6, 2012. At that time Dr. Lorenz was treating cervical symptoms and wanted to perform a repeat cervical MRI scan.

Petitioner returned to Dr. Lorenz on October 17, 2012, and reported that he was experiencing neck pain and numbness and tingling in his arm. He recalled giving a further history of having right shoulder pain from the work accident at that time.

Petitioner was seen by Dr. An on September 14, 2012. He testified that he truthfully related his history of injury to Dr. An at that time. He returned to Dr. An on January 11, 2013, and related his updated symptoms and histories.

Petitioner testified that he participated in the FCE on April 24, 2013.

Petitioner saw Dr. Chudik on June 26, 2013 and provided a history that he had a prior right shoulder injury in the 1990s. He agreed that he provided a truthful history of the incident to Dr. Chudik at that time. Dr. Chudik performed right shoulder surgery on August 13, 2013 and was keeping Petitioner off of work due to the shoulder injury. Dr. Lorenz was also keeping Petitioner off of work with kneeling and weight restrictions.

Petitioner testified that he has group insurance with Blue Cross Blue Shield which is the City's plan.

On re-direct examination Petitioner testified that he signed the accident report but did not prepare it. He indicated that he hurt both elbows. He testified that when he fell, he landed on "everything". The incident occurred when the City was hosting the G8 convention. He was asked to help move barricades. He believed that it was his duty to help the unresponsive person.

According to the Petitioner on May 21, 2012, he told Mercy Works that both of his shoulders were bothering him and that they went into spasm the day before while he was working. The doctor told Petitioner that he was somehow informed that Petitioner fell at home and it was not work related. Petitioner denied that he fell at home. He had informed Dr. Lorenz and Dr. Chudik that he had pain going from his neck down both of his arms. Petitioner testified that Dr. Lorenz recommended the MRI after Petitioner had continued complaints of right shoulder pain.

Petitioner signed a "Report of Occupational Injury" on April 5, 2012. The form indicates that as he climbed over a fence onto a tree he lost his footing and fell to the ground, hurting his ankle, knee back and elbow. (RX 5).

A description of the job requirements and physical job demands of the watchman position was offered as Respondent's Exhibit Two. The job requires Petitioner to stand and walk for extended periods of time and the ability to climb stair cases. (RX 2)

Petitioner was seen at Mercy Works on April 5, 2012. (PX 1). In a form completed by Petitioner, he indicated that he lost his footing to get into a yard from a van and injured his right ankle, knee, back and elbow. Petitioner complained of a tingling sensation in his left arm to small finger. Petitioner was diagnosed with contusions and sprains of the right ankle and right knee, a contusion of the neck, thoracic, and lumbosacral spine and both elbows. It was noted that Petitioner could work within the parameters of his previous work restrictions from his prior injury. This included no lifting more than 25 lbs., no pulling or pushing more than 45 lbs., no kneeling and no crawling. (PX 1)

A prescription form from Mercy Works which is dated April 9, 2012 indicates Petitioner was referred for physical therapy three times per week for two weeks. (PX 1). Petitioner was seen at Physical Therapy and Rehab Specialists for an initial evaluation on April 12, 2012. (PX 4). It was noted that Petitioner was a watchman for the Water Department and was attending to a person who was in a car that appeared to be in distress. He indicated that he had to lift himself out of a situation which caused him to fall approximately 13 feet. His current complaints were in the right knee and right ankle pain as well as swelling in the right ankle. He also had injuries to his cervical and thoracic spine and left scapula.

On April 26, 2012 Petitioner returned to Mercy Works. It was indicated that he would continue to work within his previous restrictions and that he should continue physical therapy. (PX 1).

Petitioner returned to Mercy Works on April 26, 2012. The work status report indicates that Petitioner could return to work within his previous restrictions, and it was indicated that a MRI scan of the neck and spine was also recommended to rule out disc herniation. (PX 1).

On May 21, 2012, Petitioner returned to MercyWorks. (PX 1). He complained of his back going into spasms while at work and that he couldn't move his shoulders. He also had neck pain and spasms in the shoulder. In an addendum, the examining physician indicated that Petitioner had reported to him that his shoulders went into spasms while working the day before. The doctor also indicated that he was "informed later that he fell at home causing the right shoulder injury". (PX 1). A follow-up work status report from Mercy Works indicated that Petitioner was unable to return to work. It appears that the MRI scan was still recommended.

On May 25, 2012 it was indicated that Petitioner could return to work within the previous restrictions. Petitioner complained of neck pain and spasms in the left shoulder. Petitioner was referred to Dr. Lorenz for a C6-C7 left foraminal disc protrusion and left cervical radiculopathy. (PX 1).

When Petitioner returned to Mercy Works on June 12, 2012, he reported a stabbing sensation in the left shoulder. It appears he had an appointment to see Dr. Lorenz on June 18, 2012. It was indicated he could continue to work within his previous restrictions. (PX 1).

Petitioner was seen by Dr. Lorenz at Hinsdale Orthopaedics on June 18, 2012. (PX 2). In a pain drawing, prepared by Petitioner, he marked that he had pain in the left upper back and neck. He had numbness down the bottom of his arms. (PX 2). His chief complaint was cervical pain and bilateral arm pain. He also had low back pain. Petitioner was last seen in June 2009, and known to have a C5-C6 and C6-C7 disc herniation at that time. Petitioner provided a history of climbing a fence and getting his foot caught while crossing barbed wire. He fell down trying to come off of a wall. He described an ankle injury, neck pain, bilateral arm pain and low-back pain. Dr. Lorenz noted that Petitioner had an MRI scan which showed some mild protrusions at C3-C4, a ridge at C5-C6 and spinal stenosis at C6-C7 with the left foraminal disc protrusion. He performed a physical examination and diagnosed Petitioner with C5-C6 spondylosis with stenosis, a left C6-C7 disc herniation and low-back pain. He found the Petitioner could continue

to work as tolerated. He recommended a cervical injection. Dr. Lorenz causally related Petitioner's condition with the April 4, 2012 incident. (PX 2).

On June 25, 2012 Mercy Works issued a work status report indicating that Petitioner could return to work within the confines of his prior injury. It was noted that he was referred for an epidural steroid injection. On that date Petitioner complained of neck pain with a stabbing sensation in the left shoulder. (PX 1). A work status report prepared by Hinsdale Orthopaedics indicated that Petitioner was taken off of work as of June 27, 2012. (PX 2). Petitioner had a cervical epidural steroid injection with Dr. Jain on July 18, 2012. (PX 3).

Dr. Jain, a pain care specialist, saw Petitioner on August 3, 2012. (PX 3). Petitioner reported to him that he developed low back and neck pain due to the fall. He reviewed a cervical MRI scan dated May 22, 2012 which reported a disc herniation at C6-C7, mild stenosis at C5-C6 and mild degenerative changes at multiple levels. Dr. Jain also performed a physical examination. He noted Petitioner complained of significant neck pain and numbness and tingling over both upper extremities in the ulnar nerve distribution. He recommended that Petitioner proceed with bilateral C5-C6 and C6-C7 facet injections. He deferred to Dr. Lorenz regarding Petitioner's work status.

Dr. Lorenz saw Petitioner on August 6, 2012. (PX 2). Petitioner was following up after an epidural steroid injection in his cervical spine. He stated the injection did not help his symptoms. He described more pressure in the neck. He described numbness down his arms. The diagnosis was C5-C6 spondylosis with stenosis, C6-C7 left-sided disc herniation and increasing bilateral arm radiculitis. Dr. Lorenz had him off of work and wanted a repeat cervical spine MRI scan.

The repeat MRI scan of the cervical spine occurred on August 13, 2012. At C5-C6 there was a disc osteophyte complex without resulting canal stenosis. There was no focal disc protrusion. There was mild bony neuroforaminal narrowing. There were similar findings at C3-C4 and C4-C5. (PX 2).

Dr. An saw Petitioner on September 14, 2012, for an independent medical examination at the request of the City. (RX 1). Petitioner provided a history of climbing onto a van near a fence by a tree to get into a yard when he lost his footing and hit the ground and injured his neck. Dr. An then took a history of Petitioner's treatment. He also performed a physical examination. Dr. An reviewed the MRI scan of the cervical spine from May 2012. He did not find any evidence of spinal cord compression at any level. Dr. An found that Petitioner's objective findings include a recent MRI scan, which correlated with cervical spondylosis neck pain and some left sided C7 and right sided C6 radicular pain. He noted low-back pain without significant radiculopathy. He noted the condition was pre-existing. Dr. An opined that the April 4, 2012, injury aggravated the condition beyond its normal progression and that Petitioner was having symptoms.

Dr. An found that the condition should improve with conservative treatment including anti-inflammatory medications. He found Petitioner was on sedentary to light-duty restrictions with no lifting greater than 15 lbs. and avoiding frequent bending and twisting of the neck and low back. He found that Petitioner's condition should plateau with maximum medical

improvement within four weeks and he should be able to go back to his regular duty work without restrictions at that time. He did not recommend any further injections as Petitioner did not have any improvement with the first injection. Dr. An noted that if Petitioner's condition became progressively worse with conservative care he should be reevaluated for possible cervical spine surgery.

On October 17, 2012, Petitioner returned to Dr. Lorenz. (PX 2). He complained of neck pain and bilateral arm numbness and tingling. He also provided a history of right shoulder pain due to grabbing a handrail or something to keep him from falling. Dr. Lorenz reviewed the MRI scan and noted it showed a central disk herniation at C3-4, spondylosis with a disk herniation at C5-6 and C6-7. He diagnosed Petitioner with C3-4, C5-6 and C6-7 disk herniation and right shoulder pain. He kept him off of work and referred him for a cervical discogram. He also referred him for a right shoulder MRI scan and follow-up with Dr. Chudik.

Petitioner had an MRI of the right shoulder on November 7, 2012. The scan was interpreted as showing a moderate to high grade partial thickness articular surface tear involving the posterior tendon fibers of the supraspinatus and the anterior tendon fibers of the infraspinatus, a SLAP tear and mid posterior labral tear and a widened acromioclavicular joint space without edema. (PX 2).

Dr. An performed a second independent medical examination on January 11, 2013. (RX 2). Petitioner reported that he had no significant improvement. He also reported right shoulder pain due to rotator cuff problems, which he was being treated for. Dr. An reviewed surveillance video, but he did not find it of much import. He noted that the video did not show any lifting, bending or twisting activities. He concluded that Petitioner had a cervical disc problem causing neck and bilateral radicular symptoms. He found that Petitioner's condition had plateaued. He also found Petitioner could return to work, but with the restrictions he noted before. A review of that prior report indicates restrictions of 15 lbs. lifting with limited bending and twisting. He found Petitioner was not capable of returning to work full duty as a watchman. He mentioned that with shoulder treatment and continuing improvement he could return to work in the future. Alternatively Petitioner could have a functional capacity evaluation to determine permanent restrictions and work capacity. He noted that if Petitioner's neck and arm symptoms worsened, he could consider a discectomy and fusion at C5-C6 and C6-C7. He reiterated his opinion that a discography was not indicated.

On March 25, 2013, Petitioner returned to Dr. Lorenz. He reiterated his recommendation for the cervical discogram. He also referred Petitioner for a functional capacity evaluation. (PX 2).

A functional capacity evaluation was performed on April 24, 2013, at ATI Physical Therapy at the request of Dr. Lorenz. (PX 5). It was found that Petitioner was at the light to medium physical demand level. It was specifically indicated that Petitioner is currently a watchman for the City of Chicago. This job was considered at the light physical demand level and Petitioner's capabilities appear to have met this level.

Petitioner saw Dr. Chudik on June 26, 2013. (PX 2). Petitioner provided Dr. Chudik with a history of his injury. He indicated that he was holding onto a high branch with his right hand and lowering himself down the tree. He did not describe a fall. He indicated that he had immediate right shoulder pain. It was noted that he had a pre-existing condition in the right shoulder from the 1990's. Based upon an MR arthogram from November, Dr. Chudik found that Petitioner had a traumatic rotator-cuff tear. He recommended the Petitioner have an arthroscopic procedure.

An addendum report from Dr. An regarding Petitioner was drafted on June 4, 2013. He indicated that Petitioner had a functional capacity evaluation on April 24, 2013 at ATI. He noted the findings. He found that Petitioner's work as a watchman at the City of Chicago is a light physical demand level. The results of the functional capacity evaluation and his previous physical examination, led him to the conclusion that Petitioner could return to work as a watchman without restrictions. (RX 3).

At Respondent's request, Dr. Wolin issued an opinion following his review of the medical records on September 3, 2013. (RX 4). Dr. Wolin opined that based upon his review of the records he did not find a causal connection between the right shoulder injury and the work injury. Dr. Wolin found no contemporaneous history of a right shoulder injury and that there was no mention of a right shoulder injury until Petitioner started seeing Dr. Chudik a year after the injury. He noted that the shoulder MRI scan findings could have been post-operative, but would not change his opinion that there was no causal connection based upon the records.

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).

The burden of proving disablement and the right to temporary total disability benefits lies with the Petitioner who must show this entitlement by a preponderance of the evidence. *J.M. Jones Co. v. Industrial Commission,*71 Ill.2d 368, 375 N.E.2d 1306 (1978)

For treatment of an employee's workplace injury to be compensable under workers' compensation laws, Petitioner must establish the treatment is necessitated by the work injury and not some other cause or condition. *Hansel & Gretel Day Care Center v Industrial Commission,* (1991) 215 Ill.App.3d 284, 574 N.E.2d 1244.

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

The Arbitrator finds that the condition causally related to the April 4, 2012 accident is an aggravation of pre-existing cervical spine pathology symptoms of neck pain radiating into the upper extremities. This is based upon the consistent histories of complaints to those body parts since the injury and the opinions of Dr. Lorenz and Dr. An. Petitioner also had injuries to the lower extremities and back which from the medical records and testimony of the Petitioner appear to have resolved soon after the injury.

The Arbitrator finds that Petitioner's right shoulder condition is not causally related to the accident of April 4, 2012. The burden is upon a claimant to establish evidence of his workers compensation claim by a preponderance of credible evidence. *Board of Education of the City of Chicago v. Industrial Commission*, 83 Ill. 2d 475, 479 (1981). Although the testimony of the claimant standing alone is sufficient to sustain an award, that testimony must be considered with all the evidence in the record. *Id.* A petitioner's testimony, standing alone, may support an award where all of the facts and circumstances do not preponderate in favor of the opposite conclusion. *Seiber v. Industrial Commission*, 82 Ill. 2d 87, 97 (1980). However, when the claimant's testimony is virtually the only evidence favoring an award and that testimony is repeatedly contradicted, then the claim should not be allowed. *Caterpillar v. Industrial Commission* 73 Ill. 2d 311, 315 (1978).

A preponderance of the credible evidence demonstrates that Petitioner did not have an injury to the right shoulder caused by the accident. The accident report signed by Petitioner the day after the accident mentions injuries to numerous body parts but fails to mention a right shoulder injury. The Petitioner was seen by MercyWorks the day after the accident. Petitioner complained of injuries to several body parts but not the right shoulder. Petitioner went to physical therapy on April 12, 2012 and again did not complain of right shoulder pain. He continued the therapy without making any complaints of shoulder pain. The Arbitrator notes the reference at Mercy Works to both shoulders hurting after work on May 21, 2012, but does not find that it demonstrates Petitioner injured his right shoulder on April 4. There is no mention of the pain beginning on April 4. The reference is to both shoulders, not just the right shoulder. Moreover, there is a history of a fall at home. On May 25, 2012, the Petitioner began complaining about pain in the left shoulder. Six months after the accident there is a specific complaint of right shoulder pain.

The Arbitrator notes that in May and June of 2012, the Petitioner continued to be treated in both therapy and with Mercy Works and did not report any complaints of right shoulder pain. The Arbitrator notes that when Petitioner started treatment with Hinsdale Orthopedics in June 2012, he treated with Dr. Lorenz, a neck and back specialist. During the initial visit Petitioner did not provide any right shoulder complaints. He had complaints of radiating pain from the neck into the arms, and a pain drawing Petitioner completed shows the symptoms in the left upper back area, not the right. Petitioner followed up with Dr. Lorenz in August and again failed to mention right shoulder symptoms. During the same month, he reported to the pain specialist, Dr. Jain, that he hurt his neck and low back in a work accident. Petitioner did not have any right shoulder complaints during his September 2012, examination by Dr. An either. He informed Dr. An that he hurt his neck when he fell.

The Arbitrator finds that on October 17, 2012, over six months after the accident, Petitioner reported that he had right shoulder symptoms and that a physician, Dr. Lorenz, suspected that Petitioner might have right shoulder pathology. The Arbitrator notes that prior to October 17, 2012, Petitioner saw numerous physicians and therapists who performed physical examinations. Not one of the records contains findings consistent with the right shoulder pathology he had after October 17, 2012. In several of those examinations the medical records indicate Petitioner complained of pain in the left shoulder.

The Arbitrator finds that the October 17, 2012 record and Petitioner's subsequent reporting of an injury to his right shoulder to Dr. Chudik fail to prove that the shoulder condition is causally related to the injury. Not only is this the first reference of right shoulder symptoms as result of the fall, but Petitioner also supplied inconsistent histories of his injury to support a connection between the fall and right shoulder condition. Petitioner's initial history in the accident report, to Mercy Works, the therapist and in his testimony all describe a fall. The consistent theme was that Petitioner lost his footing and fell or he fell from the tree branch. However, in October 2012, he provides Dr. Lorenz with a history that he had to grab a handrail to prevent his fall. The Arbitrator notes that Petitioner testified that there was no handrail. Petitioner informed Dr. Chudik in June 2013, that he was lowering himself from the tree when he injured his shoulder. He did not mention a fall. Based upon the inconsistencies in these later histories, the Arbitrator finds that the initial histories provided by Petitioner in the days and weeks after the accident were more reliable. These earlier histories all fail to mention an injury to the right shoulder.

Based upon the over six month gap between the accident and the first mention of right shoulder pathology and the inconsistent histories provided after right shoulder pain developed, the Arbitrator cannot infer a causal connection between the shoulder injury and the accident. The Arbitrator notes Petitioner's testimony about Dr. Lorenz's opinion that the shoulder issue was somehow masked by the symptoms and treatment for the cervical spine. Petitioner did not offer any opinions from the treating physicians supporting Petitioner's testimony. There was no mention of this opinion in Dr. Lorenz's or Dr. Chudik's records. There was also no response offered to Dr. Wolin's finding that the lack of contemporaneous treatment or complaints to the shoulder demonstrated a lack of causal connection. Petitioner was examined by several doctors prior to October 17, 2012, none of whom found signs of rotator cuff pathology. Therefore, the Arbitrator concludes that a preponderance of the credible evidence fails to demonstrate a causal connection between the right shoulder condition and the accident.

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?

Based upon the findings concerning causal connection, the Arbitrator finds that any treatment rendered to the right shoulder is not causally related to the accident. Therefore, the Arbitrator denies Petitioner's request for payment of medical bills from Hinsdale Orthopedic Associates

and Elmhurst Memorial Hospital for shoulder related treatment. These non-related bills total $120,684.04.

The Arbitrator finds the Respondent is liable for treatment to the cervical spine, including office visits for treatment from Dr. Lorenz and the FCE.

Respondent is responsible for payment of cervical spine related treatment bills per Petitioner's Exhibit 11, subject to fee schedule reductions.

Per the agreement of the parties, Respondent has credit pursuant to Section 8(j) and a credit for all bills paid.

What temporary benefits are in dispute?

The parties agree that Petitioner was paid temporary total disability benefits through June 28, 2013. At issue is whether Petitioner is entitled to benefits after that date. The Arbitrator finds that Petitioner participated in a functional capacity evaluation on April 24, 2013 at the request of Dr. Lorenz. The evaluation assumed that there were certain lifting requirements for the watchman position (up to 20 lbs.). However, the Arbitrator notes Petitioner's testimony that no lifting was required and the lack of lifting requirements in Job Description. (RX 10). The FCE found Petitioner could lift well above the 20 lbs. limit and that Petitioner was capable of working as a watchman. The only physicians who reviewed the FCE were Dr. An and Dr. Wolin. They both concluded that based upon the FCE, Petitioner could return to work as a watchman. The records do not show that Petitioner has seen Dr. Lorenz following the FCE.

Petitioner testified and Dr. Chudik's records show that he was off of work after June 28, 2013, due to his right shoulder condition. Based upon the Arbitrator's finding that the right shoulder condition is not causally related to the accident, the Arbitrator denies Petitioner's request for the payment of benefits after June 28, 2013.

Should penalties or fees be imposed upon Respondent?

The Arbitrator finds that Petitioner is not entitled to penalties and fees. Respondent's denial of temporary total disability and medical benefits was neither vexatious nor unreasonable. Temporary total disability benefits were suspended based upon the opinion of Dr. An that Petitioner could return to work. Dr. An based his opinion on the FCE findings, which showed Petitioner able to lift well above the requirements of the job as seen in the job description and as described by Petitioner during his testimony. In additional, medical treatment and temporary total disability benefits were denied based upon the causation dispute involving the right shoulder. The Arbitrator finds that the Respondent's causation dispute was not unreasonable. The initial accident report and medical evidence failed to show complaints or treatment to the right shoulder.

Respondent also obtained a supporting medical opinion from Dr. Wolin based upon a review of the records. Dr. Wolin erred in finding that the first mention of a shoulder injury was when Petitioner saw Dr. Chudik a year after the injury however, his conclusions were not unreasonable, because they were based upon the lack of contemporaneous treatment and complaints concerning the shoulder.

ORDER OF THE ARBITRATOR

Respondent shall pay Petitioner temporary total disability benefits of $521.95/week for 52 weeks, commencing 6/28/12 through 6/28/13, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $29,169.52 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of ATI and Hinsdale Orthopedics, 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.

Deborah L. Simpson — July 31, 2014

Signature of Arbitrator — Date

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ADEBAYO, BENJAMIN Case# **12WC040275**
Employee/Petitioner

CITY OF CHICAGO
Employer/Respondent

On 10/6/2015, 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 0.06% 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:

0307 ELFENBAUM EVERS & AMARILIO
KAROLINA M ZIELINSKA
940 W ADAMS ST SUITE 300
CHICAGO, IL 60607

0010 CITY OF CHICAGO-LAW DEPT
ELIZABETH MANNION
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Benjamin Adebayo
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **12** WC **40275**

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 **3/26/15** and **5/20/15**. 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. [ ] Is Petitioner entitled to any prospective medical care?

L. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [ ] TTD

M. [x] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other

FINDINGS

On the date of accident, **10/11/2012**, 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.

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 $**95,563.54**; the average weekly wage was $**1,837.76**.

On the date of accident, Petitioner was **56** 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

The Respondent shall pay the bill for St. Bernard Hospital, date of services 10/11/12, in the amount of $173.00, in accord with the fee schedule, directly to the provider, with a credit for any payment made by the Respondent.

The Petitioner's further claim for benefits and permanent partial disability 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

August 6, 2015
Date

ICArbDec19(b)

OCT - 6 2015

INTRODUCTION

This matter proceeded to hearing on March 26, 2015 before Arbitrator Steven Fruth. Hearing was continued for close of proofs on May 20, 2015. The disputed issues were: ***C:*** Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; ***E:*** Was timely notice of the accident given to Respondent?; ***F:*** Is Petitioner's condition of ill-being causally related to 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?; ***L:*** What is the nature and extent of the injury?; ***M:*** Should penalties or fees be imposed on Respondent?

FINDINGS OF FACT

Petitioner testified that on October 11, 2012 he was working as a building inspector. As an inspector he responds to 311 calls of complaint. He was headed to his next inspection stop when the accident happened. He was driving his personal vehicle which he used for his employment by Respondent. Respondent reimbursed Petitioner for expenses in operating his personal vehicle for his employment. He was involved in a motor vehicle accident as he was making a left turn across the path of an approaching police vehicle. Petitioner testified when his vehicle was struck his body jerked back and forth. Petitioner testified he was wearing his seatbelt at the time.

Petitioner was transported by ambulance to St. Bernard Hospital following the accident. (PX #1) Petitioner reported "(m) y breast, ribs hurt. I was in a car accident. The car hit me at the back." He testified that he also complained of back pain. No abnormalities were found on examination. No x-rays were taken. Petitioner was diagnosed with chest wall contusion and discharged that same day. No medication was administered or prescribed.

Petitioner testified he contacted his supervisor, Don Mitchell, from the hospital and reported that he was injured in a motor vehicle accident while driving to inspect a building. Petitioner reported to work the next day. He continued to work up to the day of the hearing.

Petitioner followed up care with MercyWorks (PX #2) on October 22, 2012 where he was seen by Homer Diadula, M.D. He complained of neck, right shoulder, and right chest pain. He also complained of 7/10 low back pain which radiated into his left leg numbness and tingling. His neck pain radiated into upper right arm but without numbness or tingling. Petitioner reported that he had physical therapy twice already. He denied that he had had any similar condition in the past.

On exam Dr. Diadula noted slightly limited cervical range of motion. The shoulder was not swollen and had full range of motion with pain. The chest wall was tender. Lumbar flexion was restricted but other motion of the spine was normal.

Petitioner had difficulty with heel-toe walking. He had a positive straight leg on the left at 45°. X-rays were negative for fracture or dislocation. Dr. Diadula diagnosed neck, right shoulder, and lower back strain, along with right chest wall contusion. He prescribed 600 mg ibuprofen and 10mg cyclobenzaprine (muscle relaxant).

Petitioner was placed at full duty capacity and advised to continue physical therapy. Dr. Diadula estimated the duration of the condition to be 2-3 weeks.

Petitioner returned to Dr. Diadula at MercyWorks on November 9, 2012. He had missed an appointment on November 6. He reported his right-sided neck pain at 5/10, on and off, but without radiation into the arm. Back pain was reported at 7/10 and radiating into the left leg. On exam shoulder range of motion was full. The chest was still tender. The low back exam results were the same as on October 22. Dr. Diadula now added left sciatica to the prior diagnoses. He recommended a lumbar MRI and wanted to see Petitioner after the MRI or on November 27. He continued Petitioner at full duty work.

Petitioner did not keep the November 27 appointment.

Petitioner followed up for further medical treatment with Dr. Michael Foreman of Hyde Park Medical. (PX #3) On October 22, 2012, Dr. Foreman noted Petitioner's complaints of neck, mid back, low back, and chest injuries. There were no complaints regarding either shoulder. Petitioner reported that he was driving a vehicle that was stationary when it was struck in rear by another vehicle. In history Petitioner complained of 6/10 pain in his neck and mid-back. Pain radiated into the right arm. He also complained of 7/10 low back pain with pain and numbness into his left leg.

On examination Dr. Foreman found tenderness and hypertonicity in Petitioner's cervical, thoracic, and lumbar spines. Reduced sensation in the left leg was also noted. Straight leg raise reproduced radicular pain in the left leg. Dr. Foreman diagnosed Petitioner with cervical, thoracic, and lumbar strains along with cervical and lumbar radiculopathy. Dr. Foreman considered physical therapy and allowed Petitioner to work "as tolerated".

Dr. Foreman signed a patient current condition form on October 21, 2012, stating Petitioner's "cervical/thoracic/lumbar strain" were work related. Clinical and billing records (PX #3) show Petitioner began physical therapy on October 29. Dr. Foreman's clinical notes for follow-up visits were hand-written and unreadable. Another caregiver, whose signature is unreadable, charted clinical assessments on October 29 and 31; November 4, 8, 9, 13, 14, 16, 20, 27, 29 and 30; December 3, 4, 14, 17, and 18, 2012. Petitioner's therapy continued through February 5, 2013.

On February 6, 2013 Petitioner's feet were casted for orthotics. There is not documentation whether the orthotics were necessary to treat Petitioner's back complaints.

Petitioner had MRIs ordered by Dr. Foreman of the cervical and lumbar spines on November 19, 2012. Minimal diffuse disc bulges were noted at C3-4, C4-5, C5-6, and C6-7. The bulge at C4-5 extended to the left with no central canal stenosis or foraminal narrowing. Minor diffuse disc bulges were noted from L3 to S1. There was also mild loss of hydration at L3-4 and L4-5. There was no finding of nerve root impingement. There were no disc herniations.

Petitioner continued to work full duty while under Dr. Foreman's care and during the physical therapy.

Dr. Foreman wrote a note on November 20, 2012. There was no documentation of a clinical visit on November 20. The report is the format of a report written for the purposes of litigation. Dr. Foreman copied Petitioner's history verbatim his note from October 22, 2012. Petitioner's complaints of persistent neck pain with radicular symptoms in the right arm and persistent low back pain with weakness and radicular symptoms in the left leg were documented. On November 20 Dr. Foreman listed his diagnoses: **1.** Acute cervical strain, **2.** Acute thoracic strain, **3.** Acute lumbar strain, **4.** Chest contusion, **5.** Upper extremity radiculopathy, **6.** Lower extremity radiculopathy, **7.** Cervical spondylosis, **8.** Thoracic spondylosis, **9.** Lumbar spondylosis, **10.** Right shoulder derangement. Dr. Foreman noted that he last saw Petitioner clinically on November 15. There are no clinical notes for November 15. Clinical notes dated November 14, 2012 are illegible due to poor handwriting. On November 20 Dr. Foreman noted that Petitioner was taking pain medication without stating what the medication was. Dr. Foreman repeated his opinion that Petitioner's condition was related to a work accident.

There are no readable clinical notes by Dr. Foreman documenting a clinical exam or assessment of the right shoulder. There are no radiology studies noting spondylosis anywhere in Petitioner's spine.

Dr. Foreman did not document any order for prescriptive pain relief medication. Dr. Foreman billed $120.00 for an "intermediate followup" on October 26, but there are no clinical notes of such an assessment.

Dr. Foreman referred Petitioner to Dr. Neeraj Jain at Chicago Pain and Orthopedic Institute (Chicago Pain). (PX #5) Dr. Foreman did not document the clinical indications for referral to Dr. Jain.

Petitioner first saw Dr. Jain on November 8, 2012. Petitioner gave a history of injury from a motor vehicle accident when he was struck by a high speed vehicle as he was turning left. Petitioner reported that he had immediate neck, mid-back, and lower back pain. He also complained that pain radiated into his left arm and into his left leg. Petitioner also reported that he was working full time.

On exam Dr. Jain found normal curvature of the lumbar spine. Petitioner limped, favoring his right side. There were no gross motor or sensory deficits. Dr. Jain noted a positive left straight leg raise without specifying whether it was positive for back pain or leg pain. Dr. Jain also noted that patellar reflexes were asymmetric without specifying which side was faster or slower. Dr. Jain noted that there were no Waddell signs. His impressions were the radiologist's findings on the MRIs.

Dr. Jain's plan was to give "left-sided transforaminal" at L3-4, L4-5, and L5-S1. He also planned a cervical epidural steroid injection. Dr. Jain did not document the clinical indication for either treatment plans. Dr. Jain opined that Petitioner should continue physical therapy and medication without noting what medication Petitioner was taking. He added his opinion that Petitioner's condition was related to his work accident.

Chicago Pain billing records in PX #5 document the administration of transforaminal injections on February 2, 2013. There are no clinical notes of those procedures in PX #5. Billing records contain charges for clinical visits on February 22, March 21, and May 18, 2013. There were no clinical notes for February 22. Dr. Jain noted on March 21 that Petitioner had continuing complaints but had 80% relief from the epidural injection. The exam was the same as before: positive straight leg sign on the left and no gross motor or sensory deficits. He recommended another epidural injection and continuation of ibuprofen.

Petitioner's Exhibit # 4 included the procedure note of Dr. Jain's epidural transforaminal injections at L3-4, L4-5, and L5-S1 on February 2. Dr. Jain noted "The physical examination revealed no contraindication to this procedure." There were no clinical notes for the physical examination. The anesthesia record is blank but for the start and stop times. The Anesthesia Associates Charge Sheet is difficult to read due to poor quality copying.

On May 18, 2013 Petitioner saw Dr. Heather Nath at Chicago Pain. Petitioner presented with complaints of bilateral shoulder pain and low back pain. No complaints of cervical pain or radicular symptoms were documented. On exam Dr. Nath found full strength in the upper and lower extremities and good range of motion. There were no notes of any findings on a neurologic exam. Based on this exam and review of Petitioner's "available" records Dr. Nath recommended an EMG. She did not document what records she reviewed or the clinical indication for an EMG.

Petitioner testified to ongoing chiropractic treatment currently. He testified that he is in pain every day with pain in both shoulders and in his low back into his left leg. He also receives acupuncture for his continuing pain. Petitioner did not offer any documentary evidence of medical care to support his testimony of medical care since May 18, 2013. He acknowledged that he has not returned to the physicians who initially treated his injuries for his continuing complaints.

Petitioner testified that he underwent an EMG but the medical records admitted in evidence did not document that that procedure was ever done. In later testimony Petitioner retracted his statement that he had an EMG. Petitioner also testified in a confused manner that he had bilateral shoulder pain since 2010 or 2011.

The Arbitrator notes that Petitioner sat throughout his testimony at the hearing without any apparent signs of discomfort.

Petitioner testified he has been working for the City of Chicago for the past 22 years as a building inspector. Medical records entered into evidence from Kaliana Medical Services (RX #4) contain notes from Petitioner's consultations on November 13, 2012 and May 3, 2013. There are no notes on either of those days of Petitioner reported an injury on October 11, 2012 or complaints of neck or shoulder or back pain.

Petitioner testified there is nothing strenuous in his job as a building inspector. Petitioner has continued to work full duty since the date of accident. Petitioner confirmed no doctor ever placed him off work for the incident.

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 was injured in an accident that arose out of and in the course of his employment by Respondent.

Petitioner was a building inspector for Respondent. His unrebutted testimony established that he drove his personal automobile to travel from one location to another in the City of Chicago in response to 311 reports. Petitioner testified that at the time of his automobile accident he was travelling from one assignment to another. The accident occurred during his period of employment in the City in fulfillment of his job duties as a building inspector. Travelling between inspection sites is incidental to Petitioner's employment by Respondent and is the expected means for Petitioner to perform his work duties.

The facts are not dissimilar to those in *Kertis v. IWCC,* 2013 IL App (2d) 120252 WC. In *Kertis* the petitioner, a bank manager, was injured when travelling from one branch bank to another. The Appellate Court held that the petitioner was injured from an accident that arose out of and in the course of his employment. The Court found that the petitioner was engaged in reasonable conduct that "might normally be anticipated or foreseen" by his employer, just as Petitioner was doing as a building inspector for Respondent.

E: Was timely notice of the accident given to Respondent?

The Arbitrator finds that Petitioner proved that timely notice of his work-related injury was given to Respondent in compliance with the Act.

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

The Arbitrator finds that Petitioner failed to meet his burden of proof that his current condition of ill-being was causally related to the injury. The evidence showed that Petitioner did sustain soft tissue strains to his cervical and lumbar spines as a result of the accident. There was no evidence that he sustained any underlying spinal pathology, such as a fracture or vertebral disc injury, as a result of the accident.

Also, based on Petitioner's confused and contradictory testimony, he did not prove that he sustained an injury to either shoulder as a result of the accident. In fact, at one point Petitioner testified that his shoulder complaints were pre-existing, a fact not shared with his treating physicians. There was no evidence that the accident aggravated his pre-existing shoulder conditions.

Petitioner exaggerated his complaints and current condition on the date of hearing. Petitioner exhibited no outward evidence of pain or discomfort as he sat through the hearing. Petitioner has worked full duty since the date of accident up to and including the date of hearing. Yet, Petitioner testified that the auto accident of October 11, 2012, has had a "great effect" on his ability to do his job.

Petitioner testified he often needs to keep his leg elevated when sitting for a while or often will stop driving to "stretch" his muscles, but the Arbitrator notes that Petitioner sat through the entire arbitration hearing without adjusting his seated position or leg for relief of apparent discomfort. He testified he chose to keep working due to "financial reasons" but admitted on cross-examination that no doctor had ever placed him off of work for his condition. The Arbitrator takes note that a building inspector is required to walk about sites of inspection and must frequently climb and descend stairs. Also, The Arbitrator takes note that building inspectors must often bend, stoop, and kneel. Petitioner did not testify that his claimed injuries impaired any of his work duties. Petitioner's complaints of 7/10 pain are clearly inconsistent with the full time work duties he engaged in over the period of his treatment and that he was only prescribed 600 mg of ibuprofen for pain.

Pettioner's credibility was further undermined by the records from Kaliana Medical Services which were silent about the work-related accident or any injuries sustained in that accident.

On the date of hearing Petitioner testified to constant pain in both shoulders which he believed to be due to the accident. The medical records do not support this claim, and no injury to either shoulder was noted in the initial emergency room visit. Subsequent medical records show only right shoulder complaints. Bilateral shoulder complaints first appeared in May 2013 medical treatment records, 6 months after the accident. Petitioner even testified that he had shoulder complaints as early as 2010.

Additionally, Petitioner did not produce any medical records after May 2013 to support his claim for constant ongoing medical treatment for other complaints, including his low back. The Arbitrator also notes that on his clinical visit at MercyWorks on October 22, 2012 he reported that he had already had 2 sessions of physical therapy. The only records documenting physical therapy in that time frame were from Hyde Park. Clinical and billing records show that physical therapy began on October 29, 2012. In addition, the credibility of Petitioner's claim is further undermined by the curious note by Dr. Forman dated October 21, 2012, the day before the first clinical and billing entries.

In coming to the above conclusions the Arbitrator disregarded Dr. Foreman's note date November 20, 2012. It did not comport to any clinical exam and was clearly created for the purpose of this litigation.

The injuries sustained by Petitioner in the work incident of October 11, 2012 appear to have fully resolved. The Arbitrator finds that Petitioner's testimony regarding his alleged current complaints was not credible. Petitioner failed to meet his burden that his physical condition and complaints as of the date of hearing were causally related to the work incident.

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 medical care provided to Petitioner was largely based on his subjective complaints rather than objective clinical findings. The Arbitrator did not find Petitioner to be credible when he testified regarding his subjective complaints, past and present.

Dr. Diadula at MercyWorks initially diagnosed spinal strains. Nonspecific sciatica was added later. Dr. Foreman diagnosed cervical, thoracic, and lumbar spondylosis (arthritic degeneration) and strains. Dr. Diadula opined that Petitioner's condition should resolve with physical therapy. Dr. Foreman provided physical therapy at Hyde Park Medical Center through February 2013. The Arbitrator finds that the emergency care provided at St. Bernard Hospital on the day of the accident was reasonable and necessary. The Arbitrator also finds that the medical provided at MercyWorks was reasonable and necessary. The physical therapy provided to Petitioner at Hyde Park is poorly documented. However, the Arbitrator, in light of Dr. Diadula' s opinions and Petitioner's testimony, finds that the physical therapy provided at Hyde Park Medical was reasonable and necessary.

The Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that the medical care he received at Chicago Pain and Orthopedic Institute by Drs. Jain and Nath was reasonable or necessary. Dr. Foreman referred Petitioner to Chicago Pain for assessment by Dr. Jain, a specialist in pain management. The referral was made without Dr. Foreman documenting the clinical necessity for the referral. The referral was made before Petitioner completed a round of physical therapy, before physical therapy was given a chance to resolve Petitioner's complaints.

The Arbitrator notes that the only documented pain medication which was prescribed for Petitioner was ibuprofen. He was advised to take 600 mg, a dose one may take with 3 tabs of over-the-counter versions of ibuprofen. This is not the type of analgesic that suggests pain severe enough to warrant a referral for pain management. The Arbitrator also takes note that neither Dr. Jain nor Dr. Nath fully documented their clinical findings or assessments or the clinical indications for the transforaminal injections and attendant services.

Petitioner was unable to sustain his burden of proving the reasonableness and necessity of medical care and professional charges for Chicago Pain and Orthopedic, Metro Milwaukee Anesthesia, and Accredited Ambulatory Care for the paucity of evidence submitted by Petitioner.

Respondent presented evidence, Exhibits #1 and #2, that it paid charges for reasonable and necessary medical care and services provided to Petitioner by in accord with The Act and the fee schedule. The Arbitrator finds this evidence of payment to be credible.

Petitioner submitted Petitioner's Exhibit #7 into evidence, claiming unpaid related bills totaling $14,227.30. The only bill which appears to remain outstanding on the date of hearing is the St. Bernard Hospital emergency care bill for $173.00. The Arbitrator finds that Respondent shall pay $173.00 to St. Bernard Hospital in accord with the fee schedule, directly to the provider, with a credit for any payment made.

L: <u>What is the nature and extent of the injury?</u>

The Arbitrator evaluated the nature and extent of Petitioner's claim for permanent partial disability in accord with § 8.1b(b) of the Act:

(i) The Arbitrator notes that an AMA impairment rating was offered in evidence. As such, the Arbitrator places no weight on this factor.

(ii) Petitioner worked as a building inspector for Respondent. Petitioner continued to work full time without restriction after that accident. There was no evidence that Petitioner's claimed injuries adversely affected to performed his assigned work duties. The Arbitrator places no weight on this factor.

(iii) Petitioner was 56 years old at the time of the incident. He had a statistical life expectancy of 24 years. He had a work-life expectancy of 8 years. In light of Petitioner's compromised credibility the Arbitrator places little weight on this factor.

(iv) Petitioner presented no evidence that his future earning capacity was affected by his work-related injury. The Arbitrator places no weight on this factor.

(v) The medical records submitted in evidence show that Petitioner sustained cervical and lumbar strains which resolved. The medical evidence did not show objective evidence of the medical necessity for pain management referral or for the transforaminal injections performed by Dr. Jain. The questionable credibility of Petitioner along with the inconsistencies and contradictions within the medical evidence do not support a finding of permanent partial disability.

Based on the above, the Arbitrator finds that Petitioner failed to prove that he is entitled to an award for permanent partial disability.

M: Should penalties or fees be imposed upon Respondent?

Petitioner has requested penalties and attorney's fees under § 19(k), § 19(1), and § 16 of the Act. Petitioner filed a Petition for Penalties on August 19, 2014, with noted status date of September 9, 2014. This status date for this Petition passed without the motion being presented. On the date of trial, Petitioner filed a new Petition for Penalties, identical to the August 19, 2014 filing, without prior notice to Respondent. Respondent objected to the new Petition and its entry as an exhibit.

The Arbitrator finds the Petitioner's Petition for Penalties was not untimely. The Petition is flawed on its face in that it does not set forth any facts, but rather, pleads conclusions. Further, Petitioner presented no evidence at the hearing to support the allegations set forth in the Petition for Penalties. The record is clear that Respondent did not pay the St. Bernard emergency care bill in accord with § 8(a) of the Act. However, Petitioner put forth no evidence that Respondent failed to comply with the notice of delay or denial requirement of § 19(l).

For these stated reasons, Petitioner's Petition for Penalties is denied.

Steven J. Fruth, Arbitrator

October 6, 2015

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

TEJEDA, MARIA Case# **14WC035671**

Employee/Petitioner

CARL BUDDIG & CO

Employer/Respondent

On 10/8/2015, 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 0.06% 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 & MACIARIELLO
JULIO COSTA
134 N LASALLE ST SUITE 1515
CHICAGO, IL 60602

4866 KNELL & O'CONNOR
ANDREW FERNANDEZ
901 W JACKSON BLVD SUITE 301
CHICAGO, IL 60607

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
19(b)

Maria Tejeda
Employee/Petitioner
v.
Carl Buddig & Co
Employer/Respondent

Case # **14** WC **35671**

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 **7/27/15 and 9/29/15**. 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. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On **September 05, 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 52 weeks preceding the injury, Petitioner earned $27,274.00; the average weekly wage was **$524.50**.

On the date of accident, Petitioner was **46** years of age, ***married*** with **1** dependent child.

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

ORDER

Due to the Arbitrator's finding that Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment, all other issues are rendered moot.

Therefore, 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.

David A. Kane
Signature of Arbitrator

October 8, 2015
Date

OCT - 8 2015

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

Maria Tejeda
Employee/Petitioner

v.

Carl Buddig & Company
Employer/Respondent

Case # **14** WC **35671**

Consolidated cases: _____

FINDINGS OF FACT

The Petitioner testified that on September 5, 2014, the date of alleged injury, she was 46 years old and had been working for the Respondent for approximately 14 years as a packing associate. (Trial Transcript p. 9). Her primary duties involved packing meat/bags into boxes and placing them on skids, loading various kinds of meat logs onto a meat slicer and preparing the meat slices for packaging. (Trial Transcript p. 9).

The Petitioner has a history of bilateral knee issues. She testified that 10 years prior to the alleged accident she fell in the same way and injured both knees but she returned back to work after visiting a doctor twice. (Trial Transcript p. 19). However, on cross examination, Petitioner was unable to recall the number of years that had passed since her first alleged fall. (Trial Transcript p. 46).

From the available records, the Petitioner is documented to have treated for her bilateral knee condition with Dr. John McClellan from January 2013 – March 2014. (Respondent's Ex. 8). Petitioner's initial treatment with Dr. McClellan on January 26, 2013 notes that her knee symptoms began 3 years

prior and was unrelated to work. (Respondent's Ex. 8). On February 9, 2013, Dr. McClellan diagnosed Petitioner with patellofemoral compartment degenerative joint disease in her bilateral knees and administered an epidural steroid injection ("ESI") into the left knee. (Respondent's Ex. 8). Petitioner returned to Dr. McClellan on September 21, 2013 with complaints of pain, swelling, and grinding in her knees so Dr. McClellan administered ESIs into both knees. (Respondent's Ex. 8). Petitioner was also diagnosed with a Baker's cyst and posterior horn tear and mucoid degeneration in the right medial meniscus. (Respondent's Ex. 8). Petitioner testified that she only received injections into the left knee which was for arthritis. (Trial Transcript pp. 22-23). On December 14, 2013, Petitioner returned to Dr. McClellan with complaints that her knees felt worse and now stating that she got hurt at work 3-4 years prior when a co-worker stepped on her foot and she fell onto both knees. (Respondent's Ex. 8). On December 30, 2013, Petitioner underwent a right knee meniscectomy performed by Dr. McClellan. (Respondent's Ex. 8; Trial Transcript pp. 20-21). Despite completing approximately six weeks of physical therapy, Petitioner informed Dr. McClellan on February 8, 2014 that she did not feel capable of returning to work. (Respondent's Ex. 8). Dr. McClellan instructed Petitioner to continue with physical therapy and return to work on March 10, 2014, which she did not do because of right knee discomfort. (Respondent's Ex. 8). At a visit with Dr. McClellan on March 14, 2014, Petitioner was diagnosed with bursitis of the right knee but deemed able to return to work full duty effective on March 24, 2014. (Respondent's Ex. 8).

At trial, Petitioner asserted that she did not seek or receive treatment for her knees following March 14, 2014 up until the date of her alleged work accident of September 5, 2014. (Trial Transcript pp. 21-23; Respondent's Ex. 10). However, this is untrue as documented by the medical records. Petitioner

treated with her personal physician, Dr. Khaleel, as recently as September 4, 2014, (just one day before her alleged workplace accident) and complained of leg and knee pain. (Respondent's Ex. 11). This is contrary to Petitioner's trial testimony that she only went to see her doctor on September 4, 2014 for a sore throat and foot issues. (Trial Transcript p. 64, 66). The medical records document that while treating with Dr. Khaleel just prior to the alleged accident, Petitioner was taking a myriad of medications including: Xanax, ambien, albuterol sulfate, clindamycin, Claritin, benzonatate, naproxen, and dietary management pills. (Respondent's Ex. 11). Most significantly, Petitioner reported to Dr. Khaleel that she "passed out at work 1-1/2 weeks ago" due to "taking indometacina 25 mg". (Respondent's Ex. 11). She also reported shortness of breath, but that as of September 4, 2014, she "has been well since with no such (fainting) episodes." (Respondent's Ex 11.) On her September 4, 2015 visit to Dr. Khaleel, a physical exam showed swelling of the anterior knees, so Dr. Khaleel wrote Petitioner a work note requesting that she not work extended hours. (Respondent's Ex. 5).

Following her appointment with Dr. Khaleel, Petitioner spoke with Pam Spencer, the Employee Relations Coordinator for Respondent, to discuss her work note and to request work accommodations. (Trial Transcript pp. 44, 111-112). Petitioner could not remember whether she spoke with Ms. Spencer in person or on the phone but Ms. Spencer confirmed they spoke in person. (Trial Transcript pp. 44, 111-112). Ms. Spencer noted Petitioner did not use or need a translator during this conversation nor in prior conversations because she never had any difficulty communicating with Petitioner as she had completed several ESL classes provided by Respondent. (Trial Transcript p. 123). Petitioner informed Ms. Spencer that her doctor did not want her to work overtime because of her knee condition. (Trial Transcript p. 115; Respondent's Ex. 5).

Ms. Spencer informed Petitioner that Respondent was only accepting restrictions for workers' compensation related accommodations. (Trial Transcript pp. 113-114, 116; Respondent's Ex. 5). Petitioner reacted with frustration and limped away. (Trial Transcript p. 117). Ms. Spencer heard that Petitioner suffered a work injury the next day which appeared suspicious to her because the injury occurred right after the accommodations were denied. (Trial Transcript p. 118).

The Petitioner did not have an alternative to receive work accommodations or take time off for her pre-existing knee condition as she had exhausted her Family and Medical Leave Act ("FMLA") benefits. (Trial Transcript p. 105, 125). Petitioner had an obstetrics surgery in 2009 and knee surgery in 2013 that she processed FMLA paperwork for. (Trial Transcript p. 97). As a result of the 2013 knee surgery, Petitioner used up her entire FMLA allotment which is 12 weeks (480 hours or 60 days) within a rolling calendar period (Trial Transcript p. 105, 125; Respondent's Ex. 3). By September 5, 2014, Petitioner was negative 13.5 hours meaning she used too much FMLA time which then affects her employee attendance record and Petitioner was docked points for missing work. (Trial Transcript pp. 106-107; Respondent's Ex. 3-c). Thus, Petitioner had used up all her FMLA leave prior to the alleged accident date and could not take time off absent a work accident. (Trial Transcript p. 105; Respondent's Ex. 3).

Petitioner alleged that on September 5, 2014, she injured her bilateral legs while at work. (Respondent's Ex. 1; Trial Transcript p. 10-12, 18). Petitioner stated she was working on the meat-slicer and slipped on a plastic bag that was on the floor while she was moving between her station and the meat container. (Trial Transcript p. 10-12). She reported that her right foot slipped on a plastic bag that was on the floor which she did not see; and, she

was unable to stop herself so she stumbled a distance of approximately 6-14 feet and then her left knee struck a floor drain and the right knee struck cement (Respondent's Ex. 2; Trial Transcript pp. 10-12, 36, 56-57).

Petitioner reported that she was unable to get up after falling and that several co-workers came and helped her up but she did not think they saw her fall. (Trial Transcript p. 13, 39). With the assistance of one of her co-workers, Maria Mendoza who also served as Petitioner's translator, she went to her supervisor, Ernest Horton, to report an injury. (Trial Transcript pp. 14, 81). Mr. Horton filled out a supervisor accident report which notes that Petitioner slipped on *meat* and that her fall was not witnessed. (Respondent's Ex. 2; Trial Transcript pp. 78-81). However, Petitioner refutes her statement to Mr. Horton and claims she never told him she slipped on meat, but rather she slipped on a bag. (Trial Transcript p. 38). Mr. Horton also questioned Ms. Mendoza regarding whether she witnessed the alleged fall but she stated she did not see a fall, she only saw Petitioner on one knee so she helped her up. (Trial Transcript pp. 84, 87). Curiously, Petitioner never completed an employee accident report despite being aware of the requirements and procedures to follow when an alleged work accident occurs. (Trial Transcript pp. 35, 39, 137-138).

Due to the fact that Petitioner had recently undergone knee surgery, Mr. Horton elected to send Petitioner to Ingalls Memorial Hospital for evaluation. (Trial Transcript pp. 15, 82). Mr. Horton was aware of her prior knee surgery because he remembered that she missed an extensive amount of work. (Trial Transcript pp. 88-89). There, Petitioner reported moderate and constant pain in her bilateral knees due to slipping on a bag and falling. (Respondent's Ex. 7; Trial Transcript p. 24). X-rays were compared with film taken on 9/13/11 with the new films showing degenerative changes. (Respondent's Ex. 7). Petitioner

was diagnosed with a right knee strain and a left knee sprain and she was told to follow-up with an orthopedic doctor within 48 hours. (Respondent's Ex. 7; Trial Transcript p. 27). Petitioner's son and daughter were present and translated for her at Ingalls. (Trial Transcript p. 26).

Following a work injury, the injured employee's supervisor notifies David Streeter, Respondent's Health & Safety Manager, that there has been a possible work injury. (Trial Transcript p. 137). Mr. Streeter's normal business procedure is to check to see if a supervisor accident report is filled out, as well as an employee accident report and an eyewitness report. (Trial Transcript p. 137). In this instance, there was a supervisor report but no employee report and no eyewitness report. (Trial Transcript p. 137). Mr. Streeter thought this was odd as Associates are trained yearly on proper accident reporting and they know they must complete the aforementioned reports. (Trial Transcript p. 138).

Following notification of Petitioner's alleged work accident, Mr. Streeter did a personal investigation of the line area and interviewed all associates within the respective area—approximately 15-20 people—and no one said they saw Petitioner fall. (Trial Transcript p. 187). Mr. Streeter opined that this was odd as there are 5-9 lines running at a minimum at all times in the Vincennes plant where Petitioner worked. (Trial Transcript p. 171). Additionally, Line 41, the line Petitioner was working on, is in the middle of the floor which makes it unusual that the fall was unwitnessed as there are approximately 50 associates working in the plant at any given time. (Trial Transcript p. 141; Respondent's Ex. 6A, 5B). Of note, Petitioner's alleged accident occurred in September which is one of the busiest production times of the year so it was likely that all lines were running at the time of Respondent's alleged accident. (Trial Transcript p. 172).

Mr. Streeter also examined the line areas, including Line 41, and Petitioner's position on the line as a slicer requires her to pick up a 20-pound meat log and place it directly onto the slicer which requires very little walking. (Trial Transcript p. 160; Respondent's Ex. 6D). There are no tripping hazards on the floor around Petitioner's work station and Mr. Streeter had no prior experiences with employees tripping while loading meat logs onto a slicer. (Trial Transcript p. 161; Respondent's Ex. 6E). The floor drain which Petitioner alleges she struck is flush with the cement floor and two feet from the line; the floor is not slippery. (Trial Transcript p. 163). Respondent testified that she stumbled 12-14 feet before falling and striking her knee on the drain. (Trial Transcript pp. 56-57). Mr. Streeter checks the floor drains during his weekly audits of the plants and he ensures that the floor drain is always flush with the cement floor so it doesn't cause any type of trip or slip hazard. (Trial Transcript p. 163).

Mr. Streeter also found it odd that Petitioner would have stumbled/fallen such a great distance (12-14 feet) as there would be no reason for an employee to travel down the line from one position to another as they work in one position and there are roughly 5-6 positions on each line manned by different employees. (Trial Transcript p. 159; Respondent's Ex. 6C). Furthermore, there would be no reason for bags to be at the meat slicer position as the meat doesn't go into the bags until further down the line. (Trial Transcript p. 162). Petitioner alleges that she slipped on a discarded bag that was on the floor but bags are never thrown on the floor as there is a large garbage bin placed by the line for workers to throw empty bags away. (Trial Transcript pp. 164-165; Respondent's Ex. 6G). Also, there is a dedicated janitor who empties the garbage bags so they don't overflow. (Trial Transcript p. 165). Finally, there is

no meat on the floor and nothing about the cement floor in the plant creates a tripping/slipping hazard. (Trial Transcript pp. 165-166).

On September 23, 2014, Petitioner signed her Application for Adjustment of claim, alleging a workplace injury affecting "both knees" (Respondent's Ex. 1). On September 24, 2014, Petitioner transferred her care from her prior orthopedic doctor, Dr. John McClellan, to AMCI South Holland. (Trial Transcript p. 28). Petitioner informed Dr. Dale Hooton that she was carrying a block of meat and fell, striking her left knee against a floor drain. (Respondent's Ex. 9). Petitioner testified that her left knee hurt more than the right when she presented to AMCI but the treatment notes indicate a physical exam of the left knee showed full and pain-free range of motion. (Trial Transcript p 28; Respondent's Ex. 9). Petitioner was diagnosed with a right knee sprain and taken off work duty until October 1, 2014. (Respondent's Ex. 9).

On October 1, 2014, Petitioner returned to AMCI South Holland and was examined by Dr. Michael Foreman. She reported bilateral knee pain, left worse than right, and claimed she was unable to stand or work as needed as no sedentary work was available. (Respondent's Ex. 9). This was in contradiction to Respondent's stated policy of accommodating any restrictions as a consequence of a work-related injury. (Trial Transcript p. 152). Dr. Foreman diagnosed knee sprains with underlying degenerative joint disease and recommended physical therapy. (Respondent's Ex. 9). Petitioner underwent physical therapy at AMCI three times per week from October 2, 2014 through December 23, 2014, with no significant improvement. (Respondent's Ex. 9).

On October 20, 2014, Petitioner returned to Dr. Foreman at AMCI. She denied any prior symptoms with her knees or knowledge of pre-existing degenerative joint disease. (Respondent's Ex. 9). MRI film was reviewed which indicated a possible degenerative tear in the left knee along with osteoarthritis

and a baker's cyst; the right knee showed a possible small radial tear along with mild to moderate osteoarthritis and joint effusion. (Respondent's Ex. 9).

On October 30, 2014, Petitioner presented to Dr. Thomas Bilko of AMCI who diagnosed her with degenerative joint disease and arthritic changes in the right knee with a possible medial meniscal tear of the left knee. (Respondent's Ex. 9). Surgery was recommended for the left knee and pain injections were administered to each knee. (Trial Transcript p. 29; Respondent's Ex. 9). Petitioner returned to Dr. Bilko on November 13, 2014, exhibiting improvement in her right knee but none in the left; surgery was recommended to bilateral knees. (Respondent's Ex. 9).

On December 12, 2014, Petitioner returned to Dr. Bilko. She reported minimal improvement in her bilateral knees and felt unable to return to work due to persistent weakness in her knees. (Respondent's Ex. 9).

On March 16, 2015, Petitioner presented to Dr. Brian Cole for an independent medical evaluation. (Respondent's Ex. 10). Petitioner reported to Dr. Cole that she had not treated for her knees for the six months preceding her alleged workplace injury on September 5, 2014. Based upon the information he had available, Dr. Cole opined that Petitioner suffered a work-related aggravation of pre-existing osteoarthritis to her bilateral knees. (Respondent's Ex. 10). Dr. Cole did opine that Petitioner was capable of sedentary work that allowed her to sit while working. (Respondent's Ex. 10). Significantly, Dr. Cole stated his opinion would be different if Petitioner was treating her knees in the six months prior to the alleged work accident. (Respondent's Ex. 10). In an addendum to his IME report, Dr. Cole opined that Petitioner "would have ended up requiring further care for the knees even absent of the September 2014 injury" and that he "cannot state categorically that need for care of the right and left knees is related to the (alleged) injury." (Respondent's Ex. 10).

CONCLUSIONS OF LAW

C. In support of the Arbitrator's decision as to whether the Petitioner sustained an accident which arose out of and in the course of her employment with the Respondent, the Arbitrator makes the following findings:

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of her claim. *Peoria Nursing Home v. Industrial Comm'n,* 115 Ill.2d 524 (1987). Longstanding Illinois law mandates that a claimant must show that the injury is due to a cause connected to the employment to establish that it arose out of employment. *Elliot v. Industrial Commn,* 153 Ill.App.3d 238, 242 (1987). The burden of proof is upon a claimant to establish the elements of her right to compensation, and unless the evidence considered in its entirety supports a finding that the alleged injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Comm'n,* 44 Ill. 2d 214 (1969).

In the instant matter, the Arbitrator had the opportunity to observe the Petitioner when she testified. The Arbitrator also had the opportunity to examine the medical history of the Petitioner and the other evidence provided by the parties. Based upon the review of the medical records, the supervisor's statement, the FMLA documents, and especially the fact that Petitioner's testimony was contradictory to the facts as contained in the medical records and refuted by Respondent's witnesses, the Arbitrator concludes that the Petitioner is not a credible witness.

The Petitioner alleged that on September 5, 2014, she slipped and fell on a plastic bag she did not see that was on the ground while working at the meat

slicer station on Line 41 at Respondent's Vincennes plant facility. (Trial Transcript pp. 10-12). Petitioner went to her supervisor to report an injury and was sent to Ingalls Memorial Hospital for evaluation. (Respondent's Ex. 2, 7; Trial Transcript p. 14). There, Petitioner reported that she slipped on a plastic bag at work and felt pain in her bilateral legs. (Trial Transcript p.24; Respondent's Ex. 7). X-rays of the bilateral knees were taken and compared against x-rays taken on September 13, 2011 and the comparison indicated mild degenerative changes involving the patellofemoral joint. (Respondent's Ex. 7). It is based upon these allegations that Petitioner claims that she sustained a compensable accident on September 5, 2014.

However, Respondent disputes the Petitioner's claim that a compensable accident ever occurred on the basis that Petitioner is not a credible witness.

According to the Petitioner, her right foot slipped on a bag as she was moving to bring a meat log to the slicer. (Trial Transcript pp. 10-12). She testified that she did not see the bag and stumbled six feet, and then later testified that it was more like 12-14 feet, before she was unable to stop herself from falling and struck her left knee on a drain and right knee on cement. (Trial Transcript pp. 10-12, 36, 56-57). Despite testifying that she didn't see the bag in her initial testimony, on cross-examination she stated the bag was six feet away from the drain and that it took her six feet to fall because she tried to control herself and prevent a fall but she was unable to stop herself. (Trial Transcript pp. 36-37). During her redirect testimony Petitioner's story changed to tripping an incredible 12-14 feet. (Trial Transcript p. 56-57). There was a basket that she placed a bag in and she slipped after turning away from the basket. (Trial Transcript p. 56).

Moreover, the supervisor accident report completed and verified by Ernest Horton Jr. in his testimony at trial provides that Petitioner informed him

that she slipped on meat, not a plastic bag as she testified to at trial and reported to her medical providers. (Respondent's Ex. 2; Trial Transcript pp. 10-12, 80). Mr. Horton's supervisor accident report also notes that Petitioner claims her fall was unwitnessed, which she repeated at trial. (Respondent's Ex. 2; Trial Transcript pp. 13, 39). However, it is extremely unlikely, if not impossible, that Petitioner could have fallen and suffered her described accident without any witnesses as approximately 50 different people would have been working in Petitioner's immediate vicinity. (Trial Transcript pp. 141, 171-172, 191; Respondent's Ex. 6A).

Additionally, the described mechanism of injury is highly unlikely to have occurred as regular and thorough audits of the work stations are completed to ensure that there are no tripping dangers or other hazards around the production lines. (Trial Transcript pp. 161-163). There would be no reason for bags to be at the meat slicer position where Petitioner was stationed as the meat doesn't go into the bags until further down the line. (Trial Transcript p. 162). Bags are also never on the floor as there is a large garbage bin placed by the line for workers to throw empty bags away. (Trial Transcript pp. 164-165). Furthermore, there is a dedicated janitor who empties the garbage cans so they don't overflow. (Trial Transcript p. 165). There is no meat on the floor and nothing about the cement floor would create a tripping or slipping hazard. (Trial Transcript pp. 165-166). The drain which Petitioner alleges she fell on is flush with the ground and would not be a tripping hazard. (Trial Transcript p. 163; Respondent's Ex. 6H). Mr. Streeter himself conducts regular audits of the work areas in the Vincennes plant to observe for any possible hazards and verified there are never tripping hazards on the floor and he has no prior experience with employees tripping while loading meat logs onto a slicer. (Trial Transcript p. 161).

This is not to mention several irreconcilable omissions and inconsistencies contained within the evidence that further call the Petitioner's credibility into question. For example, the Petitioner told Dr. Foreman that she was not aware of any prior knee symptoms and had no knowledge of her degenerative joint disease despite treating for degenerative joint disease in her bilateral knees with Dr. John McClellan just one year prior. (Respondent's Ex. 8, 9). Petitioner also informed Dr. Brian Cole that she had not treated for any knee conditions since terminating treatment with Dr. McClellan in March 2014. (Respondent's Ex. 10). This is simply untrue as she was treating with Dr. Khaleel as recently as the day prior to the alleged work accident and even presented a note to Ms. Spencer requesting work accommodations due to her knee issues. (Trial Transcript pp. 111-112; Respondent's Ex. 5A).

Additionally, the Petitioner altogether failed to mention that due to other medications, she experienced shortness of breath and fainting episodes, including one episode just a week and a half prior to her alleged workplace accident. (Respondent's Ex. 11). During her trial testimony, Petitioner even lied about the nature of her visits with Dr. Khaleel as she stated she went to him for a sore throat and that the work note was for a sore foot. (Trial Transcript p. 64, 66-67). The work note from Dr. Khaleel dated September 4, 2014, expressly cites Petitioner's knee condition. (Respondent's Ex. 5A). Additionally, despite Petitioner telling her medical providers that light duty could not be accommodated, Mr. Streeter and Ms. Spencer testified that Respondent would be able to accommodate any workers' compensation related work restrictions. (Respondent's Ex. 11; Trial Transcript pp. 116, 192). Significantly, Petitioner indicated she was unable to speak any English despite having communicated with Ms. Spencer in English several times without a translator as she had

completed several classes of ESL provided by Respondent. (Trial Transcript p. 123).

Finally, Petitioner had motive to allege a false work injury as she did not want to work extended hours because of her pre-existing knee condition but she had exhausted her FMLA benefits. (Trial Transcript pp. 105-107, 125, 134; Respondent's Ex. 3-4). As a result of her 2013 knee surgery, Petitioner used up her entire FMLA allocation of 12 weeks within a rolling calendar period. (Trial Transcript p. 105, 125). When Petitioner discussed work accommodations with Ms. Spencer on September 4, 2014, she was negative 13.5 hours of FMLA leave which meant she used too much FMLA time and received a disciplinary point for missing work. (Trial Transcript p. 106-107). An employee's FMLA allocation is only renewed once an employee has earned enough work hours—1250 hours—and the employee still has time available within the rolling calendar period, which Petitioner did not. (Trial Transcript p. 108-109). During her conversation with Ms. Spencer, Petitioner was informed that because she did not have FMLA time available, the company could not accommodate her restrictions as they were not related to a work injury and she could only have restrictions accommodated if she had a work accident. (Trial Transcript p. 116). The following day, September 5, 2014, Petitioner alleged the slip and fall at work. (Respondent's Ex. 1).

Considering the totality of the evidence – the fact that Petitioner lied on the stand, several times, regarding the alleged mechanism of injury; that Petitioner omitted details regarding idiopathic fainting episodes; the nearly impossible lack of witnesses to the alleged fall; her medical history and treatment for her knee conditions; her ability to speak English; and the lack of FMLA benefits available rendering her unable to work with accommodations absent a work injury, all rendering Petitioner's credibility suspect—the Arbitrator

cannot say that the preponderance of the evidence establishes that an accident arose out of and in the course of the Petitioner's employment on September 5, 2014.

Rather, the preponderance of the evidence suggests that no compensable accident happened on September 5, 2014. As such, the Petitioner is not entitled to benefits under the Illinois Workers' Compensation Act.

F. In support of the Arbitrator's decision as to whether the Petitioner's present condition of ill-being is causally-related to the injury, the Arbitrator makes the following findings:

In discussing the issue of "accident" in this case, the question of causation was also involved. As previously noted, the Petitioner testified that she was not having symptoms or treating for her bilateral knees prior to the alleged accident on September 5, 2014. However, this testimony was contradicted by medical records showing that Petitioner had treated for degenerative joint disease in her bilateral knees from 2013-2014 with Dr. McClellan and with Dr. Khaleel as recently as the day before the alleged work injury. Therefore, the Arbitrator cannot accept the Petitioner's testimony, when it is evident that Petitioner had a preexisting condition with her bilateral knees, as reliable proof that the alleged at-work accident was a cause of Petitioner's subsequent condition of ill-being.

When considering that Petitioner had a preexisting condition present at the time of injury, the Petitioner 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 Hosp. v. Workers' Compensation*

Comm'n, 371 Ill.App.3d 882 (5th Dist. 2007). The question of causal relationship is a question of fact for the Commission. *Chicago Park Dist. v. Indus. Comm'n,* 36 Ill.2d 212 (1966).

Having established that the Petitioner's testimony and credibility is unreliable, the Arbitrator next turns to expert opinions on causation. It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board,* 318 Ill.App.3d 507, 514-15 (1st Dist. 2000).

Dr. Cole stated that it was likely Petitioner suffered a work-related aggravation of preexisting osteoarthritis to her bilateral knees as a result of her fall (Respondent's Ex. 10); however, this opinion cannot be given weight since the Petitioner withheld treatment information. Dr. Cole expressly stated that his causation opinion could change if Petitioner had been treating for her knees in the 6 months prior to the alleged work accident. (Respondent's Ex. 10). At the time of the IME evaluation, Petitioner did not disclose to Dr. Cole that she had been treating with Dr. Khaleel for her knee as recently as the day before the alleged work injury and Respondent had not yet located the records from Dr. Khaleel's office to provide to Dr. Cole. (Respondent's Ex. 10). Additionally, because Dr. Cole did not have Dr. Khaleel's treatment records, Dr. Cole could not have known about the Petitioner's other medications and her fainting episodes which call into question the true mechanism that aggravated Petitioner's degenerative condition. Furthermore, and even absent this relevant information, Dr. Cole cautiously opined that he "cannot state categorically that need for care of the right and left knees is related to the (alleged) injury." (Respondent's Ex. 10).

Turning to the medical evidence itself, Petitioner's records reflect consistent diagnoses of degenerative joint disease in the patellofemoral area of the bilateral knees that pre-existed the alleged work injury. Petitioner reported to Dr. McClellan that her knee symptoms began 3 years prior to her initial treatment on January 26, 2013, although she testified at trial that her knee symptoms began 10 years prior to the injury date. (Respondent's Ex. 8; Trial Transcript p. 19). Dr. McClellan diagnosed Petitioner with patellofemoral compartment degenerative joint disease in her bilateral knees on February 9, 2013. (Respondent's Ex. 8). Her initial treatment at Ingalls Memorial Hospital following the alleged work injury on September 5, 2014, alleged bilateral knee sprains/strains. (Respondent's ex. 7). Petitioner was later diagnosed with degenerative joint disease, osteoarthritis, and a possible degenerative tear at AMCI South Holland. The entirety of Petitioner's medical history as related to her bilateral knees points to chronic degenerative knee conditions that pre-existed the alleged work injury.

Based on the preponderance of the evidence presented, the Arbitrator finds that the Petitioner did not establish that her current condition of ill-being was causally-related to her alleged at-work accident of September 5, 2014. Rather, the preponderance of the evidence suggests that following September 5, 2014, her condition remained unchanged from her baselilne.

In the alternative, if the Arbitrator finds causal-connection to a workplace injury, the Arbitrator finds that causation is for a knee sprain/strain only, and that the Petitioner reached MMI for that injury by October 1, 2014, the date designated by Dr. Dale Hooton of AMCI South Holland to make her initial return to work.

Due to the Arbitrator's findings on the issues of accident and causation, all other issues are rendered moot.

Therefore, compensation is hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WENC, DANUTA Case# **10WC035396**

Employee/Petitioner

THE MARVEL GROUP

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

0208 GALLIANNI DOELL & COZZI LTD
ROBERT J COZZI
20 N CLARK ST SUITE 825
CHICAGO, IL 60602

1153 MARTIN, PATRICK W
203 N LASALLE ST
SUITE 2100
CHICAGO, IL 60601

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

Danuta Wenc
Employee/Petitioner

v.

The Marvel Group
Employer/Respondent

Case # **10** WC **35396**

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **August 18, 2015**. 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] 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 22, 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 $**27,456**; the average weekly wage was $**528.**

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 $**3,500** under Section 8(j) of the Act for long-term disability benefits paid for by the group disability carrier. However, the respondent will hold the petitioner harmless with respect to claims for reimbursement by the group carrier.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $352/week for 47 weeks commencing 4/23/10 through March 17, 2011, as provided in Section 8(b) of the Act.

Respondent shall pay petitioner permanent partial disability benefits of $316.80 for 100 weeks because the injuries sustained caused the 30% loss of a 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.

FINDINGS OF FACTS

Petitioner's Testimony

Danuta Wenc, (the "petitioner") testified that prior to working for The Marvel Group (the "respondent"), since June of 1990 and she never experienced any problems with her lower back. The only doctor with whom she treated was her family physician, Dr. Gierlachowski, for coughs, colds and flus. She speaks and writes only Polish and an interpreter was used for this hearing.

She emigrated from Poland in 1990 and became an American citizen in 1993. She attended school in Poland through the high school level. She has attended no additional classes, schooling or training in Poland or the United States other than the courses necessary to become an American citizen.

After attending high school, she went to work as a salesperson in a grocery store for four to five (4 –5) years. She was then married and began raising a family. She became a stay-at-home housewife until she came to the United States in 1990. As soon as she arrived, she obtained a work visa enabling her to begin employment in the United States. She began working for the respondent in June of 1990.

When she began her employment with for the respondent, her husband also began working there also. They had three children, ages 16, 14 and 5 years old. Her husband worked the first shift and she worked the second shift from 3:30 to midnight. Essentially, her and her husband switched off in mid-afternoon so they could care for the children and work.

The first job that she performed while working for the respondent was cleaning offices which she performed for two years. She was then moved to a different department to work as a machine operator. Initially, she worked four hours cleaning offices and four hours on the machines before becoming a full time machine operator. From that point, she only worked as a machine operator for the respondent, 8 hours a day, 5 days a week for 18 years.

The respondent makes metal cabinets and other types of office furniture. It also makes large metal cabinets, for the United States Army. While working as a machine operator, she was required to work on two machines at a time. These machines were parallel to one another and she stood in between them. She would put the metal sheets into one machine and then move to the other to operate it. Throughout her entire eight-hour day, she was operating two machines simultaneously.

These machines made metal cabinets and she was required to feed large metal sheets into them so the machine could cut them. She would then shake the cut sheet and several pieces would drop onto a table. The metal sheets that she had to feed into the machine were approximately 4 feet long and 4–5 feet wide, weighing between 30–50 pounds. She was required to lift each sheet to feed into the machine and the sheets were oily; which caused them to stick together, making it harder to separate them before feeding them into the machine. She had to feed 200 – 300 sheets of metal per hour.

The metal sheets would be stacked on a table that was approximately 3 feet high. The sheets would be stacked up an additional 2 feet high. The petitioner is 5 foot 4 inches tall. The slit in the machine that she had to feed the sheets into was approximately 3 ½ – 4 feet high.

After she fed the sheets of metal into the machine, the machine would feed back the finished product. She would have to shake the sheet of metal, gather the finished products that had fallen out, and place them onto a separate table. If the sheet weighed about 30 pounds, when it came out of the machine it weighed approximately 5 pounds less. The petitioner testified that the shaking part of her operation was very hard and this is when she felt the pain in her low back the most. Sometimes she would have to shake an individual sheet 10 times to get all of the pieces out of the sheet. The leftover scrap was then placed into bins which, when they were full, weighed 50–60 lbs. She would be required to lift up the bin and throw its contents into a large container. She had to bend over to do so. She did this approximately 3–4 times per hour.

The petitioner did this work for approximately 10–12 years before her back started to hurt. She last worked on April 22, 2010. On that date, her supervisor was Mike Zolla, who did not speak Polish. When she communicated with him, she would do so through a Polish-speaking individual who worked in the office named Maria Sidor.

The petitioner's family doctor since 1999 has been Dr. Ursula Gierlachowski. Between 2000 through 2008, she would occasionally complain to Dr. Gierlachowski of low back pain. However in 2008, her back began getting worse and she also began to notice that her right leg was getting numb. Dr. Gierlachowski prescribed medication, physical therapy, and shots. She was also sent for an MRI in 2008. Yet, she continued working every day but occasionally used sick and vacation days, when she could not work.

The records of Dr. Gierlachowski note that the petitioner was seen on May 13, 2008, complaining of low back pain which was radiating to her right leg. The history reflects that it is worse after work. Dr. Gierlachowski diagnosed low back pain with right sciatica. Medication and physical therapy was prescribed. An MRI of the lumbar spine was performed on September 20, 2008 which showed "a minimal central disc protrusion at L4-5. There is evidence of annular tears at the posterior disc margin of L4-5 and L5-S1." PX1.

In the beginning of 2010, her back began to feel painful all the time and her leg was numb. She took pills that had been prescribed by Dr. Gierlachowski through the last date that she worked on April 22, 2010.

The petitioner was seen by Dr. Gierlachowski on April 23, 2010 and the doctor instructed her to remain off of work. She was given an off work slip which she faxed to Maria Sidor. The petitioner also spoke to her on that date. Dr. Gierlachowski sent her to physical therapy.

The records of Dr. Gierlachowski indicate that the petitioner was seen on April 23, 2010 and reported that her back pain was getting worse and now radiating into her left buttock, thigh, calf and down into the left foot. An examination of the lower back revealed tenderness; muscle spasm; the inability to walk on heel and toe; restriction of forward flexion to 30 degrees and extension to 5

degrees; positive straight leg raising on the left at 25 degrees. The petitioner was diagnosed with low back pain; left sciatica; and degenerative joint disease of the lumbar spine. She was taken off of work; prescribed Flexeril and Norco and sent for physical therapy.

The petitioner underwent physical therapy but did not have significant improvement. Dr. Gierlachowski referred her to Dr. Branovacki, an orthopedic surgeon. In the spring of 2010, Dr. Gierlachowski indicated that Petitioner could do light duty work, lifting up to 5 lbs. She testified that she was told by Mike Zolla through Maria Sidor that there was no such work available.

The petitioner was first seen by Dr. Branowacki on June 24, 2010. His examination revealed, "Very strongly positive left straight leg raising with severe pain that goes down to the foot." He suspected that she had a herniated disc and would require injections. He ordered a new MRI and instructed her to return when completed. The MRI was completed on June 25, 2010 and read to show an anterior disc protrusion at L4-5 as well as an annular tear. When she returned to Dr. Branowacki on June 28, 2010, he noted the annular tear at the L4-5 disc with extrusion. He recommended physical therapy and that Petitioner remain off work. On August 12, 2010, Dr. Branowacki recommended an epidural steroid injection at L4-5. He sent her to Dr. Lim for continued treatment. PX4.

The petitioner was first seen by Dr. Richard Lim of Midwest Orthopedic Consultants on September 14, 2010. He recommended a second epidural injection. When she returned on October 27, 2010 she reported that the injections only helped for 2 – 3 days. Her doctor offered surgery but could not guarantee it would be successful or even help her. In fact, he told her that it might make her condition worse. She decided not to undergo surgery. He recommended additional physical therapy and pain patches. PX1.

The petitioner continued to treat with Dr. Gierlachowski through 2011. She sent her for additional therapy, prescribed medication and told her that she should remain off work.

The petitioner then came under the care of a different primary care physician, Dr. Kakol. Physical therapy, patch, pills and home exercise were prescribed. She has been attending Excel Physical Therapy PXs 3 & 5.

At the present time, she notices that she has difficulty with simple daily activities and that she can only lift up to 10 lbs. She cannot turn quickly and has difficulty taking a shower. The pain is located in her lower back and radiates down her right leg. Her leg gets numb and feels raw. She has difficulty doing any one thing such as standing or sitting for longer than 40 minutes. When her pain gets bad, she puts a patch on her back and also takes medication. Dr. Kakol has prescribing Naproxen and Tylenol which she takes sometimes twice a day. In the morning, she does her home exercises when she first gets up.

Upon cross-examination, Petitioner stated that on April 22, 2010, she felt pain in her back that was so severe that she was unable to get herself in the car. The next day, she called the office and told Maria Sidor that she had to go on sick leave and could not work because of the problem with her back.

Video taken by Respondent

The respondent showed her a video at the hearing, which purports to be her job duties. The petitioner testified that it does not accurately portray what she had to do at work. Specifically, she had to work on two machines simultaneously but the video only showed the operator working on one. In addition, the sheets of metal that she had to use were much bigger. The machine that is shown in the video is the smallest machine that the respondent has. The machine shown on the video depicted only small parts but she used larger pieces of metal. The sheet metal that came out of the machine that she was required to shake was much bigger than the ones depicted in the video. With respect to the stack of sheet metal sitting on the table, the video showed approximately 100 pieces on the table whereas she had to work off of a stack of up to 1,000 pieces. The metal sheets were also thicker than the ones depicted on the video. The total cycle depicted in the movie lasted for several minutes whereas her cycle was much quicker and took seconds, i.e., she had to work much faster than the person depicted in the video. She further testified that her job involved walking, lifting and bending. She would have to walk between the two machines 8 hours per day. Her job also involved squatting when she had to though out the scrap metal in the bin. When the pile of sheet metal was high, she was lifting the material from eye level down to the slit to feed the machine. Eventually, the pile would be reduced to waist level and it would then be replenished.

On re-direct examination, she stated that she would occasionally have pieces of sheet metal as small as the ones depicted in the video but this would occur approximately once or twice per month. The rest of the time, she worked with 4 feet x 5 feet sheets. Also, the metal that was being used in the video was not oiled and the sheets were not sticking together as the operator was taking them off the stack. Her sheets were oiled and stick to one another. In order to move them, she would have to lift and then jerk it before loading it into the machine. In addition, based on the height of the table, it appeared that the operator in the movie was taller than she is.

Finally Petitioner testified that she told her supervisor, Mike Zolla, through the translator, Maria Sidor on several occasions, that she was having problems because of the lifting she was doing at work. When she told him that prior to April 22, 2010, he told her they did not have light duty work and she could quit if she wanted to. Finally, she left work with the respondent, she has not worked or looked for work because Dr. Kakol has instructed her not to.

Respondent's first witness's testimony

Mr. Dane Nakashima testified that he has been the personnel manager for Respondent for the past forty-six years. He also handles insurance grievances, hiring and termination of personnel. He was not aware that the petitioner sustained an isolated, traumatic injury at the workplace between April 19 and April 22, 2010. After the last day, she brought in a doctor's slip stating she could not work. She was paid sick pay for twenty weeks. He testified that Petitioner also provided the respondent with further doctor's notes that she could not work after the twenty-week period of time.

On cross-examination, he stated that he did not speak Polish, only a few phrases or colloquialisms. As personnel manager, he was responsible for keeping personnel files for all the employees. Although he kept one for the petitioner, he did not bring it to the hearing but rather left it at his office.

Respondent's second witness's testimony

Michael Zolla testified that he is a supervisor for the respondent and that he began working there in 1983. He has been a supervisor in the fabrication and welding department for the past fifteen (15) years. His job duties include dictating the workflow, monitoring the operators and schedule the work. The Respondent manufactures office furniture. There are currently 156 employees and 93 of them are machine operators. The machines sheets of steel into certain pieces that are eventually sent someplace else for welding and manufacturing.

The petitioner was one of the machine operators that he supervised in April of 2010. At the end of her employment with the respondent, she was taking time off of work and she brought in doctor's notes. She never complained while she as at work about being in discomfort.

A videotape of the petitioner's purported work tasks and activities was made. He was present while it was being made and he believes it accurately portrays the work tasks she performed as a machine operator. The sheets of metal were 32 inches by 50 inches and were 16 gauge, which would be a normal operation. The operator sometimes works with larger pieces of metal but they would vary. Some sheets could be 48 inches x 70 inches and could be a heavy gauge such as 14 gauge. The petitioner at times worked with metal that was bigger and thicker than what was depicted on the video but only 20% of the time.

The video did not show the operator working on two machines simultaneously. The cycle could last anywhere between 30 second to 4 minutes. The cycle depicted on the video was about 3 minutes. The machine has four speeds. The purpose of shaking the steel sheets was to break the tabs that were holding the cut pieces in the sheet. There are two types of bins for scrap metal. The large one was on wheels and had to be moved out by crane. The smaller bin was kept on the floor by the operator, who would have to pick it up and empty it into the larger bin. It would weigh 30- to 40 pounds. He further testified that there is an oily film on every sheet and it does make it harder to separate the sheets from one another. The cycle that runs only 30 seconds means the operator would have to move 120 pieces of sheet metal into the machine per hour. The average cycle is 2 ½- 3 minutes which would mean 20 to 25 pieces of sheet metal per hour.

Upon cross-examination, he stated that both he and the respondent's attorney were present when the video was made. In fact, the attorney was the individual who shot the video. The particular machine in the video was selected because it was the only one running at the time that the video was being taken. The video was taken approximately 2 & 2 ½ months before the hearing. The respondent makes metal file cabinets that are approximately 4 ½ - 5 feet tall. Sometimes the machines use 11 and 12-gauge metal, which is much heavier than the gauge that was used in the video. The 11-gauge metal which the respondent uses is twice as thick as the one depicted.

The company keeps records for the types of orders that it received for office equipment cabinets back in 2010, but he did not look for them prior to coming to testify nor did he ask anyone at the respondent to look for those records to show the size of the equipment being made.

The operator has to shake the pieces of metal out of the sheet in order to allow the metal pieces to drop. The pieces of metal weigh 30 to 40 lbs. prior to cutting. On the average, the machine operator would have to move 30 to 40 pieces per hour into the machine.

Although the petitioner was working on two machines while employed by the respondent, he did not show the machine operator working the two machines because there was only one machine in operation at the time. He did not tell the individual taking the video that the petitioner was working two machines at the same time because he was not asked.

The oil makes it difficult to split the stacked pieces of sheet metal apart so the operator would have to "snap" the sheet with her/his hands. This breaks the material apart and it would then be put into the machine. The metal pieces were fed into the machine that weighed 30 to 40 pounds do not weigh substantially less after they are taken out, perhaps 5 to 10 pounds lighter. The average piece of sheet metal that would be fed into the machine is 30 – 40 lbs.

Deposition of Petitioner's treating doctor

Dr. Ursula Gierlachowski testified that she has been practicing internal medicine in Illinois since 1994. She was board-certified in 1993 and has been a general practitioner in Illinois since that time. The petitioner has been a patient of hers since 1999 through 2011. Prior to 2008, she would occasionally complain of low back pain and had been seen by a chiropractor but she was not specifically providing any direct medical care to her until 2008.

In May of 2008, the petitioner reported she had to lift metal weighing approximately 30 to 50 pounds at work and as a result, she was in pain. PX2, pp. 4-9.

Her physical examination showed positive straight leg raising; normal deep tendon reflexes. The positive straight leg raising told her that something was touching the nerves. The petitioner continued working through 2010 and she took her off of work only for a day or two at a time. She is also prescribed anti-inflammatories, muscle relaxants and pain medications and DepoMedrol injections. PX2 pp. 10-11.

The doctor further testified that she continued to see the petitioner intermittently through 2010, when on April 23, 2010, the petitioner reported that the pain was getting worse and it was now radiating into her left buttock, side and down to the foot. The physical examination showed tenderness; muscle spasm; the inability to perform heel and toe walking. These findings indicated that there may be bulging or slipped discs. She took her off of work and diagnosed a displaced disc. The MRI that had been taken two years earlier showed that she had degenerative disc disease. She ordered x-rays, referred her to physical therapy, administered an injection and prescribed muscle relaxants and pain medication. PX2, pp. 12-13)

In June of 2010, she referred her to an orthopedic surgeon, Dr. Branowacki of Midwest Orthopedics. He sent her for an MRI and administered epidural injections and kept her off of work. On August 19, 2010, Dr. Gierlachowski prepared a note indicating that the petitioner has L4-5 disc protrusion as a result of heavy lifting at work. She continued to see her intermittently in 2010 and 2011 and kept her off work during this time. PX2, pg. 15.

On March 17, 2011, the petitioner continued to report symptoms of weakness and radiation down the legs. The physical examination revealed tenderness; restriction of motion; and positive straight leg raising.

Based on a reasonable degree of medical certainty, the petitioner diagnosis is degenerative disc disease with herniated disc and radicular symptoms. In her opinion, it is related to the petitioner having to lift 30 to 50 lbs. throughout the day, amounting to over a ton of metal per day for twenty years. This activity aggravated and speeded up the process of degeneration and the aggravation is a permanent. In her opinion, the petitioner cannot return to any form of work as of the date that she last saw her. PX2, pp. 18-19.

On cross-examination, she acknowledged that the petitioner first mentioned low back pain in 2005. She was receiving therapy from a chiropractor, Dr. Buresz, who is now deceased. In 2006, she ordered physical therapy, administered an injection and prescribed medication. In 2008, the condition was getting worse and had been present for several years so she considered it a chronic condition. Since Dr. Buresz was no longer alive, Dr. Gierlachowski ordered the therapy in 2008. She was reporting that the pain was worse after working. An MRI was also ordered at the time that showed a disc protrusion and annular tears at L4-5 and L5-S1. A disc protrusion with an annular tear is a herniation. An EMG was performed on May 11, 2010 which was normal. On April 29, 2010, straight leg raising was positive on both sides. As of March 17, 2011, she was not anticipating much improvement but her condition would wax and wane thereafter. PX2, pp. 22-61.

On re-direct, the doctor testified that Petitioner attributed her chronic, worsening condition in her low back, from 2005 to 2010, by the type of work she was performing. Also, that there was no other injury to the petitioner's low back between 1999 to 2011, other than the heavy lifting she was performing at work. PX2, pg. 62.

IME by Dr. Kern Singh

The petitioner underwent an examination with Dr. Kern Singh, at the request of the respondent on August 10, 2011. His physical examination revealed no positive findings. The MRI study of September 2, 2008 revealed annular tears at L4-5 and L5-S1. The MRI in 2010 revealed a slight disc extrusion at the right L4-5. He indicated she was capable of working only light duty with a 20 pound lifting restriction and minimum bending, kneeling, stooping and squatting. He requested copies of the actual films. Dr. Singh was thereafter provided with films and issued an addendum report which is undated. He indicated that there was no interval change between the MRI's and therefore, the degenerative disc disease was not aggravated by a work-related injury. He opined

that she was at maximum medical improvement ("MMI") and could return to work in a full duty capacity, without restrictions. His diagnosis was muscle strain. RX1 & 2.

The petitioner was examined by orthopedic surgeon, Dr. Michael Treister, on February 9, 2014, by request of Petitioner. He was provided a detailed description of her job duties including the amounts of weight that she had to perform; how often she had to move the weight and what she had to do with the metal. The physical examination showed restriction of motion of the lumbar spine; tenderness over the right sciatic nerve; positive straight leg raising on the right at 60 degrees and negative on the left, absent ankle and knee reflexes; low focal weakness in the lower extremity and no sensory deficit in the lower extremity. He diagnosed degenerative disc disease with annular tears and disc protrusions. With respect to causation, he stated as follows:

> Why this lady first developed degenerative disc disease at L4-5 we will never know now. But we are certain that it has been present since prior is 2005 and hence for a minimum of 15 years was repetitively traumatized by the nature of her work. Hence, the progression of that pathology observed on 6/25/10 lumbar MRI along with the associated right-sided disc protrusions are much more likely than not, causally related to the type of heavy work which she did over that period of time.

He opined that the only treatment that might alleviate the condition would be a decompression at L4-5 and an anterior and posterior fusion from L5 to S1. PX6.

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 the petitioner's repetitive activities constitute a repetitive trauma and an accidental injury arising out of and in the course of her employment. *Bellwood Nursing Home vs. Industrial Commission* (1987) 115 Ill. 2d. 524, 505 N.E. 2nd 1026, 106 Ill. Dec. 235. The Arbitrator finds that the date of accident to be April 22, 2010, the date in which the petitioner last worked for the respondent. *Oscar Meyer & Co. vs. Industrial Commission* (1988) 176 Ill. App. 3d. 607, 531 N.E. 2nd 174, 126 Ill. Dec. 41.

F. Is the petitioner's current condition of ill-being causally related to the injury?

The issue is whether lifting the equivalent of 10 to 40 tons of steel per day for 18 years aggravated the degenerative disc disease in the petitioner's lumbar spine. Three physicians have rendered an opinion with respect to causation: Drs. Gierlachowski, Singh and Treister. Drs. Gierlachowski and Treister have opined that the petitioner's work-related activities aggravated the petitioner's pre-existing degenerative disc disease in her lumbar spine. Dr. Singh did not find causation.

The Arbitrator finds the opinions of Drs. Gierlachowski and Treister to be more persuasive than that of Dr. Singh. Dr. Gierlachowski has been the petitioner's treating physician since 1999. She has documented and noted the progress of the petitioner's low back problems throughout her last twelve years of employment with the respondent. She ordered testing and treatment and performed interval physical examinations showing the progression of the disease. Dr. Treister's report reveals a detailed understanding of each aspect of the petitioner's work including the size of the materials being lifted; the weight of the materials; the frequency that it had to be performed; and the biomechanics involved in performing her work. While he acknowledged that the reason why she had degenerative disc disease in the first place would never be known, the heavy work she had to perform for many years repetitively traumatized that degenerative condition.

Dr. Singh failed to demonstrate an understanding of the basic aspects of the petitioner's work. It does not appear that he understood that it was a repetitive trauma claim because his report reflects that there was "no acute interval event." The respondent did not provide him with a job description or the video that was taken of the machine operator's job, as flawed as that video might be. It is well settled under Illinois law that an expert's opinion is only as valid as the bases and reasons for the opinion. When there is no factual support for an expert's conclusions, his conclusions alone do not create a question of fact. *Wilson v. Bell Fuels, Inc.* (1991) 214 Ill App. 3rd 868, 158, Ill. Dec. 406, 574 N.E. 2nd 200. In that Dr. Singh was not provided with any information regarding the petitioner's job duties, little weight can be placed on his opinion. The Arbitrator, therefore, finds that the petitioner's current condition of ill-being is causally related to the repetitive work she performed in her job as a machine operator for the respondent.

K. What temporary benefits are in dispute?

The petitioner was taken off of work by Dr. Gierlachowski on April 22, 2010 and was kept off work through the date of her last examination of March 17, 2011, a period of 47 weeks. Her doctor indicated on March 17, 2011 that she did not expect her condition to improve from that point. Therefore, her condition was no longer temporary. The respondent did not seek an evaluation of the petitioner until August of 2011. Therefore, it is unrebutted that the petitioner was temporarily totally disabled during that period of time. The Arbitrator awards the petitioner 47 weeks of temporary total disability from April 23, 2010 through March 17, 2011.

L. What is the nature and extent of the injury?

The petitioner suffers from a central disc protrusion at L4-5 and annular tears at L4-5 and L5-S1. Drs. Gierlachowski, Kakol, Branovacki and Treister have all opined that the petitioner is not capable of returning to work. Dr. Lim has recommended surgery but the petitioner is reluctant to undergo the procedure because she has been warned the condition could worsen. Dr. Treister has recommended a two-level lumbar discectomy and fusion. Dr. Singh, on the other hand, finds that the petitioner sustained only a lumbar strain.

The Arbitrator finds the opinions of the petitioner's treating doctors and that of Dr. Treister to be more persuasive than that of Dr. Singh. The petitioner's lumbar radiculopathy is reflected not only in the findings of the MRIs but also in the treating doctors physical examinations, which all consistently show a positive straight leg raising indicative of neurological impingement. The petitioner credibly testified that she is capable of sitting, standing and walking only in 40-minute intervals. She continues to take prescription medication at the present time and undergoes interval physical therapy. The Arbitrator finds that the petitioner sustained the complete and permanent loss of 30% of a person as the whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
10WC35396
SIGNATURE PAGE

L. Thompson-Smith
Signature of Arbitrator

October 7, 2015
Date of Decision

OCT 8 - 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FUENTES, ANGEL Case# **15WC004527**

Employee/Petitioner

MARRIOTT INTERNATIONAL

Employer/Respondent

On 10/5/2015, 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 0.10% 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:

1377 PARENTE & NOREM PC
DAVID A IAMMARTINO
221 N LASALLE ST 27TH FL
CHICAGO, IL 60601

2461 NYHAN BAMBRICK KINZIE & LOWRY
CHRISTINE M JAGODZINSKI
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602-4195

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

ANGEL FUENTES,
Employee/Petitioner

Case #**15 WC 04527**

v.

Consolidated cases:

MARRIOTT INTERNATIONAL,
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 KANE**, Arbitrator of the Commission, in the city of **CHICAGO**, on **September 22, 2015**. 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. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other

FINDINGS

On **2/1/2015**, 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 **$35,415.13**; the average weekly wage was **$681.06**.

On the date of accident, Petitioner was **32** 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.

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

Denial of benefits

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.

David A. Rhine
Signature of Arbitrator

October 5, 2015
Date

OCT 5 - 2015

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Angel Fuentes

Petitioner,

v.

Marriott International

Respondent.

Court No. **15 WC 04527**

Findings of Fact and Conclusions of Law

Memorandum of Arbitrator's Decision

I. Statement of Facts

Angel Fuentes testified that he works as a maintenance engineer for Renaissance Convention Center in Schaumburg, Illinois. He has worked for the Renaissance for 8 years. His job duties included answering guest calls, changing refrigerators, painting, changing light bulbs, as well as other maintenance work.

On February 1, 2015, Mr. Fuentes testified that he worked from 7:00 a.m. to 3:30 p.m. He then punched out and walked to the south parking lot to a parked vehicle where his wife waited to pick him up. Mr. Fuentes stated that he reached in his pocket to remove his cell phone and a couple

dollars felt out. The money blew in front of his car. He testified that he walked to get the money, bent down, and slipped and fell onto his back. Mr. Fuentes stated that there was snow on the ground and it was packed down. He testified that he had the wind knocked out of him and strong low back pain after he fell.

Mr. Fuentes testified that associates park in the south parking lot where he fell. If he did not park in that location, he would be disciplined. Mr. Fuentes acknowledged that a video camera was present near the area where he fell. This camera was located by the parking lot close to a smoking area where associates smoke. Mr. Fuentes stated that he knew the incident was videotaped, but he did not see the video.

After his fall, Mr. Fuentes testified that he presented to St. Alexius Medical Center. He then sought treatment at Alexian Brothers Medical Group and was referred to Dr. Babak Lami. Dr. Lami ordered physical therapy. Mr. Fuentes stated that he then elected to treat at Midwest Bone and Joint Institute. He agreed that his diagnosis was low back pain with radiculopathy. He underwent MRI studies and attended physical therapy. Mr. Fuentes stated that physical therapy helped his low back. He was released from treatment in May, 2015. Mr. Fuentes stated that he did not lose any time from work as his employer provided light duty work. While on light duty, he folded towels in the housekeeping department and unpacked boxes.

On direct-examination, Mr. Fuentes testified that he has low back pain and takes over the counter medication. He noted that he does have a pre-existing condition called ankylosing spondylitis. He claimed that his ankylosing spondylitis became worse after this incident.

On cross-examination, Mr. Fuentes stated that he was not directly in front of his vehicle when he fell, but he was close to his car. When asked whether he jogged to get his money, Mr. Fuentes denied jogging and testified that he is barely able to walk, let alone jog. Mr. Fuentes agreed that it was his choice to pursue the money after it blew out of his pocket. He also admitted that he had safely made it to his vehicle before he decided to chase after his money.

Mr. Fuentes agreed that he had low back pain and stiffness before February 1, 2015 as evidenced in the records of Midwest Orthopaedics at Rush. Every six weeks, Mr. Fuentes testified that he undergoes a Remicade infusion for ankylosing spondylitis at Rush. He also admitted that he took over the counter medication for his low back prior to February 1, 2015.

The video of the incident initially shows Mr. Fuentes at the passenger door of the vehicle driven by his wife. Mr. Fuentes then walks toward the front of the car. He then changes direction and jogs in pursuit of his money. After he started jogging, Mr. Fuentes slipped and fell onto his back.

II. Conclusions of Law

A. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Mr. Fuentes alleges that he sustained a work related injury to his low back on February 1, 2015 when he slipped and fell while pursuing some dollar bills that flew out of his pocket. In a workers' compensation claim, "...an employee bears the burden of showing, by a preponderance of the

evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment." *820 ILCS 305/1(b)3(d) (2011).*

An injury "arises out of" a person's employment if its origin is in some risk connected with or incidental to the employment. Caterpillar Tractor Co. v. Industrial Comm'n, 129 Ill.2d 52, 58 (Ill.1989). The injury occurs "in the course of" the employment if it occurs during a reasonable time before or after work, at a place where the claimant may reasonably be in the performance of his duties and, while he is fulfilling those duties, or engaged in something incidental thereto.

Illinois courts have consistently held that injuries that arise from a personal risk, rather than an employment related risk, are not compensable. (See, *e.g.* Orsini v. Industrial Comm'n, 117 Ill.2d 38, (Ill.1987) (claimant suffered leg injuries while repairing his personal auto); Jones v. Industrial Comm'n, 78 Ill.2d 284 (Ill. 1980) (claimant injured hand while closing car door). Further, the Arbitrator finds this case factually similar to the situation in Dodson v. Industrial Comm'n. 308 Ill.App.3d 572 (Ill. App. Ct. 5th Dist. 1999). In Dodson, the employee initially left work and traveled down a concrete sidewalk toward the parking lot. The employee then decided to cut across a sloping, grassy path. This occurred during a rainstorm. The employee fell and broke her ankle while walking on the sloping, grassy path. The Illinois Appellate Court in Dodson affirmed the Commission's decision, finding that an injury does not arise out of the employment when an employee voluntarily exposes himself to an unnecessary personal risk solely for his own convenience. Dodson, 308 Ill.App.3d at 577.

Mr. Fuentes testified that he safely arrived at the passenger door of

his vehicle after he left work on February 1, 2015. Shortly thereafter, he chose to walk away from the vehicle to pursue a couple dollar bills which flew out of his back pocket after he removed his cell phone. Mr. Fuentes slipped and fell while in pursuit of his money. The video evidence confirms that Mr. Fuentes safely arrived at his vehicle and then jogged after his money during the snowstorm, despite his testimony that he is barely able to walk, let alone jog. Like the claimant in *Dodson*, Mr. Fuentes voluntarily exposed himself to an unnecessary personal risk for his own benefit. His actions did not benefit his employer.

Based upon the credible evidence, the Arbitrator finds that Mr. Fuentes failed to demonstrate that his injuries arose out of his employment when he chose to jog after his money in the parking lot during blizzard conditions on February 1, 2015. The Arbitrator finds that Mr. Fuentes' actions only benefited himself and there was no benefit to his employer.

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

L. What is the nature and extent of the injury?

M. Should penalties or fees be imposed upon Respondent?

As the Arbitrator finds that Mr. Fuentes failed to prove by a preponderance of the evidence that he sustained an accidental injury that

arose out of his employment on February 1, 2015, all remaining issues are moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WAUKEGAN

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICK DUNNE,

Petitioner,

vs. NO: 12 WC 29647

KMK CONSTRUCTION,

Respondent,

ORDER PURSUANT TO SECTION 19(f) OF THE ACT

This cause comes before Commissioner Michael J. Brennan pursuant to Petitioner's "Motion for Approval of Rider to Lump Sum Petition and Order."

The Arbitrator approved the attached Settlement Contract Lump Sum Petition and Order on August 12, 2015. Counsel for the Petitioner filed the above Motion on August 27, 2015. Pursuant to the Motion, Petitioner's counsel advised that spread language was inadvertently omitted from the Lump Sum Petition and Order dated August 12, 2015.

Pursuant to the "Rider to Lump Sum Petition and Order:"

> **The Petitioner is 49 years and 10 months of age and therefore has a remaining life expectancy of 30 years and 7 months. After deducting attorney fees of $27,000.00 and litigation expenses of $184.52, the sum of $107,815.48 represents compensation for the loss of bodily function as contrasted to the periodic benefits within the meaning of 424(a) of the Social Security Act and should be reasonably deemed to represent the amount of $293.77 per month and $67.89 per week for the balance of the Petitioner's expected lifetime of 30 years and 7 months for loss of bodily functions.**

The above rider was filed with the Commission on August 27, 2015 and was signed by both attorneys and the Petitioner himself.

Pursuant to Section 19(f) of the Act:

> [T]he Arbitrator or Commission may on his or her own motion, or on the motion of either party, correct any clerical error or errors in computation within 15 days after the date of receipt of any award by such Arbitrator or any decision on review of the Commission and shall have the power to recall the original award on arbitration or decision on review, and issue in lieu thereof such corrected award or decision.

IT IS THEREFORE ORDERED BY THE COMMISSION, that the above Motion filed August 27, 2015 is hereby granted pursuant to Section 19(f) of the Act. The Settlement Contract Lump Sum Petition and Order filed August 12, 2015 is hereby modified to include the following language:

> **The Petitioner is 49 years and 10 months of age and therefore has a remaining life expectancy of 30 years and 7 months. After deducting attorney fees of $27,000.00 and litigation expenses of $184.52, the sum of $107,815.48 represents compensation for the loss of bodily function as contrasted to the periodic benefits within the meaning of 424(a) of the Social Security Act and should be reasonably deemed to represent the amount of $293.77 per month and $67.89 per week for the balance of the Petitioner's expected lifetime of 30 years and 7 months for loss of bodily functions.**

IT IS FURTHER ORDERED BY THE COMMISSION, that the heretofore approved Lump Sum Settlement Contract, as was approved by Arbitrator Robert Falcioni on the 12th day of August, 2015 remains in full force and effect, and shall be read in concert with the attached "Rider to Lump Sum Petition and Order."

DATED: OCT - 5 2015
D: 10-5-15
MJB/tdm
052

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF MOTION AND ORDER

ATTENTION. Attach the motion form to this notice. If the motion is not attached, this form may not be processed.

Patrick Dunne
Employee/Petitioner

Case # **12** WC **29647**

FILED
2015 AUG 27 AM 9:52
ILLINOIS WORKERS' COMPENSATION COMMISSION

v.

KMK Construction
Employer/Respondent

Commissioner Brennan
Illinois Workers' Compensation Commission
100 W. Randolph Street, Suite 8-200
Chicago, IL 60601

Marya Savich
Holecek & Associates
161 N. Clark Street, Suite 800
Chicago, IL 60601

On October 16, 2015, at 9:30 **AM / PM** or as soon thereafter as possible, I shall appear before the Honorable **Commissioner** Brennan, or any arbitrator or commissioner appearing in his or her place at Lake County Courthouse Waukegan ~~**100 W. Randolph Street, Suite 8-200, Chicago,**~~ Illinois, and present the attached motion for:

___ Change of venue (#3072)
___ Consolidation of cases (#3071)
___ Dismissal of attorney (#3052)
___ Dismissal of review (#3085)
___ Fees under Section 16 (#1600)
___ Fees under Section 16a (#1645)
___ HearingunderSect.19(b)(#1902)
___ Penalties under Sect.19(k)(#1911)
___ Penalties under Sect 19(l) (#1912)
___ Reinstatement of case (#3074)
___ Request for hearing (#R33)
___ Withdrawal of attorney(3073)
✓ Other (explain)

Motion for Approval of Rider to Lump Sum Petition and Order

Signature Petitioner ✓ Respondent ___

300 South Ashland Avenue, Suite 101
Street address

Matthew J. Leonard **#926**
Attorney's name and IC code # (please print)

Chicago, **IL** **60607**
City State Zip cod

Leonard Law Group, LLC.
Name of law firm, if applicable

(312) 226-8273
Telephone number

ORDER

The motion is set for hearing on _____

Signature of the arbitrator or commissioner

Date

ORDER

The motion is ✓ Granted ___ Withdrawn ___ Dismissed

___ Denied ___ Continued to ____/____/____

Signature of arbitrator or commissioner

10, 05, 2015
Date

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION

PATRICK DUNNE,	)	
	)	
Petitioner,	)	12 WC 29647
	)	
KMK CONSTRUCTION,	)	Arb. Falcioni
	)	
Respondent.	)	

FILED
2015 AUG 27 AM 9:52
ILLINOIS WORKERS' COMPENSATION COMMISSION

NOW COMES, the Petitioner, PATRICK DUNNE, by and through his attorneys LEONARD LAW GROUP LLC. and prays the Commission approve by its authority this Rider To Lump Sum Petition and Order and in support of said prayer alleges and states as follows:

MOTION FOR APPROVAL OF RIDER TO LUMP SUM PETITION AND ORDER

1) Application 12 WC 29647 was filed August 28, 2012.
2) Application 12 WC 29647 was settled via lump sum petition and order on August 12, 2015 via agreement of the parties. Accordingly Arbitrator Robert Falcioni lost jurisdiction over the application at the time of approval. (see attached lump sum petition and order marked as Petitioners A.)
3) Said lump sum of $135,000.00 represented a compromise wage differential.
4) Petitioners counsel Mr. Matthew J. Leonard, because of a clerical error, forgot to include spread language in the lump sum petition and order.
5) Petitioners counsel prays for the Commission to approve this Rider to Lump Sum Petitioner and Order.
6) Petitioners counsel in no way seeks to delete, add, modify or otherwise alter the terms as reflected in Petitioners A, other than to add spread language.
7) The approval of said Rider to Lump Sum Petition and Order in no way prejudices Respondent or its client.

WHEREFORE, the Petitioner, PATRICK DUNNE prays the Commission approve said Rider to Lump Sum Petition and Order.

Respectfully Submitted,

Leonard Law Group LLC.

LEONARD LAW GROUP LLC.
300 South Ashland Ave., Suite 101
Chicago, IL 60607
Tel. 312 226 8273
Atty No. 926

847 516 8071 815 455 0711

ILLINOIS WORKERS' COMPENSATION COMMISSION
SETTLEMENT CONTRACT LUMP SUM PETITION AND ORDER

ATTENTION. Please type or print. Answer all questions. File four copies of this form. Attach a recent medical report.

Workers' Compensation Act ☒ Occupational Diseases Act ☐ Fatal case? No ☒ Yes ☐ Date of death _____

EXHIBIT A

Patrick Dunne
Employee/Petitioner

Case # **12** WC **029647**

v.

KMK Construction
Employer/Respondent

Setting **Waukegan**

To resolve this dispute regarding the benefits due the petitioner under the Illinois Workers' Compensation or Occupational Diseases Act, we offer the following statements. We understand these statements are not binding if this contract is not approved.

Patrick Dunne
Employee's name

P.O. Box 151
Street address

Island Lake, IL 60042
City, State, Zip code

KMK Construction
Employer's name

701 W. Lamm Rd.
Street address

Freeport, IL 61032
City, State, Zip code

State Employee? Yes ☐ No ☒ Male ☒ Female ☐ Married ☐ Single ☒

Dependents under age 18 **0** Birthdate **11/16/1965** Average weekly wage $ **830.77**

Date of accident **5/24/2012**

How did the accident occur? **Struck by falling debris**

What part of the body was affected? **Left shoulder/head**

What is the nature of the injury? **Rotator cuff tear/surgery**

The employer was notified of the accident orally ☒ in writing ☐ Return-to-work date _____

Location of accident **Helena, AR** Did the employee return to his or her regular job? Yes ☐ No ☒
If not, explain below and describe the type of work the employee is doing, the wage earned, and the current employer's name and address.

Looking for employment

TEMPORARY TOTAL DISABILITY BENEFITS: Compensation was **All paid** weeks at the rate of $ **553.85**/week.
The employee was temporarily totally disabled from **04/02/2013** through **Present**.

MEDICAL EXPENSES: The employer has ☐ has not ☒ paid all medical bills. List unpaid bills in the space below.

_____

PREVIOUS AGREEMENTS: Before the petitioner signed an *Attorney Representation Agreement*, the respondent or its agent offered in writing to pay the petitioner $ **0** as compensation for the permanent disability caused by this injury.

An arbitrator or commissioner of the Commission previously made an award on this case on **NA** regarding

TTD $ **NA** Permanent disability $ **NA** Medical expenses $ **NA** Other $ **NA**

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION

PATRICK DUNNE,	)	
	)	
Petitioner,	)	12 WC 29647
	)	
KMK CONSTRUCTION,	)	Arb. Falcioni
	)	
Respondent.	)	

FILED
2015 AUG 27 AM 9:53
ILLINOIS WORKERS' COMPENSATION COMMISSION

RIDER TO LUMP SUM PETITION AND ORDER

The Petitioner is 49 years and10 months of age and therefore has a remaining life expectancy of 30 years and 7 months. After deducing attorney fees of $27,000.00 and litigation expenses of $184.52, the sum of $107,815.48 represents compensation for the loss of bodily function as contrasted to the periodic benefits within the meaning of 424(a) of the Social Security Act and should be reasonably deemed to represent the amount of $293.77 per month and $67.89 per week for the balance of the Petitioner's expected lifetime of 30 years and 7 months for loss of bodily functions.

8/26/15

Matthew J. Leonard – Pet. Atty

Patrick Dunne - Petitioner

Marya Savich – Res. Atty

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

ANDRAS, JOSEPH Case# **13WC015845**

Employee/Petitioner

BURLINGTON COAT FACTORY

Employer/Respondent

On 10/13/2015, 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 0.06% 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:

5536 DAN COLLINS LAW FIRM
7848 103RD ST
BRIDGEVIEW, IL 60455

1120 BRADY CONNOLLY & MASUDA
MARK VIZZA
10 S LASALLE ST SUITE 900
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Joseph Andras
Employee/Petitioner

v.

Burlington Coat Factory
Employer/Respondent

Case # **13** WC **15845**

Consolidated cases: **D/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 **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **September 28, 2015**. 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. [x] Is Petitioner entitled to any prospective medical care?

L. [x] What temporary benefits are in dispute?
[x] 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, 10/22/2012, 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 right shoulder and pulmonary/cardiology conditions of ill-being ***are*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**25,623.00**; the average weekly wage was $**492.75**.

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

The parties agreed to defer the issue of incurred medical expenses to a later hearing. Arb Exh 1.

Respondent shall be given a credit of $**22,244.15** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**22,244.15**.

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 $328.50/week for 70 5/7 weeks, commencing 1/17/13 through 3/24/13; 3/29/13 through 7/9/13; 1/2/14 through 11/2/14 and 9/9/15 through 9/28/15, as provided in Section 8(b) of the Act, with Respondent receiving credit for the $22,244.15 in benefits it paid prior to the hearing.

Respondent shall pay Petitioner temporary partial disability benefits of $35.17/week for 15 2/7 weeks, commencing on 3/30/15 through 6/20/15 and 8/16/15 through 9/8/15, as provided in Section 8(a) of the Act.

Petitioner is entitled to prospective care in the form of the surgical and pulmonary/cardiology consultations recommended by Dr. David Smith.

The issue of incurred medical expenses is deferred to a later hearing, pursuant to the parties' agreement.

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.

Molly C Mason
Signature of Arbitrator

10/13/15
Date

OCT 13 2015

Joseph Andras v. Burlington Coat Factory
13 WC 15845

Summary of Issues

The parties agree that Petitioner, a dock supervisor, sustained an accident on October 22, 2012, while working for Respondent. They also agree on certain periods of temporary total disability. As of the hearing, the issues in dispute included whether Petitioner established causation after January 7, 2015, whether he was temporarily partially disabled from January 14, 2015 through September 8, 2015, whether he was temporarily totally disabled from September 9, 2015 through the September 28, 2015 hearing and whether he is entitled to prospective care. Arb Exh 1.

The parties agreed to defer the issue of incurred medical expenses to a later hearing. Arb Exh 1.

Arbitrator's Findings of Fact

At the beginning of the hearing, Petitioner made a motion to amend the Application on its face to allege a date of accident of October 22, 2012 rather than October 23, 2012. Respondent did not object to the amendment. Accident is not in dispute. Arb Exh 1.

Petitioner testified he was injured when he lost his footing while standing on a chair, using a 2 x 4 to dislodge cardboard that was stuck in a trash compactor. Petitioner testified no ladder was available. After he lost his footing, he fell onto his right side, landing on his right elbow and shoulder. He testified he felt only slight pain at that time.

Petitioner first sought care at Ingalls Occupational on the day of the accident. The examining physician noted that Petitioner fell from a height of 5 to 7 feet earlier that day, landing on his right side. The physician noted that Petitioner complained of pain in his right shoulder, right lateral ribs, lower back and both knees. On back examination, the physician noted a limited range of motion and negative straight leg raising. On right shoulder examination, the doctor noted pain with abduction beyond 90 degrees and negative "drop arm" testing. The doctor noted no abnormalities on bilateral knee examination. The doctor ordered X-rays, imposed work restrictions and prescribed Naprosyn and Flexeril. PX 6.

Petitioner returned to Ingalls Occupational on October 25, 2012 and primarily complained of 7/10 right shoulder pain to Dr. Choudry. The doctor also noted complaints of low back, rib cage and bilateral knee pain. The doctor noted limited abduction and external rotation on right shoulder examination as well as healing abrasions on both knees. He continued the work restrictions and medications. PX 6.

Petitioner saw his internist, Dr. Stuck, on October 27, 2012 and requested an orthopedic referral due to the work accident. The doctor referred Petitioner to Dr. Perez-Sanz. He also started Petitioner on statins and directed him to stop smoking. PX 5.

On November 1, 2012, a physician's assistant at Ingalls Occupational recommended ice applications and physical therapy. On November 8, 2012, the same physician's assistant prescribed a right shoulder MRI. PX 5.

Petitioner underwent the MRI on November 15, 2012. The MRI, performed without contrast, showed supraspinatus and infraspinatus tendinosis without evidence of a rotator cuff tear and likely tears of the anterior and posterior superior labrum with an adjacent 3.4 centimeter paralabral cyst. PX 2a.

On November 15, 2012, the physician's assistant at Ingalls Occupational reviewed the MRI, prescribed Hydrocodone and referred Petitioner to an orthopedic surgeon.

On November 21, 2012, Petitioner saw Dr. Weber at Integrity Orthopedics. The doctor recorded a consistent history of the work accident and noted a complaint of right shoulder pain. He also noted that Petitioner had been performing restricted duty since the accident. On right shoulder examination, he noted pain with range of motion testing, no instability and positive O'Brien's testing. He reviewed the MRI and recommended therapy, noting surgery might be needed if Petitioner failed to improve. He released Petitioner to work with no overhead lifting or overhead work with the right arm. PX 2a.

Petitioner underwent an initial physical therapy evaluation at Ingalls Memorial Hospital on November 27, 2012. Petitioner began attending therapy on a regular basis thereafter. PX 6.

On December 10, 2012, Dr. Weber noted that Petitioner reported no improvement. He recommended surgery and imposed restrictions. PX 2a. Petitioner was discharged from therapy, pending the surgery, on January 15, 2013. PX 6-8.

On January 17, 2013, Dr. Weber operated on Petitioner's right shoulder at Ingalls Same Day Surgery. He performed a right shoulder arthroscopy with superior and anterior labral repair and subacromial bursectomy and decompression. In his operative report, he noted a less than 30% partial-thickness rotator cuff tear, a complete detachment of the superior labrum and moderate fraying of the anterior aspect of the labrum. He also documented areas of Grade 3 to nearly Grade 4 articular cartilage degeneration of the humeral head along with a smaller corresponding lesion on the glenoid. PX 2a.

Petitioner developed acute chest pain, leg pain and shortness of breath postoperatively. He presented at the Emergency Room at Advocate South Suburban Hospital on January 22, 2013. Following testing, he was diagnosed with a pulmonary embolism and possible pneumonia. He was started on Warfarin and Lovenox and was discharged from the hospital on January 26, 2013, with a recommendation of home health care. PX 5, 9.

Petitioner returned to Dr. Weber on January 28, 2013, with the doctor noting ongoing care for the post-operative embolism. The doctor recommended home exercises and physical therapy. He directed Petitioner to remain off work. PX 2a.

On January 29, 2013, Dr. Stuck obtained lab studies and directed Petitioner to stop smoking. PX 5.

On February 20, 2013, Dr. Weber noted that Petitioner described his shoulder as "still pretty uncomfortable." He refilled the Percocet, prescribed Ambien and directed Petitioner to continue therapy. He released Petitioner to light duty, with no use of the right arm other than for clerical work, as of February 25, 2013. PX 2a.

On February 26, 2013, Dr. Stuck noted that Petitioner was "breathing better" but "still smoking a lot." He increased the Coumadin, restarted the Lovenox and again urged Petitioner to quit smoking. PX 5.

On March 20, 2013, Dr. Weber noted that Petitioner described his shoulder as "slightly better but still sore and tight." He prescribed Norco and released Petitioner to restricted duty, with no overhead reaching and lifting of 10 pounds to the waist with the right arm, as of March 21, 2013. He indicated he would consider injecting the shoulder at the next visit if Petitioner remained symptomatic. PX 2a.

Petitioner returned to Integrity Orthopedics on March 29, 2013, and saw Dr. Joy. The doctor noted that Petitioner complained of worsening, radiating right shoulder/arm pain, along with hand swelling, since resuming work. On examination, the doctor noted a severely limited range of right shoulder motion. He described Petitioner's right hand and wrist as normal. He injected the right shoulder joint, prescribed Norco and took Petitioner off work for two weeks. He indicated Petitioner should continue therapy but avoid any strengthening exercises. PX 2a.

On April 16, 2013, Petitioner saw Dr. Weber and complained of significant pain in his right shoulder radiating down the arm into the elbow. The doctor noted no right elbow abnormalities on examination. He prescribed Lyrica and Norco. He indicated Petitioner should refrain from therapy for one week to allow the Lyrica to take effect. He released Petitioner to restricted duty, with no use of the right arm for other than clerical work, as of April 15, 2013. PX 2a.

On May 15, 2013, Petitioner complained to Dr. Weber of numbness and tingling in his right arm and hand. The doctor diagnosed adhesive capsulitis and injected the right subacromial space. He discontinued the Lyrica, refilled the Norco and directed Petitioner to stop therapy for two weeks. He continued the previous restrictions and indicated he might give consideration to an EMG. PX 2a.

On May 29, 2013, Dr. Weber indicated that Petitioner reported worsening right arm pain and an inability to use the arm much. The doctor recommended an EMG and manipulation under anesthesia. He continued the previous restrictions. PX 2a.

Petitioner underwent the recommended EMG on June 10, 2013. Dr. Holmes conducted the test. He recorded a consistent account of the work accident and noted that Petitioner complained of right shoulder pain as well as numbness and tingling from the shoulder down to the hand. He found no electrical evidence of any active right brachial plexopathy, right cervical radiculopathy, right ulnar neuropathy or right median neuropathy. PX 2a.

On June 12, 2013, Dr. Weber noted the negative EMG results and again recommended manipulation under anesthesia. He continued the previous restrictions. PX 2a.

Dr. Weber performed the right shoulder manipulation on June 27, 2013. PX 2a.

On July 5, 2013, Petitioner returned to Dr. Weber and reported his shoulder initially felt good after the manipulation but had since stiffened up again. The doctor recommended that Petitioner resume physical therapy. He imposed restrictions of no overhead lifting and no lifting over 20 pounds to waist level. PX 2a.

Petitioner testified he resumed light duty on July 10, 2013. His light duty tasks included stocking light weight items such as clothing and scanning trucks in at the dock. These duties were different than those he had performed as a dock supervisor.

On July 26, 2013, Petitioner informed Dr. Weber that his range of motion had improved but that his right shoulder was "still very sore." The doctor directed Petitioner to continue home exercises. He released Petitioner to full duty as of July 29, 2013. PX 2a.

Petitioner continued to see Dr. Weber on a fairly regular basis thereafter. On September 13, 2013, Petitioner told the doctor his shoulder had been "locking up over the last few weeks." The doctor administered an injection at the next visit, on October 6, 2013. The doctor informed Petitioner that his ongoing symptoms were likely secondary to the significant arthritis documented at the time of the arthroscopy. On October 16, 2013, the doctor issued temporary work restrictions after Petitioner complained of increased symptoms secondary to heavy lifting. On November 6, 2013, the doctor recommended an MR arthrogram. The arthrogram, performed on November 20, 2013, showed no rotator cuff or biceps abnormalities and tearing involving the base of the entire anterior and superior portions of the labrum. Following this study, the doctor recommended additional surgery but indicated Petitioner would require clearance due to the previous pulmonary embolism. PX 2b.

Dr. Weber performed another right shoulder surgery, including a rotator cuff repair, biceps tenotomy and subpectoral biceps tenodesis, on January 2, 2014. In his operative report, he documented a detachment of the superior labrum and progression of the previously noted rotator cuff tear. PX 2b.

Dr. Weber released Petitioner to clerical work as of February 12, 2014. PX 2b.

Following the January 2, 2014 surgery, Petitioner continued to complain of right shoulder pain and weakness, along with difficulty sleeping on his right side. Dr. Weber injected the right shoulder on June 25, 2014. On July 9, 2014, the doctor recommended another manipulation under anesthesia. On July 31, 2014, the doctor performed a diagnostic arthroscopy and a manipulation under anesthesia. On September 17, 2014, the doctor provided Petitioner with samples of Celebrex.

On October 22, 2014, Dr. Weber noted that Petitioner complained of increased shoulder pain and two episodes of shoulder "locking." After re-examining Petitioner, the doctor refilled his Hydrocodone, prescribed Mobic and released Petitioner to modified duty, with no overhead lifting, no lifting over 15 pounds to waist level and no pushing/pulling with the right arm until November 3, 2014. The doctor indicated Petitioner would be able to resume full duty as of November 3, 2014. PX 2b.

Petitioner testified that Respondent terminated his light duty work due to "underperformance" on November 2, 2014.

On November 19, 2014, Dr. Weber noted that Petitioner reported "having a lot of pain lately" and being unable to tolerate Mobic due to an allergic reaction. The doctor administered another injection, refilled the Gabapentin and Hydrocodone and released Petitioner to full duty. He indicated he would consider ordering a functional capacity evaluation at the next visit if Petitioner failed to improve. PX 2b. RX 1.

On December 3, 2014, Dr. Weber noted that Petitioner experienced only a week of pain relief following the injection. He prescribed Norco and Skelaxin and indicated Petitioner could resume full duty. PX 2b.

On January 7, 2015, Dr. Weber noted that Petitioner complained of increased right shoulder pain "after shoveling snow recently." At the hearing, Petitioner testified he, his wife and his son were shoveling, after a "light dusting of snow," when he felt pain. Petitioner testified he stopped shoveling after he noticed the pain.

When Dr. Weber examined Petitioner's right shoulder on January 7, 2015, he noted active flexion and abduction to 90 degrees, internal rotation to L3 and external rotation to 60 degrees. He noted moderate pain with passive flexion to 140 degrees, "limited by guarding." He noted strength of +5/5 external and internal rotators and -5/5 supraspinatus. He advised Petitioner to stop smoking and continue his home exercises. He found Petitioner to be at maximum medical improvement and released him to full duty. He indicated Petitioner could return to him on an "as needed" basis. He added the following comment:

> "I discussed with [Petitioner] that he has some arthritis in

> the shoulder which may be contributing to his pain. His arthroscopic evaluation in July revealed his rotator cuff repair to be intact and manipulation under anesthesia revealed no true contracture. Therefore, I do not have any objective reason to continue restrictions and I do not have any further intervention to recommend."

RX 2.

Petitioner testified that, when Dr. Weber released him from care, he was still in a lot of pain and having difficulty with routine activities such as brushing his teeth and lifting dishes from overhead cupboard shelves. He discussed the idea of a second opinion with Dr. Weber and made an appointment to see Dr. Smith. He testified he could not get in to see Dr. Smith right away due to a delay in securing authorization from workers' compensation.

Petitioner testified he began working as a security guard at Lydia Health Care on January 14, 2015. His duties included answering telephones and checking in patients. He was not required to perform any lifting or overhead work.

Petitioner denied reinjuring his right shoulder at any point after he started working for Lydia Health Care.

On February 4, 2015, Petitioner saw Dr. Smith. The doctor's letterhead reflects he is affiliated with Bone and Joint Physicians. Dr. Smith indicated that a rehabilitation nurse was present during the appointment. He recorded a consistent history of the work accident and subsequent treatment. He described Petitioner as right-handed. He noted that Petitioner complained of constant right shoulder pain, 5/10 at rest and 10/10 with activity, as well as weakness of the arm. He indicated that Petitioner reported managing his symptoms with Norco, as prescribed by Dr. Weber.

On examination, Dr. Smith noted active flexion and abduction of 90 degrees bilaterally, internal rotation to 45 degrees, external rotation to 50 degrees, positive Neer's testing and positive "drop arm" testing. He noted that Petitioner had undergone multiple injections and was a smoker. His differential diagnoses included adhesive capsulitis and reflex sympathetic dystrophy. He recommended an MR arthrogram. He did not comment on work capacity. PX 1a.

The physician who performed the MR arthrogram on March 5, 2015 described the results as "slightly compromised due to motion artifact." He noted post-operative changes as well as a SLAP tear, a suspected inferior labrum tear and "mild fraying or shallow undersurface tear in the distal supraspinatus tendon with focal interstitial tear distally." PX 1a.

On March 9, 2015, Dr. Smith reviewed the MR arthrogram results with Petitioner and recommended a short course of therapy pending a consultation by Dr. Romeo. He again

documented the presence of a rehabilitation nurse. He did not comment on work capacity. PX 1a.

At Respondent's request, Petitioner saw Dr. Forsythe for purposes of a Section 12 examination on March 30, 2015. Dr. Forsythe's letterhead shows he is affiliated with Midwest Orthopaedics at Rush.

In his report, Dr. Forsythe described Petitioner as "congenial throughout the entirety of his examination."

Dr. Forsythe indicated he reviewed records from Ingalls Occupational, Dr. Weber and Dr. Smith, along with extensive physical therapy notes.

Dr. Forsythe noted that Petitioner described his job at Respondent as requiring him to frequently lift 100 to 150 pounds. He also noted that Petitioner described his pain level as 5-6/10 at baseline and reaching 8/10 depending on his activity level. He indicated that Petitioner reported taking Norco for pain. He stated that, according to Petitioner, Dr. Weber's last recommendation was to return to work with no use of the right arm. He described Petitioner as right-handed and a longtime smoker.

Dr. Forsythe noted no abnormalities on cervical spine examination. On right shoulder examination, he noted trace supraspinatus and infraspinatus atrophy and mild to moderate deltoid atrophy. He described the left shoulder musculature as normal. He also noted scapular winging only on the right side.

With respect to right shoulder range of motion, Dr. Forsythe noted 95 degrees of active, painful scaption, 120 degrees of passive scaption, 50 degrees of external rotation and internal rotation to L2. On the left, the doctor noted 165 degrees of scaption, 65 degrees of external rotation and internal rotation to T10.

With strength testing, Dr. Forsythe noted 5/5 supraspinatus, 4+/5 infraspinatus, 5/5 subscapularis, 4+/5 biceps and 4+/5 triceps strength. He indicated that Petitioner demonstrated "give way effort" with infraspinatus biceps, triceps and supination strength and "intermittent wincing" with passive range of motion.

Dr. Forsythe interpreted the March 5, 2015 MR arthrogram as showing typical post-operative changes and a grossly intact rotator cuff and labrum, as well as evidence of a biceps tenodesis.

Dr. Forsythe opined that "there are no non-occupational, pre-existing conditions contributing to [Petitioner's] ability to return to work." He characterized all of the treatment to date as reasonable and necessary. He saw no need for additional treatment, commenting as follows:

> "The claimant has already undergone four arthroscopic procedures; further intervention would not be of significant clinical value. Furthermore, the claimant manifests mild symptom magnification. In my opinion, he has reached a therapeutic clinical plateau."

Dr. Forsythe found Petitioner capable of working full-time subject to the following restrictions: no overhead lifting, no repetitive use of the right arm and no lifting over 5 pounds. He indicated that Petitioner should undergo a functional capacity evaluation if these restrictions could not be accommodated. He found Petitioner to be at maximum medical improvement. RX 4.

Petitioner returned to Dr. Smith on June 22, 2015 and provided the doctor with a copy of Dr. Forsythe's report.

Dr. Smith described his examination findings as unchanged. He recommended a functional capacity evaluation and again recommended an evaluation by Dr. Romeo, noting the doctor's expertise in the area of SLAP injuries and biceps tenodesis. He indicated that Petitioner described Respondent as "cutting off" his salary and terminating him despite the lack of a work release. He also indicated that Petitioner reported having found a lighter job. PX 1a.

Petitioner underwent the functional capacity evaluation at ATI Physical Therapy on July 13, 2015. The evaluator, Jason Lemley, ATC, CWcHP [hereafter "Lemley"], rated the evaluation as valid.

Lemley found that Petitioner demonstrated physical abilities consistent with the medium physical demand level, meaning he was capable of occasionally lifting 50 pounds from chair to floor level, 60 pounds from desk to chair level and 23 pounds above shoulder level. Lemley noted that, when Petitioner performed unilateral lifting from desk to chair level, he was able to occasionally lift 28 pounds with his affected right arm and 51 pounds with his unaffected left arm. While performing unilateral lifting above shoulder level, Petitioner was able to occasionally lift 17 pounds with his affected right arm and 28 pounds with his unaffected left arm.

Lemley indicated that Petitioner reported having worked as a "dock supervisor" for Respondent. Lemley stated that this job would typically be considered a medium physical demand level occupation according to the Department of Labor's Dictionary of Occupational Titles [DOT] but that Petitioner reported having to lift and move furniture weighing up to 150 pounds. Lemley stated that this reported lifting requirement would classify Petitioner's job as a very heavy physical demand level occupation. He concluded that Petitioner's current abilities met the level set by the DOT but fell below his self-described job duties.

Lemley noted that Petitioner complained of ongoing right shoulder pain that increased with activity. He noted that Petitioner demonstrated limitations with lifting and terminated

these activities with reports of right shoulder pain. He also noted that Petitioner reported left knee pain with stairs and squatting. He recommended that Petitioner perform these activities on an occasional basis. He also recommended that Petitioner follow up with his physician "to discuss all options." RX 3.

On September 4, 2015, Dr. Smith noted that Petitioner complained of some chest and pulmonary issues. He also noted that Petitioner had discontinued the previously prescribed anticoagulants because he had lost his health benefits due to being terminated at his previous job. Dr. Smith recommended that Petitioner see Dr. Koslov, a cardiologist, noting that some patients who develop emboli can also develop pulmonary hypertension, which can be life-threatening. With respect to the right shoulder, Dr. Smith noted that Petitioner had not seen Dr. Romeo due to what Petitioner described as a conflict of interest. He recommended that Petitioner instead see Dr. Nigro, a fellowship-trained shoulder surgeon in his group. He injected Petitioner's shoulder with cortisone and indicated he would wait to see what Dr. Nigro recommended. He explained to Petitioner that "one does become rather pessimistic as to the prognosis after four operations as to whether he can be returned to a more normal status with his shoulder." PX 1b. PX 10.

Petitioner testified he wants to pursue the cardiology and shoulder referrals Dr. Smith made on September 4, 2015.

Petitioner identified the documents in PX 3 and PX 11 as his paycheck stubs from Lydia Health Care. At Lydia, he earned $11.00 per hour and worked 40 hours per week. The stubs in PX 3 cover the pay periods beginning January 4, 2015 and ending June 20, 2015. The two check stubs in PX 11 cover the pay periods August 16, 2015 through August 29, 2015 and August 30, 2015 through September 12, 2015. The last stub reflects year to date gross earnings of $14,250.50.

Petitioner testified his right shoulder is "not good." He wakes up due to pain three to five times per night. He has difficulty reaching overhead to retrieve items. He also has difficulty putting on his shoes. Sometimes he feels a "bolt" of extreme pain in the shoulder. He still takes Norco as needed. On a bad day, he takes 3 to 4 Norcos. On a good day, he takes 1 to 2. Weather conditions affect his symptoms. He is able to tell when it is going to rain because his shoulder gets stiff and tender.

Under cross-examination, Petitioner testified that Dr. Weber was aware of his job duties when he released him to full duty in November 2014. Petitioner testified that, when Dr. Weber released him in January 2015, he told Petitioner he had done all he could do within the confines of workers' compensation.

Petitioner acknowledged his job at Respondent was also titled "receiving supervisor." Petitioner agreed with most but not all of the duties outlined in RX 5, a written job description. He was not required to help with recruiting or hiring, as RX 5 indicates. He regularly performed lifting. Lydia Health Care terminated him based on its "hands free" policy. Per that policy, no

employee of Lydia Health Care could touch a patient. When he saw Dr. Smith on September 4, 2015, the doctor referred him to a surgeon other than Dr. Romeo because Dr. Romeo is a partner of Respondent's examiner, Dr. Forsythe. He saw his primary care physician for about a year after being diagnosed with the pulmonary embolism. Dr. Smith recommended consultations for his cardiac/pulmonary issues and "kind of" recommended more shoulder surgery. He described his job duties to the functional capacity evaluator. He does not believe the evaluator had access to a formal job description.

On redirect, Petitioner explained he put his hands on a patient at Lydia Health Care after the patient punched him in the nose.

No one testified on behalf of Respondent. In addition to the exhibits previously described, Respondent offered into evidence RX 5, a one-page description of a "receiving supervisor" job. RX 5 reflects that this job entailed many duties, including supervising receiving associates, "managing time wisely in a fast-paced environment," operating all equipment necessary to perform the job, the "ability to handle multi-million dollar inventories" and the "ability to stand for extended periods, and to move and handle merchandise, which entails lifting, and perform all functions as set forth above." The exact lifting requirements are not described.

Arbitrator's Credibility Assessment

Petitioner came across as a hard-working individual who wants to get better. His description of the lifting he performed for Respondent was detailed and believable. The Arbitrator finds credible his testimony that Respondent was sometimes short-staffed and that he regularly lifted pieces of furniture (such as cribs, desks and dressers) weighing up to 150 pounds.

The Arbitrator finds credible Petitioner's testimony that his job at Lydia Health Care was light in nature. Also credible was Petitioner's denial of any shoulder re-injuries during his tenure at Lydia Health Care.

Dr. Weber noted guarding in his last few treatment notes. Dr. Smith noted no inconsistencies. The functional capacity evaluator rated the evaluation as valid.

Despite noting mild symptom magnification and some give way effort on strength testing, Respondent's examiner, Dr. Forsythe, recommended significant work restrictions, including no lifting over 5 pounds, no repetitive use of the (dominant) right arm and no overhead work. RX 4.

Arbitrator's Conclusions of Law

<u>Did Petitioner establish causal connection? Is Petitioner entitled to prospective care?</u>

The Arbitrator finds that Petitioner established a causal connection between his undisputed work accident of October 22, 2012 and his current right shoulder condition of ill-being.

In finding causation as to the right shoulder, the Arbitrator relies on the following: 1) the fact that none of the records in evidence reflect any pre-accident right shoulder problems or treatment; 2) the fact that Petitioner was able to perform a variety of physical tasks, including significant lifting, while working for Respondent before the accident; 3) Petitioner's credible account of the accident; 4) the initial treatment records, which reflect that Petitioner fell from a height of 5 to 7 feet, landing on his right side; 5) the right shoulder MRI and MR arthrogram results; 6) the various operative reports; and 7) Petitioner's credible denial of any new right shoulder injuries after January 14, 2015, the date he began working for Lydia Health Care.

While Dr. Weber indicated that underlying arthritis could be a cause of Petitioner's persistent pain, there is no evidence indicating that this arthritis was causing symptoms prior to the work accident. The Arbitrator views Petitioner's current right shoulder condition as multi-factorial, with both the underlying arthritis and the work accident contributing to the condition. Under Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193, 205 (2003), an injured worker need only establish that his accident was a cause of his condition of ill-being. He is not required to show that the accident was a significant factor. Nor need he eliminate all other possible contributing causes.

The Arbitrator does not view the snow shoveling incident of January 2015 as an intervening event sufficient to sever the causation chain. While Petitioner complained of increased right shoulder pain to Dr. Weber following this incident, he had also reported increased pain and "locking" of the shoulder at previous visits. In fact, all of Dr. Weber's office notes reflect ongoing symptoms, despite the surgeries, manipulations, therapy and injections. When Dr. Weber last saw Petitioner, on January 7, 2015, he noted a reduced range of active motion and moderate pain with passive range of motion. PX 2b. There is no evidence indicating Dr. Weber ever reviewed the MR arthrogram that Petitioner underwent two months later.

With respect to the right shoulder, the Arbitrator further finds that Petitioner established causation as to the need for the significant work restrictions imposed by Respondent's examiner, Dr. Forsythe. The Arbitrator assigns more weight to these restrictions than to those targeted by the functional capacity evaluator. The Arbitrator notes that Dr. Forsythe recommended Petitioner undergo a functional capacity evaluation only if his proposed restrictions could not be accommodated. RX 4.

The Arbitrator also finds that Petitioner established causation as to the need for the surgical consultation with Dr. Nigro recommended by Dr. Smith. The Arbitrator views Dr. Weber's and Dr. Forsythe's findings of maximum medical improvement premature, given Petitioner's ongoing symptoms. It appears to the Arbitrator that Respondent approved the

consultation with Dr. Smith, based on Petitioner's testimony concerning the need for authorization and the doctor's notation that a nurse case manager attended the initial and second appointment. Dr. Smith candidly discussed the pitfalls of operating on a patient who has already undergone four procedures. He expressed no interest in assuming this task but did not rule out the possibility that another surgeon might have an idea as to how to proceed. He initially targeted Dr. Romeo but, after a conflict arose, recommended his associate, Dr. NIgro, noting the doctor's fellowship training. The Arbitrator awards prospective shoulder-related care in the form of a consultation with Dr. Nigro or any other shoulder specialist recommended by Dr. Smith and any testing or treatment recommended by that specialist. In the Arbitrator's view, Petitioner should not be precluded from investigating the possibility of improvement, given that the injury involves his dominant arm and he potentially has a decade of work ahead of him.

The Arbitrator also finds that Petitioner established causation as to his pulmonary embolism and ongoing need for anti-coagulants. There is no evidence suggesting that Petitioner had a history of emboli before the accident. Moreover, the pulmonary embolus was diagnosed within a very short period after the January 2013 shoulder surgery. Respondent's examiner, Dr. Forsythe, characterized the embolus as "post-operative." RX 4. While Petitioner's cigarette usage may have also been a contributing factor, an injured worker need only prove that his accident, or treatment required as a result of that accident, was a cause of his condition. Sisbro, Inc. v. Industrial Commission, 207 Ill.2d 193, 205 (2003). There is no dispute as to the need for the January 2013 shoulder surgery. Dr. Forsythe specifically found that all of the treatment to date, including the surgeries and manipulations, was reasonable and necessary. RX 4.

Relative to the pulmonary condition, the Arbitrator awards prospective care in the form of pulmonary and/or cardiology consultations, as recommended by Dr. Smith, and any anti-coagulation regimen recommended during said consultations.

Is Petitioner entitled to temporary partial disability benefits?

At the hearing, Petitioner claimed temporary partial disability benefits from January 14, 2015 (the date he began working for Lydia Health Care) through September 8, 2015 (apparently the date he was terminated by Lydia Health Care). Respondent disputes this claim, citing Dr. Weber's full duty releases in November and December 2014 and January 2015.

The Arbitrator finds that Petitioner is entitled to temporary partial disability benefits from March 30, 2015 (the date on which Dr. Forsythe recommended significant work restrictions, including no overhead work, no repetitive use of the right arm and no lifting over 5 pounds) through June 20, 2015 and from August 16, 2015 through September 8, 2015, a period of 15 2/7 weeks. There is no evidence indicating that Respondent offered Petitioner work within Dr. Forsythe's restrictions. Petitioner credibly testified that the security-related tasks he performed at Lydia Health Care involved no lifting and no overhead work. The Arbitrator declines to award temporary partial disability benefits from January 14, 2015 through March

29, 2015, as originally requested by Petitioner, based on Dr. Weber's full duty release. While that release is very much at odds with Dr. Forsythe's stringent restrictions, Petitioner acknowledged that Dr. Weber was aware of his job duties and there is no evidence that any other physician imposed restrictions between January 14, 2015 and March 30, 2015. The Arbitrator also declines to award temporary partial disability benefits from June 21, 2015 through August 15, 2015, as Petitioner did not offer any evidence of earnings during that period. PX 3, 11.

The Arbitrator awards temporary partial disability benefits at the rate of $35.17 per week. This figure represents 2/3 of the $52.75 difference between Petitioner's weekly gross wage of $492.75 at Respondent (Arb Exh 1) and his weekly gross wage of $440.00 ($11.00 x 40 hours) at Lydia Health Care.

Is Petitioner entitled to temporary total disability benefits from September 9, 2015 through the hearing of September 28, 2015?

The Arbitrator has already found that Petitioner established causation as to his current right shoulder and pulmonary conditions of ill-being and as to the need for the consultations Dr. Smith has recommended. The Arbitrator views Petitioner's causally related conditions as unstable as of the hearing. Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010). Based on those findings, along with the stringent work restrictions Dr. Forsythe recommended on March 30, 2015 and Petitioner's explanation of his departure from Lydia Health Care, the Arbitrator awards temporary total disability benefits at the rate of $328.50 per week from September 9, 2015 through the hearing of September 28, 2015, a period of 2 6/7 weeks.

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

MONTERO, JUAN Case# **13WC041484**

Employee/Petitioner

CITY OF CHICAGO

Employer/Respondent

On 10/9/2015, 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 0.06% 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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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
19(b)/8(a)

Juan Montero
Employee/Petitioner
v.
City of Chicago
Employer/Respondent

Case # **13** WC **41484**

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 **6/9/15**. 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. [ ] Should penalties or fees be imposed upon Respondent?

N. [x] Is Respondent due any credit?

O. [ ] Other

FINDINGS

On the date of accident, **12/11/13**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**67,459.41**; the average weekly wage was $**1,335.76**.

On the date of accident, Petitioner was **44** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**3,562.16** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**3,562.16**.

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

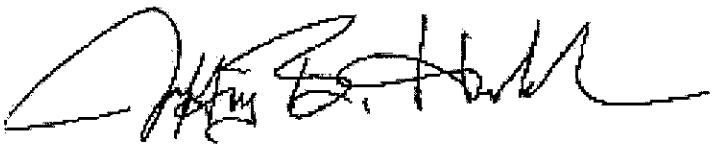
ORDER

Petitioner's claim for TTD and incurred and prospective medical expenses is denied. Petitioner failed to prove a causal connection between the accidental injury of December 11, 2013 and his condition of ill-being regarding his right shoulder and cervical spine.

In no instance shall this award be a bar to a 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

October 9, 2015
Date

ICArbDec19(b)

OCT 9 - 2015

FINDINGS OF FACT

The Parties proceeded to hearing on June 9, 2015, with disputed issues as to accident, causation, incurred and prospective medical expenses and TTD benefits. At the beginning of the trial, Petitioner amended the Application to add: "Right Shoulder/arm; Man as a Whole" to the claimed body parts affected (in addition to the previously claimed "Face, Lip, Neck". (ArbEx. 2) Petitioner also voluntarily dismissed Case Number 13 WC 41769.

Petitioner was employed by Respondent as a laborer in the Department of Streets and Sanitation for 15 years. He was classified as a sanitation laborer/engineer.

Petitioner testified that on December 11, 2013, he loaded a garbage cart onto a "flipper" of a garbage truck. The cart had partially emptied into the truck when it fell backward. At trial, Petitioner testified he was hit in the face and right shoulder and his neck snapped back. The incident report he signed on the date describes the injuries as "a cut on his top lip and pain in the face and noise (sic)." (Rx 7) The incident report does not mention the neck or right shoulder as being injured. Petitioner sought treatment at Mercy Works that same day, where medical records from December 11, 2013 reflect Petitioner "was loading a cart into the garbage truck, the flipper of the cart came loose it hit him on the face." The records further state "he denies any neck pain or any radicular pain." (Px 2) Petitioner was diagnosed with "upper lip contusion and abrasion" and Dr. Nagib Ali found "in view of the minimal findings on exam the patient was returned back to work." He was scheduled for a follow-up on Monday, December 16, 2013. (Px 2) Mercy Works records show that on December 20, 2013, Petitioner called Mercy Works and advised he had another injury and was seeing his primary doctor. (Px 2)

Petitioner testified that he worked his scheduled shifts the following two days, Thursday December 12th and Friday December 13th. He was off work for the weekend. Petitioner came into work on Monday, December 16, 2013, and completed another incident report. The incident report completed on December 16, 2013, signed by Petitioner, states: "Per Laborer Juan Montero went home Friday came back to work on Monday and said his right shoulder was in pain and discomfort to work Monday 12/16/2013." (Rx 8)

On December 16, 2013, Petitioner reported to U.S. Healthworks, where he saw Dr. Stephen Bunting for pain in his right shoulder. The medical records reflect that Petitioner reported on this date:

> "he has had some symptoms of pain and tenderness in the anterior right shoulder for the past six months, off and on, and he has been doing his regular work, pushing and pulling garbage containers. On Friday, at the end of his shift, he felt more significant pain after his shift." (Rx 6)

There is no mention of the garbage flipper incident. Petitioner had an X-ray that day of the right shoulder which showed "no evidence of fracture, dislocation, or other bony abnormality. The acromioclavicular joint appears normal…" The radiologist's report says that the study was of the left shoulder, but the remainder of the records say that the x-ray was of the right shoulder. (Rx 6).

Petitioner was returned to work with restrictions regarding pushing and pulling with the right arm not to exceed 20 pounds. (Px 3)

On Dec. 17, 2013, Petitioner began treating with his chiropractor, James Egan, D.C. Chiropractor Egan's records from that date state: "Pt related of gradually increasing R shoulder pain x 2 month. Pt denies specific injury and states pain is from repetitive use at work." (Px 5) Chiropractor Egan also completed a separate office note for that same date of service, Dec. 17, 2013, which states, "PT related of being injured at work on 12/11/13. Pt states he was loading cart onto garbage truck, when cart struck him in the face, causing his head to jerk back." (Px 4) There is no mention of the right shoulder being struck in these histories. Petitioner also complained of neck pain and numbness in both arms. The Arbitrator finds it troubling that Dr. Egan keeps separate charts for the neck and shoulder and issues (and charges for) reports for both body parts (injured allegedly in the same accident). (Px 4 & 5)

Petitioner then began treating with Dr. Theodore Fisher at the Illinois Bone & Joint Institute. The first visit is on January 8, 2014, but there are no records regarding that visit. On Feb. 28, 2014, Dr. Fisher charted that Petitioner was seen in follow-up for reevaluation of neck pain, right shoulder pain and recurrent forearm and hand radicular symptoms. The symptoms were said to have begun approximately December 11, 2013, when a garbage can fell on the patient. Dr. Fisher diagnosed Petitioner with cervicalagia, right shoulder internal derangement, and C5-6 degenerative disc disease and ordered MRIs of the c-spine and right shoulder. (Px 6)

On March 6, 2014, Petitioner had MRIs done of his neck and right shoulder. The MRI of the C-spine showed at the C5-6 level mild to moderate bilateral foraminal stenosis more on left due to disc osteophyte complex, and at C4-5 level mild bilateral foraminal stenosis more on right due to disc osteophyte complex. The MRI of the right shoulder showed "mild to moderate degenerative changes of the acomioclavicular joint effacing the fat over the musculotendinous junction of supraspinatus and may produce positional impingement." Tenosynovitis of the long head biceps tendon was present, along with a focal defect involving the medial aspect of the humeral head, and tendinosis of the subscapular tendon and minimal glenohumeral joint effusion. (Px 7)

Petitioner then began treatment with Dr. Gabriel Levi at the Illinois Orthopedic Network. On March 26, 2014, Petitioner reported he was injured "when he was raising a garbage can into a truck, and the garbage can fell back and hit him in the face." Dr. Levi further wrote, "the garbage can apparently hit his shoulder as well." Dr. Levi recommended physical therapy for Petitioner's neck and shoulder. Petitioner also treated with Dr. Murtaza, who noted on June 5, 2014, that the patient denied any radiation of pain from his neck down his upper extremities. Chart notes from this provider document that Petitioner is taking the anti-seizure medication, Depakote. On June 18, 2014, Dr. Levi recommended arthroscopic surgery with a possible biceps tenodesis and a subacromial decompression. (Px 8)

On July 29, 2014, Petitioner was seen by Dr. Gregory L. Primus of the Chicago Center for Sports Medicine and Orthopedic Surgery for a §12 examination regarding the right shoulder. Dr. Primus reviewed the medical records and examined Petitioner and found Petitioner had some degeneration and tenosynovitis in his right shoulder. Dr. Primis also noted the medical history of right anterior shoulder pain reported off and on 6 months prior to the injury at work. Dr. Primus found that Petitioner's symptoms "are likely due to degeneration at the AC joint. He has a significant pre-existing shoulder condition that is related to a posterior shoulder dislocation with

location…". Dr. Primus noted a posterior Hills-Sachs lesion, indicating chronic dislocation of the shoulder. Additionally, Petitioner was noted to have a history of seizures that pre-date the incident, starting in February 2013. Dr. Primus further opined that Petitioner's shoulder injury "most likely occurred during a seizure episode which is classic for the more unusual posterior shoulder dislocations." Dr. Primus found the treatment for his right shoulder was not related to the work incident, and Petitioner did not require any formal treatment and should be allowed to return to work full duty without restrictions. (Rx 2)

Dr. Primus also examined Petitioner for his cervical spine pain on September 23, 2014. During this IME, Petitioner told Dr. Primus he had cervical pain that started around the same time as the work injury, and his neck pain progressively worsened. At the time of the IME, Dr. Primus said Petitioner was not experiencing much pain. Dr. Primus believed Petitioner "has a pre-existing cervical spine disease, chronic in nature, and involving a hyperlordosis deformity with apex at C6-7, and disc herniation at C5-6 and bulging at C4-5. These appear to be chronic and long-standing changes." Dr. Primus found no causal connection between Petitioner's extensive and pre-existing degenerative spine condition and the work injury. Dr. Primus found there was "no clear indication after the injury that he had sustained specific neck pain with associated upper extremity complaints." Dr. Primus found Petitioner could perform his regular job duties in regard to his cervical spine. Petitioner was already working full duty at the time of this IME. (Rx 2)

Petitioner had an ESI to his neck on December 18, 2014. On January 15, 2015, Dr. Murtaza stated in his records that "the patient would benefit from return to work" and was to follow up as needed. Notable improvement in the neck pain complaints was charted. (Px 8)

At the arbitration hearing, Petitioner testified that he does not have as much pain in his neck, but the main symptoms are in his right shoulder. He has pain and popping in the right shoulder. He has numbness in his right hand and less flexibility in the shoulder. He denied prior injuries to his neck or right shoulder. He never sought medical treatment for his neck or right shoulder before December 11, 2013.

While the medical records contain several vague mentions of a seizure condition that Petitioner has, unfortunately no testimony or medical records relating to the seizure condition were submitted. It is notable that when Petitioner saw Dr. Murtaza on April 24, 2014, it was charted that the patient was a poor historian due to confusion and a very poor memory. He was having seizure activities and had seen a neurologist who told him not to drive. He had difficulty getting place to place and had poor recall of current events and of the history of injury. (Px 8)

Petitioner has been working full duty since August 21, 2014. Petitioner is seeking the right shoulder treatment recommended by Dr. Levi in June of 2014.

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

Regarding Issue (C), Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? and Issue (F) Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrator finds:

Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on December 11, 2013, based upon Petitioner's testimony and the medical records.

Regarding causation, it appears that Petitioner sustained injuries to his face resulting in an abrasion to his upper lip as a result of the accident. Petitioner has failed to prove that the claimed injuries to his neck and right shoulder are causally related to the December 11, 2013 accident.

Petitioner reported to Mercy Works on the date of incident and only complained of pain to his face. The Mercy Works records from December 11, 2013 further state Petitioner "denies any neck pain or any radicular pain." Petitioner also signed an incident report on that date, stating that he "was loading a cart into the garbage truck, the flipper of the cart came loose it hit him on the face." Neither record supports Petitioner's testimony that the cart also hit his shoulder, or caused his neck to jerk back, as he testified on the date of trial. There is no mention of a neck injury or a shoulder injury in the initial medical records. Obviously, Respondent's clinic would have examined Petitioner thoroughly if an injury beyond the facial abrasion had been mentioned, given the mechanism of a cart falling off a garbage truck and striking Petitioner.

Petitioner was then able to work for 2 full days as a sanitation laborer without complaining of pain or seeking medical attention. He sought no medical care over the weekend.

Petitioner then came into work on December 16, 2013 and reported right shoulder pain. The incident report that Petitioner signed on that date did not reference the December 11, 2013 incident, stating: "Per Laborer Juan Montero went home Friday came back to work on Monday and said his right shoulder was in pain and discomfort to work Monday 12/16/2013." Medical records from Dr. Bunting at U.S. Healthworks from that date relate the shoulder pain to a pre-existing condition, not a specific date of injury, as they state:

> "he has had some symptoms of pain and tenderness in the anterior right shoulder for the past six months, off and on, and he has been doing his regular work, pushing and pulling garbage containers. On Friday, at the end of his shift, he felt more significant pain after his shift."

At this point, Petitioner had several opportunities to complain of right shoulder and neck pain that he testified started with the December 11, 2013 incident, but failed to do so.

Petitioner began treating with a chiropractor, James Egan, D.C., who has two separate records for the same date of service December 17, 2013. One of the reports states that Petitioner had gradually increasing pain of his right shoulder for the past two months, and he denied a specific injury. Peculiarly, the other note from Dr. James Egan states that the patient injured his neck on 12/11/13 at work, when a cart struck him in the face causing his head to jerk back. There is no mention of the right shoulder being struck in either set of records.

Dr. Levi charted that the patient was injured "when he was raising a garbage can into a truck, and the garbage can fell back and hit him in the face", Petitioner reported he was injured "when he was raising a garbage can into a truck, and the garbage can fell back and hit him in the face", "the garbage can apparently hit his shoulder as well."

The medical records show significant pre-existing degenerative disease in the Petitioner's neck. Further, the records document a pre-existing condition that was causing Petitioner ongoing pain in his right shoulder before the December 11, 2013 incident. The histories to the various providers are too inconsistent to be believable.

Dr. Primus' opinions on causation are found to be credible, persuasive and to most comport with the evidence. The initial medical records do not support Petitioner's claim of an injury to the right shoulder and neck as a result of the garbage can striking him on December 11, 2013. Petitioner's testimony of an injury to the neck and right shoulder and neck is not credible. Any causation opinions contained in the treating records are not credible and not persuasive. Petitioner has not proved that the accident was a causative factor leading to his right shoulder and cervical spine condition.

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? (K) Is Petitioner entirled to any prospective medical care?

As the Arbitrator has found that Petitioner's current condition of ill-being regarding his cervical spine and right shoulder is not causally related to the accident, Petitioner's claim for incurred medical expenses and prospective medical care is denied.

Regarding (L) What temporary benefits are in dispute (TTD)? Regarding (N) Is Respondent due any credit?

Based upon the Arbitrator's finding regarding causation, Petitioner's claim for TTD is denied. Respondent is entitled to a credit of $3,562.16 for TTD benefits paid.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MILLER, GAIL Case# **12WC036519**

Employee/Petitioner

COSTCO WHOLESALE

Employer/Respondent

On 10/9/2015, 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 0.06% 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:

5410 FRANKS & RECHENBERG PC
MARLO KRECZMER
1301 PYOTT RD SUITE 200
LAKE IN THE HILLS, IL 60156

0210 GANAN & SHAPIRO PC
AMY L TURNBAUGH
210 W ILLINOIS ST
CHICAGO, IL 60654

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

- [ ] 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

Gail Miller
Employee/Petitioner
v.
Costco Wholesale
Employer/Respondent

Case # **12 WC 36519**

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 Falcioni**, Arbitrator of the Commission, in the city of **Woodstock**, on **September 3, 2015**. 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. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other

FINDINGS

On May 23, 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 $48,532.64 the average weekly wage was $933.32.

On the date of accident, Petitioner was 60 years of age, *single* with *no* 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 $2,781.75 under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $623.23/week for 4 5/7 weeks, commencing December 20, 2012 through January 21, 2013, as provided in Section 8(b) of the Act.

Medical Benefits

Respondent shall pay reasonable and necessary medical services of $1,407.11 in out-of-pocket medical expenses, as provided in Sections 8(a) and 8.2 of the Act, to the Petitioner.

Respondent shall hold Petitioner harmless from any claims by and providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act, provided the Respondent pays the Petitioner all of his out-of-pocket expenses for deductibles and prescription medications.

Permanent Partial Disability

Respondent shall pay Petitioner permanent partial disability benefits of $559.99/week for 25.05 weeks, because the injuries sustained caused 15% loss of the right foot, 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.

Robert E. Johnson

Signature of Arbitrator

October 6, 2015

Date

OCT 9 2015

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

CARLI, NORMAN Case# **10WC043951**

Employee/Petitioner

VILLAGE OF FRANKLIN PARK

Employer/Respondent

On 10/5/2015, 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 0.10% 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:

1377 PARENTE & NOREM PC
DAVID A IAMMARTINO
221 N LASALLE ST 27TH FL
CHICAGO, IL 60601

0507 RUSIN & MACIOROWSKI LTD
DANIEL R EGAN
10 S RIVERSIDE PLZ SUITE 1530
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
19(b)

Norman Carli
Employee/Petitioner

Case # **10** WC **43951**

v.

Consolidated cases: _____

Village of Franklin Park
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 **Ketki Steffen**, Arbitrator of the Commission, in the city of **Chicago**, on **July 14 and August 4, 2015**. 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, **September 10, 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 to his cervical spine 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 relating to his cervical spine ***is not*** causally related to the accident. (Petitioner did suffer a work injury to his right shoulder and right biceps. Said injury is not at issue in this 19B proceeding)

In the year preceding the injury, Petitioner earned $**79,976.00**; the average weekly wage was $**1,538.00**.

On the date of accident, Petitioner was **43** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**4,101.33** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**4,101.33**.

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

ORDER

Petitioner's claim for TTD benefits is denied. Petitioner failed to prove the condition in his cervical spine is causally related to his claimed work injury of September 10, 2010.

Petitioner's request for penalties is declined.

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.

R Steffen 10/5/15

Signature of Arbitrator Date

ICArbDec19(b)

OCT 5 - 2015

PROCEDURAL HISTORY

This matter was tried before Arbitrator Steffen on July 14, 2015 and concluded on August 4, 2014 as a 19B petition. Petitioner is a Franklin Park police officer who filed an Application for Adjustment of Claim on November 15, 2010 for a September 10, 2010 date of accident. Petitioner alleges that he injured his right shoulder as well as his cervical spine. The 19B hearing before Arbitrator Steffen seeks TTD benefits from 12/1/14 through 7/14/15 (32 2/7 weeks); said benefits arising from the injury and treatment relating to the cervical spine. In addition, both parties seek resolution regarding the causal connection and liability for medical treatment relating to the cervical spine issue. It appears that the right shoulder injury and the benefits stemming from this injury are not in dispute. **The following opinion addresses the issues in dispute relating to the cervical spine only. (AX1) Petitioner has not filed an 8a petition nor does he currently seek prospective medical treatment. Issues related to the right shoulder injury are not addressed.**

FACTUAL HISTORY

Petitioner, Norman Carli, testified that on September 10, 2010 he was employed by Respondent as a police officer. (Transcript, hereinafter "T." p. 15) As of that date, Petitioner testified he had worked for Respondent as a police officer for approximately 20 years. (T. p. 15)

Petitioner testified that pursuant to his duties as a police officer, he and his partner were attempting to arrest a subject. Petitioner testified that there was a struggle which resulted in his partner and the suspect falling.(R 14-15) Petitioner states that he tried to break this fall and was injured as he bore the weight of these two individuals upon his shoulder. (T. p. 16)

Shortly after the incident, Petitioner felt pain and numbness to his right shoulder and arm and hand. (T. p. 18) An accident report was prepared and documents the

accident and the injury. (Rx 2) Petitioner alleges that the injury was to his right shoulder area. (Rx 2)

Petitioner was treated for his injuries initially at Advanced Occupational Medicine for treatment. (T. p. 18; Rx 8) The medical records indicate a diagnosed of right shoulder pain and right biceps strain.

Petitioner returned to work but was placed on modified duty during treatment. Petitioner continued to treat for his shoulder and bicep and underwent an MRI to the right shoulder and physical therapy.

Petitioner's pain symptoms continued and he was referred to an orthopedic specialist, Dr. Nassos. (T. p. 19; Rx 9) He was examined by Dr. Nassos on October 8, 2010. (Rx 9) Petitioner was specifically asked whether he had any neck pain or radicular pain, which he denied. Respondent's Exhibit 9 included a typewritten report for a Date of Service of October 8, 2010 which included a paragraph entitled "History of Present Illness". The last sentence in the doctors notes states "He denied any neck pain or radicular pain" (Rx 9) Dr. Nassos diagnosed Petitioner as having a partial thickness supraspinatus tear and a superior labral tear. Dr. Nessus recommended surgery.

Surgery took place on October 29, 2010, and consisted of a superior labral repair and subacromial decompression without acromioplasty. (Rx 9) After surgery, Petitioner remained under Dr. Nassos' care (Rx 9) and returned to Advanced Occupational Medicine for physical therapy (Rx 8). On January 5, 2011, Petitioner complained to Dr. Nassos of numbness radiating in the biceps region and radiating around the right shoulder. (Rx 9) On this date the cervical spine was specifically examined. Dr. Nassos noted a painless range of motion in flexion and extension of the cervical spine. Spurling sign was negative bilaterally. There was no tenderness to palpation throughout the cervical spine. In addition, an EMG/NCV test was ordered. (Rx 9)

The EMG/NCV test was performed on February 14, 2011 by Dr. Laluya. (Rx 9) Prior to administration of this test, Dr. Laluya performed a physical exam. Of note, Dr. Laluya noted the cervical spine range of motion to be normal. Spurling test was negative. According to Dr. Laluya the EMG/NCV revealed no electrodiagnostic evidence of an acute cervical radiculopathy, brachial plexopathy or peripheral

neuropathy to explain his symptoms; Dr. Laluya felt that Petitioner may have sustained a mild traction injury to the brachial plexus that was not identifiable at that time. (Rx 9)

Shortly thereafter, Petitioner switched his care to Dr. Guido Marra, then at Loyola. (T. p. 46; Px 4) Petitioner first saw Dr. Marra on April 14, 2014. Petitioner complained of ongoing pain after his first surgery. Dr. Marra recommended Petitioner undergo additional right shoulder surgery.

Dr. Marra performed surgery to the right shoulder on May 16, 2011. (Px 4) Surgery consisted of arthroscopic decompression, debridement and AC Joint Resection. (Px 4) Petitioner continued to treat with Dr. Marra until May 31, 2012. (Px 4)

At Respondent's request, Petitioner underwent an independent medical exam on August 29, 2012 by Dr. Paul Papierski. (Rx 7) On this date, Petitioner reported no complaints to his head and neck to Dr. Papierski. (Rx 7) There is no indication in Dr. Papierski's report that Petitioner had any cervical involvement in his condition. Dr. Papierski found that the superior labral tear of the right shoulder was causally related to the work accident. (Rx 7) Dr. Papier ski agreed and acknowledged that the medical treatment and surgery that Petitioner has undergone and found that he did not require any further treatment. His medical report notes that the Petitioner had returned back to unrestricted duty at this time. (RX7)

Petitioner testified that he was referred to Dr. Rinella. On September 13, 2012, Petitioner presented himself to Dr. Rainelle (Pox 2, Ex. 2) Petitioner complained of neck pain to Dr. Rainelle and stated that the pain stemmed from his claimed accident of September 10, 2012.

Dr. Rainella testified in this matter. (Px 2) Dr. Rinella acknowledged that he had none of Petitioner's prior records from Advanced Occupational Medicine, Dr. Ghanayem, Dr. Nasso and Dr. Marra to review. (Px 2, pp. 16-21) Dr. Rinella noted that in the records he did review, Petitioner had not made any complaints regarding his cervical spine to his prior providers. (Px 2, pp. 21, line 23) He also indicated that Petitioner told him he had been having neck pain for over two years, since 2010. (Px 2, pp. 25, lines 11-18) Dr. Rinella also indicated that Petitioner had related to him indirectly that Dr. Marra had told him that his ongoing arm pain may be the result of his cervical spine issue. (Px 2, pp. 27, lines 7-11) Dr. Rinella opined that Petitioner

required cervical spine surgery based on his ongoing, subjective complaints, his MRI results and his two year history of two years. (Px 2, pp. 27 lines 3-11) Dr. Rinella performed the cervical spine fusion surgery for Petitioner.

At Respondent's request Petitioner was examined by Dr. Alexander Ghanayem on September 15, 2014. (Rx 6) Dr. Ghanayem concluded that Petitioner

> ...has subjective complaints of pain in the neck and the shoulder girdle region absent any objective physical exam findings to point to a cervical spine etiology. His pattern of symptoms is not consistent with someone that needs cervical spine surgery, particularly in the recommended levels of C5-6 and C6-7. Putting this another way, radiographics findings, the operative intervention, his subjective complaints, and his objective physical exam findings represent a significant mismatch, thereby making surgery not appropriate at any level....Relative to the cervical spine, I do not believe he sustained either an injury or an aggravation, given the mismatches as outlined above. (Rx 6)

Petitioner filed his Application for Adjustment of Claim on November 15, 2010, claiming injuries to his right shoulder. (Rx 3)

ANALYSIS/FINDINGS

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

The Petitioner bears the burden of proving all the elements of his claim in order to recover benefits under the Illinois Workers' Compensation Act. *Illinois Bell Telephone co. v. Industrial Commission*, 265 Ill.App.3d 681 (1994). This includes proving that an accident occurred and that a claimant's state of ill-being is causally related to the alleged work accident. *Martinez v. Industrial Commission*, 242 Ill.App.3d (1993). To prove a causal connection the Petitioner need not prove that his work injury was the sole, primary cause of his injury as long as it was a causative factor in the resulting condition of ill-being. *Rock Road Construction Co. v. Indus. Comm'n*, 37 Ill. 2d 123, 127, 227 N.E.2d 65 (1967).

In fact, recovery under Illinois law may be had even in preexisting condition cases, where an employee can show that a work-related accidental injury aggravated or accelerated the preexisting disease. *Sisbro. Inc. v. Indus. Comm'n*,

207 Ill. 2d 193, 204-206, 797 N.E.2d 665 278 Ill.Dec. 70, (2003); citing Caterpillar Tractor Co. v. Indus. Comm'n, 92 Ill. 2d 30, 36-37, 65 Ill. Dec. 6, 440 N.E.2d 861 (1982); Caradco Window & Door v. Indus. Comm'n, 86 Ill. 2d 92, 99, 56 Ill. Dec. 1, 427 N.E.2d 81 (1981); Azzarelli Construction Co. v. Indus. Comm'n, 84 Ill. 2d 262, 266, 49 Ill. Dec. 702, 418 N.E.2d 722 (1981); Fitrro v. Indus. Comm'n, 377 Ill. 532, 537, 37 N.E.2d 161 (1941). Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Industrial Commission. Roberts v. Indus. Comm'n, 93 Ill. 2d 532, 538, 67 Ill. Dec. 836, 445 N.E.2d 316 (1983); Caterpillar Tractor Co. v. Indus. Comm'n, 92 Ill. 2d at 36-37; Caradco Window & Door v. Indus. Comm'n, 86 Ill. 2d 92, 99, 56 Ill. Dec. 1, 427 N.E.2d 81 (1981).

In applying the reasoning of the above caselaw, the Arbitrator finds that the Petitioner has failed to meet his burden to show that his cervical spine condition is related to his work accident of September 10, 2010. In making this finding the Arbitrator finds that the opinion of Dr. Ghanayem is more credible then the findings of Dr. Rinella. The greatest hurdle to Petitioner's case is that he treated with competent, qualified physicians for two years, underwent surgical procedures for his right shoulder and yet, never mentioned his cervical issues to any of them. It is noted that neither his pain complaints nor medical tests led any of his treating physicians to suspect any cervical problems for over two years. Petitioner's claim that he consistently complained of pain in his "right shoulder area" which included his neck, is not sufficient to overcome this deficit" in light of the MRI films and lack of other objective findings.

The medical records reflect that Petitioner's cervical spine region was evaluated both in the form of physical exam and in the form of diagnostic testing during this two year period of time, all with negative results. The Arbitrator is not persuaded by the testimony of Dr. Rinella as he acknowledged that he had none of Petitioner's prior records from Advanced Occupational Medicine, Dr. Ghanayem, Dr. Nasso and Dr. Marra to review. (Px 2, pp. 16-21) The Arbitrator finds this to be a glaring defect in light of the fact that Petitioner had been treated for his work injury for the prior two years. Dr. Rinella also noted that in the records he did review that Petitioner had not made any complaints regarding his cervical spine to his prior providers. (Px 2, pp. 21, line 23) He also indicated that Petitioner told him he had been having neck pain for over two years, since 2010. (Px 2, pp. 25, lines 11-18) The Arbitrator notes that Dr. Rinella did not attempt to resolve or explain this inconsistency. Dr. Rinella also indicated that Petitioner had related to him indirectly that Dr. Marra had told him that his ongoing arm pain may be the result of his cervical spine issue. (Px 2, pp. 27, lines 7-11) Dr. Rinella did not examine Dr. Marra's reports regarding this crucial point. Although, Dr. Rinella opined that Petitioner required cervical spine surgery based on his ongoing, subjective complaints, his MRI results and his two year history of two years, the Arbitrator finds his opinion to be less persuasive then Dr. Ghanayem.

In comparison, Dr. Ghanayem's conclusion that there was no injury to the cervical spine on September 10, 2010 is consistent with the records of Advanced Occupational Medicine (Rx 8), Dr. Nassos (Rx 9), Petitioner's Application for Adjustment of Claim (Rx 3) and Petitioner's own description of injury to his right shoulder (Rx 2). Lacking any persuasive proof that Petitioner registered any cervical complaints with any of his medical treaters, the Arbitrator finds that Petitioner's cervical

issues are not related to his work accident of 2010. In so finding, the Arbitrator notes significant inconsistencies between Petitioner's testimony and the medical records, and gaps in time between Petitioner's injury and cervical treatment.

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?

As explained above, Petitioner failed to establish a causal connection between her claimed current condition of ill-being and her work injury. Thus, the issues of whether Petitioner's medical services were reasonable and necessary and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services is rendered moot. Thus, Petitioner's claim for payment of any outstanding medical bills related to Petitioner's cervical spine treatment is denied.

L. **What temporary benefits are in dispute?**

Based upon the Arbitrator's finding concerning causal relationship, these issues are moot.

M. Should penalties or fees be imposed upon Respondent?

Based upon the Arbitrator's finding concerning causal relationship, this issue is also moot. The Respondent reliance on the opinion of Dr. Ghanayem was proper. Penalties are respectfully declined

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 Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rick Bailie,

Petitioner,

vs. NO. 14WC005466

GRP Mechanical Company,

15IWCC0757

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review under §19b having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary disability, causal connection, medical expenses, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 4, 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.

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: OCT 5 - 2015
SJM/sj
o-8/6/2015
44

Stephen J. Mathis

Mario Basurto

DISSENT

I respectfully dissent from the majority decision and would reverse the Arbitrator's decision in regard to causal connection. Petitioner testified to having a right knee injury in 2012 which required treatment through May 11, 2012. Petitioner stated he has worked his normal duties as a laborer since that date. Petitioner testified to striking his right knee on the trailer hitch of his truck at home, but it did not break the skin and he did not seek medical treatment. Petitioner also testified to having a boil on his left leg. Petitioner stated that he saw a Dr. Klein on January 3, 2014 with complaints of the boil on his leg. Dr. Klein noted some cellulitis and prescribed an antibiotic. Petitioner testified that the boil dried up within a couple of days.

Petitioner testified that he had been recalled to work by Respondent on January 7, 2014 and sent to Oklahoma to begin work on January 8th digging around a 36 inch main pipe located in an open field. Petitioner testified that while he was in the trench a piece of sandstone the size of a table slid down and struck him on the right shin. Petitioner stated that although the stone didn't tear his pants it did break the skin, his leg was bleeding. A co-worker named Ty Reed testified on Petitioner's behalf. Mr. Reed testified that he roomed with Petitioner on January 9, 2014 and noticed a fresh scratch on Petitioners right leg after work. Reed further testified that he asked Petitioner what had happened and Petitioner told him that a rock slid off the ledge and hit him in the leg.

Petitioner was seen by Dr. Vest who opined that his condition of ill being was causally connected to the accident in question. Dr. Vest testified that MRSA can enter the body through a traumatic wound or an orifice like the mouth. Dr. Vest stated that based upon the examination he performed and the patient history, there were no other probable sources of entry for the MRSA other than the scrape on Petitioner's right shin. Dr. Vest stated that the fact that the MRSA attacked the nearest joint to the abrasion (the right knee) is consistent with the bacteria entering the body at the site of the abrasion.

The majority's decision relies upon alleged evidence of multiple other possible sources of the MRSA which were not included in the history given to Dr. Vest. The majority concurs with the Arbitrator's assessment that Dr. Vest's causal connection opinion is based upon incomplete and inaccurate information and therefore not valid. However, the evidence the Arbitrator relies upon amounts to nothing more than speculation. Dr. Vest was unaware of the incident wherein Petitioner struck his right knee on a trailer hitch or the resolved boil on Petitioner's left thigh. However, Dr. Vest's records, including the date of treatment when he aspirated Petitioner's knee 114 cc of fluid, make no mention of any abrasions or open wounds on Petitioner's right knee which could have been the entry point for the MRSA. Furthermore, blood cultures performed at the same times as the knee aspirant were negative for MRSA. So although the knee aspirant tested positive for MRSA, there was no MRSA found in Petitioner's blood, or any other part of his body, making any inference that the infection was spread through the bloodstream to Petitioner's right knee purely speculative.

After considering all of the evidence, it is clear that Petitioner's MRSA infection is causally related his January 8, 2014 accident. Petitioner is under no obligation to disprove every other possible cause of his condition of ill-being. Sisbro, Inc. v Industrial Commission, 207 Ill. 2d 193, 205, 797 N.E.2d 665 (2003). However, any other possible causes of Petitioner's infection are speculative at best and not supported by the evidence in the record. Accordingly, I would reverse the decision of the Arbitrator in regard to causal connection and remand the matter for a determination of benefits.

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF 19(b) ARBITRATOR DECISION

BAILIE, RICK
Employee/Petitioner

Case# **14WC005466**

GRP MECHANICAL COMPANY
Employer/Respondent

15IWCC0757

On 12/4/2014, 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 0.07% 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:

4620 ARMBRUSTER DRIPP WINTERSCHEIDT
JOHN WINTERSCHEIDT
219 PIASA ST
ALTON, IL 62002

0000 WIEDNER & McAULIFFE LTD
MATTHEW J ROKUSEK
8000 MARYLAND AVE SUITE 500
ST LOUIS, MO 63105

15IWCC0757

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
19(b)

Rick Bailie
Employee/Petitioner

v.

GRP Mechanical Company
Employer/Respondent

Case # **14** WC **05466**

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 **Brandon Zanotti**, Arbitrator of the Commission, in the city of **Belleville**, 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. [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. [x] 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, **January 8, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**18,734.00 over 8 weeks**; the average weekly wage was $**2,341.75**.

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

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

Respondent shall be given a credit of $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**2,678.88** for other benefits, for a total credit of $**2,678.88**.

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

ORDER

BECAUSE PETITIONER FAILED TO PROVE THAT HIS CONDITION OF ILL BEING WAS CAUSALLY CONNECTED TO THE ACCIDENTAL INJURIES SUSTAINED ON JANUARY 8, 2014, CLAIM FOR COMPENSATION IS HEREBY 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 4, 2014
Date

ICArbDec19(b)

DEC 4 - 2014

Statement of Facts

On January 8, 2014, Petitioner Rick Bailie was employed by Respondent GRP Mechanical Company as a laborer.

Prior to January, 2014, Petitioner had prior treatment to his right knee by Dr. Vest. Petitioner testified that he injured his right knee in 2012 while changing an engine at home. Dr. Vest testified that an MRI taken March 22, 2012 revealed a torn medial and lateral meniscus (Px 5, pg 8). Petitioner was treated through May 11, 2012. (Px 5, pg 9). Petitioner testified that he worked his normal duties as a laborer after that. He had stiffness and his knee just hurt every once in a while. Petitioner testified that he struck his right knee on the trailer hitch of his pickup truck at home. Petitioner testified that it did not break the skin. He did not seek medical treatment

Petitioner testified that he had a boil on his left leg. Dr. Klein gave him an antibiotic.. Petitioner testified that it dried up in a couple of days. In his statement (Rx 9) Steve Huch states that on January 3, 2014 Petitioner told him he had a sore on his leg. He showed him a two inch pus filled sore on his thigh. Dr. Klein saw Petitioner on January 3, 2014 with complaints of the boil on his left leg as well as congestion, cough and sinus drainage with fever. The record states that Petitioner's wife was messing around with the boil and it had become bigger. The examination notes some cellulitis. The doctor prescribed Bactrim (Rx 13).

Petitioner testified that he had been laid off and was called back to work for Respondent on January 7, 2014. He was sent to Skiatook, Oklahoma. Petitioner testified that he began work on January 8, 2014 in an open field digging around a 36 inch main pipe. Petitioner testified that he was working with Steve Huch. Petitioner testified that while he was in the trench a piece of sandstone about the size of a table slid down into the hole and hit him on the right shin. Petitioner testified that the stone did not tear his pants but it did break the skin. He rolled up his pant leg and saw it was bleeding, but just rolled his pant leg back down and went back to work. He continued working. Petitioner initially testified that he was wearing jeans, but on redirect admitted he was not sure if he was wearing the required protective clothing.

Petitioner testified that he did not immediately report the injury to his supervisor. Petitioner signed the Job Safety Analysis stating he was not injured on January 8, 2014 (Rx 7). Petitioner testified that the injury was just a scrape and he did not think anything of it.

Ty Reed testified for Petitioner. He testified that he roomed with Petitioner on January 9, 2014. He noticed a fresh scratch on Petitioner's right shin after work on January 9, 2014 when Petitioner exited the shower. He testified he asked Petitioner what happened and was told that a rock slid off the ledge and hit him in the leg

Petitioner testified that as he continued working, his right leg was starting to swell up and was getting stiff. Petitioner spoke with John Schultz, the project manager on January 14, 2014 and asked if he knew where he could get a cortisone injection for his right knee. Mr. Schultz testified that he asked Petitioner if he got hurt and was told by Petitioner that he did not. On January 21, Petitioner requested to be seen by a doctor and Mr. Schultz arranged for him to be seen at One Source.

Petitioner was seen at One Source on January 21, 2014 (Px 1; Rx 12). He gave a history of his prior 2012 problem in the knee and also of hitting his knee on his trailer hitch two weeks ago. He stated it did not seem to bother him, but now two weeks later he is having right knee discomfort. The record notes swelling. A diagnosis of degenerative joint disease was made and he was advised to follow up with his personal physician.

Petitioner returned home and was seek by Dr. Vest on January 23, 2014. The record of that visit (Px 2) notes the prior May, 2012 treatment and denies any history of injury. Petitioner claimed increased pain over the last two weeks. The impression was right knee pain and effusion. The knee was injected and the doctor aspirated 114 cc of fluid which was sent for culture. The cultures were positive for MRSA. On January 27, 2014, Petitioner was seen and scheduled for hospital admission and surgery. He provided Dr. Vest with a history of an abrasion to the right shin on the January 8, 2014. The January 27, 2014 notes reflect a finding of a 2 cm by 5 mm abrasion on the upper right shin (Px 2).

Petitioner contacted John Schultz and Tom DeClue. At that time he told them he hurt his leg while working on the jobsite the week of January 6 when a rock fell on his leg and caused a cut (Rx 8).

Petitioner underwent an initial surgery to his right knee on January 27, 2014 at St. Anthony's Health Center (Px 2). The operative report notes a diagnosis of septic arthritis, chronic tears of the medial and lateral menisci, degenerative arthritis, synovitis, and chondromalacia. Dr. Vest testified that all of the conditions except for the meniscal tears were related to the diagnosis of MRSA (Px 5, pg 36-38). An MRI performed February 3, 2014 found osteomyelitis of the proximal tibia. Petitioner underwent a second surgery on February 4, 2014 for incision and drainage of a deep abscess of the right proximal leg with opening of bone cortex of the right proximal tibia and excision and debridement of the right proximal tibia for osteomyelitis (Px 2).

Petitioner has been under Dr. Vest's care through a visit on April 21, 2014. He was on a PICC line for intravenous antibiotics. Petitioner has been disabled by Dr. Vest through the date of the hearing. He is scheduled to see him next on June 2, 2014. The Petitioner demonstrated a scar on the right shin to the Arbitrator. Petitioner testified that his right knee is still stiff and sore.

Dr. Vest testified by deposition as to causal connection (Px 5). He testified that the abrasion on the right shin may have caused or resulted in the staph infection diagnosed. He testified that based on Petitioner's history; there was no other obvious source for the infection (pg 15). The finding of the abrasion is consistent with his opinion. MRSA is present in the environment and on people's skin (pg 33). It can enter the body through a break in the skin (pg 34). When it breaks the skin, it enters the blood stream. It can travel the blood stream or penetrate the tissues adjacent to the site of infection (pg 19). If the bacteria was in the blood stream, it could spread anywhere throughout the body. If it entered through another source, such as the mouth, it is possible it could travel to the leg (pg 35-36).He testified that MRSA can enter the body through a traumatic wound or an orifice like the mouth (pg 12). MRSA can infect the skin. It can manifest as cellulitis where the skin becomes red and warm (pg 45). It can cause boils and sores. In some people you can eradicate it; in others, it comes right back (pg 46). Symptoms can include pain, swelling, and sometimes fever. These symptoms would begin to manifest within a few days to a few weeks (pg12).

Conclusions of Law

In support of the Arbitrators decision with respect to C (Accident), the Arbitrator finds as follows:

Petitioner testified to an accident on January 8, 2014 when a piece of sandstone fell into the ditch in which he was working, striking his right shin, causing an abrasion. His testimony is corroborated by the testimony of Ty Reed and the findings of Dr. Vest of the abrasion during the January 27, 2014 examination.

Respondent's defense focuses on the failure of Petitioner to report the accident as required by the company policies, including the signing of the January 8, 2014 Job Safety Analysis form, stating he had not been injured, and the failure to present the history of accident in the initial medical visits to One Source and to Dr. Vest on January 23, 2014. The Arbitrator notes that Petitioner testified that he was working with Steve Huch when he was injured. Respondent submitted a statement from Mr. Huch concerning Mr. Huch's observations of the Petitioner's left leg boil, but no testimony concerning whether a piece of sandstone fell into the ditch on January 8, 2014. Respondent's Exhibit 7 listed all of the employees who were working on January 8, 2014, but no testimony concerning the lack of the stone falling into the ditch was presented by Respondent.

The Arbitrator finds that Petitioner's explanation for not reporting the minor abrasion is reasonable and persuasive. Given the prior knee injury in 2012 and the symptoms that Petitioner testified to developing in his right knee during the initial period following January 8, 2014, it is also consistent that he would not present the doctors with the January 8, 2014 incident as related to his complaints.

The Arbitrator finds that Petitioner as proved by a preponderance of the credible evidence that on January 8, 2014, he suffered an abrasion to the right shin as a result of an accident arising out of and in the course of his employment.

In support of the Arbitrators decision with respect to F (Causal Connection), the Arbitrator finds as follows:

The evidence that Petitioner's MRSA infection and subsequent related treatment is causally connected to the accident on January 8, 2014 is based entirely on Dr. Vest's opinion in his deposition that "the abrasion on the right leg may have caused or resulted in the staph infection that we diagnosed." He testified that the infection can be secondary from a scrape on the right shin. He testified that abrasion he observed was consistent with the history.

Dr. Vest's opinion is specifically based upon the history he received containing no other source of the infection. He testified that "based on his history, there were no other obvious sources for the infection that we diagnosed." Dr. Vest agreed that there are multiple possible sources for contracting MRSA including through an orifice such as the mouth. MRSA can infect the skin. It can manifest as cellulitis where the skin becomes red and warm. It can cause boils and sores. When it enters the body in can travel through the bloodstream and spread anywhere through the body.

Dr. Vest was initially provided with no history of injury on January 23, 2014. On January 27, 2014, after the diagnosis of MRSA, he recorded the history of the January 8, 2014 accident only. He did not have any information about the injury when Petitioner struck his leg on the trailer hitch of his car. This was noted to have occurred two weeks before he saw One Source which would place it within days of the January 8, 2014 accident. He was not provided information about the boil on the left leg, or the

additional symptoms of congestion, cough and sinus drainage with fever. Dr. Klein diagnosed Petitioner with a cellulitis and prescribed antibiotics. Dr. Vest testified cellulitis can be the manifestation of a MRSA infection.

An expert's opinion is only as valid as the bases and reasons for the opinion. *Gyllen v. College Craft Enterprises, 260 Ill App 3d 707; 633 N.E.2d 111 (2nd Dist. 1994).* Dr. Vest based his causation opinion that the abrasion may have caused the infection based upon a history providing no other obvious source. But the evidence presents multiple other possible sources not included in this history. The basis of the causation opinion is an incomplete and inaccurate statement of the evidence presented concerning the potential source of the infection.

The Arbitrator finds that Petitioner failed to prove by a preponderance of the credible evidence that the accidental injury sustained on January 8, 2014, caused the MRSA infection and therefore the subsequent treatment and lost time.

In support of the Arbitrators decision with respect to J (Temporary Compensation), L (Medical) and K (Prospective Medical), the Arbitrator finds as follows:

In light of the Arbitrator's finding with respect to causal connection, claims for Temporary Compensation, and Medical, past and prospective are denied.

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

CASEY, LEROY Case# **14WC020800**

Employee/Petitioner

CENTRAL RODDING TOTAL SEWER

Employer/Respondent

On 10/15/2015, 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 0.08% 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:

2208 CAPRON & AVGERINOS PC
STEVE SMALLING
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

1408 HEYL ROYSTER VOELKER & ALLEN
LYNSEY A WELCH
120 W STATE ST PO BOX 1288
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Leroy Casey
Employee/Petitioner

v.

Central Rodding Total Sewer
Employer/Respondent

Case # **14** WC **20800**

Consolidated cases: **D/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 **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **9/28/2015**. 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. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On the date of accident, **April 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.

For the reasons set forth in the attached decision, the Arbitrator finds that Petitioner established causation as to shoulder/brachial plexus, bicipital tendonitis, cervical and lumbar spine conditions of ill-being but failed to establish causation/aggravation as to a pre-existing and progressive neurological disorder and as to carpal tunnel syndrome.

In the year preceding the injury, Petitioner earned $**46,966.92**; the average weekly wage was $**903.21**.

On the date of accident, Petitioner was **56** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of $**26,192.25** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $**26,192.25**..

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

ORDER

- Respondent shall pay the following medical expenses: 1) Franciscan Physician Network (Dr. Carlson), to the extent of the $3,018.63 in payments made by Respondent (RX 1); 2) Mea-Munster, LLC, $501.00, subject to the fee schedule and with Respondent receiving credit for the $450.90 payment it made (RX 1); 3) Imaging Associates of Indiana, $84.00, subject to the fee schedule and with Respondent receiving credit for the $80.33 payment it made (RX 1); 4) Munster Radiology Group, $77.00, subject to the fee schedule; 5) Dr. Julian Ungar-Sargon, $13,094.01, subject to the fee schedule; 6) CVS Pharmacy, prescription reimbursement, $91.99; 7) Merrillville Plaza Surgery, 4/1/15 charges only, $7,755.70, subject to the fee schedule; 8) Franciscan St. Anthony Hospital, $888.00, subject to the fee schedule and with Respondent receiving credit for the $692.64 payment it made (RX 1); and 9) William Mason, M.D., 4/22/15 CT scans, $478.00, subject to the fee schedule. All other claimed medical is denied, for the reasons set forth in the attached decision.

- Respondent shall pay Petitioner temporary total disability benefits of $602.14 per week for 76 5/7 weeks commencing April 10, 2014 through September 28, 2015 as proved in Section 8(b) of the Act, with Respondent receiving credit for the $26,192.25 in benefits it paid prior to the hearing.

- Respondent shall pay Petitioner temporary total disability benefits that have accrued from April 10, 2014 through September 28, 2015 and shall pay the remainder of the award, if any, in weekly payments.

- Respondent is not liable for the prospective care sought by Petitioner, i.e., ongoing treatment by Drs. Carlson and Ungar-Sargon. Respondent shall authorize and pay for prospective care in the form of an evaluation and possible treatment by a board certified physician specializing in brachial plexus injuries.

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.

Molly C Mason
Signature of Arbitrator

10/15/15
Date

OCT 15 2015

Leroy Casey v. Central Rodding Total Sewer
14 WC 20800

Arbitrator's Findings of Fact

Petitioner testified he is currently 58 years old. He finished high school in 1976 and began working in the plumbing trade thereafter. He began working for Respondent about 15 or 16 years before his disputed accident of April 9, 2014.

Petitioner testified his duties for Respondent varied from day to day. He might be assigned to a residential plumbing job one day and be out in the field the next. He worked on manholes and sewer lines and regularly performed lifting. He operated backhoes and different kinds of trucks.

Petitioner acknowledged undergoing a cervical spine fusion at C6-C7 in 1996. Once he recovered from this surgery, he resumed working full duty.

Petitioner testified he was not subject to any limitations or under the care of any doctor before the accident. Petitioner specifically denied having any tremors in his right hand as of the accident. Before the accident, no one diagnosed him with Parkinson's or any other neurological disorder.

Petitioner's medical records reflect he did in fact seek treatment for various conditions, including a right hand problem, in 2013. Electronic record entries in PX 4 show that Petitioner saw Dr. Carlson or another physician in his group on May 15, 2013 for back pain, psoriasis and "arthritis all over his body," on August 13, 2013 for chest pain and right hand weakness and on August 22, 2013 for a CDL examination and GERD. Complete records from these three dates are not in evidence.

Respondent offered into evidence a "wage calculation report" reflecting Petitioner's weekly hours and earnings between April and December 2013. A handwritten statement on this report reflects both that Petitioner "did not work in 2014" and that Petitioner "came back [in 2014] and worked 10.5 hours." RX 6. Petitioner did not object to RX 6. Under cross-examination, Petitioner acknowledged he was off work, collecting unemployment benefits, between January and March 2014. It is not clear whether the claimed accident of April 9, 2014 occurred on Petitioner's first day back to work for Respondent.

Petitioner testified that immediately before the April 9, 2014 accident, he and "Billy," a fellow employee, were working in Country Club Hills, cleaning a manhole. They were using a 4-inch hose and a "vacuum truck" to accomplish this. The hose was attached to a vacuum apparatus on the back of a truck. Petitioner was working next to the manhole while Billy was next to the truck. Petitioner testified he was crouching down, holding the hose in both hands, when Billy "flipped an arm" on the truck. This caused the hose to jerk violently. Petitioner testified that, when the hose jerked, he felt his head suddenly move backward, as if it was going

to come into contact with his back. His knees hit the ground and he almost went down into the manhole.

Petitioner testified he noticed a tremor in his right hand immediately after the accident. He told Billy he did not feel good.

Petitioner testified that, when he woke up the morning after the accident, he was still experiencing the tremor. He was also experiencing neck and back pain. He reported to work and told Respondent's owner's wife about the accident. He also indicated he needed to see a doctor. [Notice is not in dispute. Arb Exh 1.]

Petitioner testified he went to the Emergency Room following the accident. No Emergency Room records are in evidence but a check in RX 1 reflects Petitioner went to Community Hospital in Munster on April 10, 2014. Petitioner's failure to offer the Emergency Room records is puzzling. A summary of the Emergency Room care appears in the report of Dr. Ross, Respondent's first Section 12 examiner. Dr. Ross indicated Petitioner complained of right shoulder, scapular and wrist pain as well as a slight tremor in his right hand secondary to the work accident. He also indicated Petitioner was given Ibuprofen, Flexeril and Tramadol and was directed to seek follow-up care. PX 2.

Petitioner testified he followed up with Dr. Carlson after being discharged from the Emergency Room. He described Dr. Carlson as a "new" primary care physician he had not previously seen but, as noted above, records in PX 4 reflect he saw Dr. Carlson in 2013.

On April 11, 2014, Dr. Carlson noted Petitioner had been injured at work the previous day and had undergone X-rays at Community Hospital. He also noted that Petitioner had been given prescriptions for Flexeril, Motrin and Tramadol and complained of being unable to sleep due to right shoulder and arm numbness. He further noted a tremor in Petitioner's right hand and a complaint of back and neck pain. He indicated that no X-rays of the back or neck were performed at the hospital. He ordered cervical and lumbar spine X-rays. The cervical spine X-rays showed changes consistent with the previous fusion, mild cervical spondylosis at C5-C6 and moderate facet arthropathy from C4-C5 through C7-T1. The lumbar spine X-rays showed severe degenerative disc disease. PX 4.

Petitioner returned to Dr. Carlson on April 18, 2014. The doctor noted a complaint of back pain radiating through the left buttock as well as pain in the neck, right shoulder and right wrist. He again noted the right arm tremor, which he described as worsening. He indicated that Petitioner denied having this tremor before the work accident. On examination, he noted paravertebral spasm bilaterally in the back, a decreased range of motion in the right shoulder and swelling in the right wrist. He prescribed cervical and lumbar spine MRI scans, along with orthopedic and neurological consultations. PX 4.

On May 2, 2014, Dr. Carlson noted that Petitioner's shoulder was slightly better but that he was still experiencing low back pain radiating to his buttocks, hand tremors and numbness in

his hands and arms at night. He discontinued the Flexeril and indicated he was still waiting for workers' compensation to authorize the MRIs. PX 4.

On May 5, 2014, Dr. Carlson noted that Petitioner reported "increased pain over the weekend in right neck, arm and lower back." He also noted that increasing Petitioner's Ultram dosage "didn't help decrease pain." He prescribed Norco. PX 4.

On May 12, 2014, Dr. Carlson noted that Petitioner rated his pain at "8/10 all the time" and complained of "shaking to right arm at all times, like tremor." On examination, he noted limited motion and 2/5 strength in the right arm and a full range of motion in the other extremities. The following day, Petitioner called the doctor's office and requested a note indicating he needed to remain off work. PX 4.

On May 19, 2014, Dr. Carlson noted that Petitioner reported taking two Norco 5 mg tablets at one time to obtain pain relief. On examination, the doctor noted a tremor in Petitioner's left upper extremity. [It is not clear whether this is an error]. PX 4.

On May 20, 2014, workers' compensation authorized the MRI scans. On May 23, 2014, Petitioner contacted Dr. Carlson's office and indicated he had been unable to complete the MRIs due to claustrophobia. Dr. Carlson prescribed Valium on May 27, 2014. PX 4.

Petitioner was able to complete the MRI scans on May 28, 2014. The cervical spine MRI showed evidence of the previous fusion, a broad-based bulging disc at C5-C6 and spurring of the uncinated processes and bulging disc resulting in foraminal narrowing bilaterally, greater on the left. The lumbar spine MRI showed extensive multi-level degenerative disc disease, mild central canal stenosis from L2-L3 through L4-L5 and asymmetric foraminal stenosis at L3-L4 on the right secondary to a right foraminal disc protrusion. PX 4.

On June 2, 2014, Petitioner complained to Dr. Carlson of lower back pain radiating down both legs, as well as persistent tremors and neck and shoulder pain. On examination, the doctor noted a right upper extremity tremor. He refilled Petitioner's medication and recommended a neurological consultation. PX 4.

Dr. Carlson continued noting similar complaints thereafter. On June 9, 2014, he noted that Petitioner was pain and tremor free prior to the work accident. On June 30, 2014, he noted Petitioner was scheduled to see a neurologist. PX 4.

At Respondent's request, Petitioner saw Dr. Ross, a neurosurgeon, for purposes of a Section 12 examination on July 3, 2014. The doctor's report of that date sets forth a history of the prior C6-C7 fusion and the April 9, 2014 work accident. The doctor indicated that Petitioner reported being "yanked forward" at the time of the accident. He also indicated that Petitioner reported experiencing bilateral hand numbness when he tried to sleep the night of the accident and new trembling or shaking in his right hand. He indicated that Petitioner "denies ever having had tremor in the past."

On examination, Dr. Ross noted a "pronounced high frequency tremor in the right hand and forearm." He indicated that the tremor would "quiet" at times and become more pronounced at other times. He specifically noted that the tremor subsided when Petitioner "concentrates on rapid finger tapping on the left hand." He described Petitioner's gait as normal. He noted a full range of cervical and lumbar spine motion, slight weakness in all the muscle groups of the right arm and hand, full strength in the left arm and both legs, pinprick "perceived as being reduced over the thumb, index, ring and little fingers of the right hand" and slightly weak but symmetric deep tendon reflexes.

Dr. Ross indicated he reviewed a CD containing images of the May 28, 2014 cervical and lumbar spine MRIs. He interpreted the cervical spine MRI as showing a well healed C6-C7 fusion and some early degenerative changes developing at C5-C6, above the fused level. He interpreted the lumbar spine MRI as showing degenerative changes at multiple levels, "some foraminal disc herniation at L3-L4 on the right side" and "some foraminal narrowing at L4-L5 on the left."

Dr. Ross opined that Petitioner "likely sustained mild cervical, right shoulder and lumbosacral strains as a result of his work injury of April 9, 2014." He described Petitioner's tremor and right arm weakness as "more puzzling." He indicated Petitioner had no cervical spine pathology to explain the diffuse right arm weakness and no indication of a spinal cord injury that would likely cause a tremor. He found it "possible that [Petitioner] sustained a brachial plexus stretch injury," although he "did not find supporting evidence for this diagnosis in [Petitioner's] reflex examination." He indicated that, while a nerve injury could lead to tremor, Petitioner's examination was "certainly suspicious for the movement disorder being nonorganic or psychogenic." With respect to the work injury, he recommended an EMG/NCV of the right arm as well as a formal consultation with a neurology movement disorder specialist. He also found it appropriate for Petitioner to undergo therapy for his right shoulder pain and cervical and lumbar strains. He found Petitioner capable of light duty, with lifting up to 25 pounds. He indicated Petitioner might require work conditioning prior to a full duty release, "given the heavy physical nature of his job." He indicated that work conditioning should not be initiated until after Petitioner underwent the EMG, neurology consultation and three to four weeks of therapy. He stated that, "in a best case scenario, [Petitioner] would be able to return to full duty work in approximately three months and reach MMI in approximately four months." He indicated these estimates could change depending on the results of additional diagnostic work-up. PX 2.

On August 4, 2014, Dr. Carlson noted positive straight leg raising bilaterally as well as a persistent right arm tremor. He indicated that Petitioner was scheduled to undergo an EMG the next day. He also indicated that Petitioner remained totally disabled. PX 4.

On September 23, 2014, Dr. Ross issued an addendum indicating he reviewed an EMG report dated August 5, 2014. He described this EMG as showing left carpal tunnel syndrome. He indicated that the examiner might have performed a right-sided nerve conduction study but

that this was not mentioned in the "impression" section of the report. He suspected there were pages missing from the report or that the examiner got confused in his dictation. In either event, he viewed the EMG report as "inadequate." He indicated the EMG might need to be repeated if the examiner was unable to review the raw data and generate a more comprehensive report addressing both arms. He described the left carpal tunnel syndrome as "probably unrelated" to the work accident. He addressed the tremor issue as follows:

> "As mentioned earlier, the evaluation and treatment of a tremor is the province of a movement disorder neurologist. If the tremor is confirmed to be nonorganic or psychogenic, the connection to the work injury would be tenuous and linked via psychologic or psychiatric issues rather than true neurologic pathology."

PX 2.

Petitioner continued seeing Dr. Carlson throughout this period. The doctor started Petitioner on a low dose of Gabapentin and noted this seemed to help the right arm tremor somewhat. On November 25, 2014, the doctor noted Petitioner was having difficulty dorsiflexing his right foot. On December 9, 2014, the doctor described Petitioner's gait as "shuffling." PX 4.

At Respondent's request, Petitioner underwent a Section 12 examination by Dr. Karen Levin on January 5, 2015. Petitioner testified Dr. Levin spent only seven or eight minutes with him on that date. Petitioner indicated he walked down a hall at Dr. Levin's direction, with the doctor observing him.

In her report, Dr. Levin noted that Petitioner's wife accompanied him to the examination. She indicated that Petitioner's wife described Petitioner as a "workaholic working two jobs" before the April 9, 2014 accident.

Dr. Levin recorded a consistent history of the previous cervical fusion, the work accident and the post-accident care. She indicated that Petitioner complained of neck pain, 8/10 daily headaches, arm numbness, a tremor and pain in his right arm, right leg numbness and a right foot drop. She also indicated that, on further inquiry, Petitioner admitted to difficulty getting out of chairs and Petitioner's wife noted that Petitioner's voice was now "definitely softer," that his handwriting was now "scribbled" and that he now spent his days watching television. According to Dr. Levin, Petitioner related that work sent him for an EMG but that the test had to be stopped because the doctor performing the study told him he had Parkinson's. She indicated that Petitioner denied any familial history of Parkinson's or other neurodegenerative disease.

Dr. Levin described Petitioner as having a "masked face," slightly decreased sensation on the left side of the face, significantly increased tone, with "tremor, rigidity and decreased

rapid movements" and a "significantly stooped posture with a shuffling gait with a very narrow base."

Dr. Levin indicated she reviewed an Employer's First Report of Injury, prepared by Karen Eyler, and a description of Petitioner's job. The Arbitrator notes these documents are not in evidence. Dr. Levin also indicated she reviewed the initial Emergency Room records along with multiple treatment notes and Dr. Ross's reports.

Dr. Levin opined that the work accident resulted in a "minor pull injury to the right arm." She found Petitioner's current examination "completely suggestive of Parkinson's disease." She indicated this disease was not caused or aggravated by a "peripheral pull injury to the arm." She theorized that the work accident "was just an event that made [Petitioner] more aware of the tremor." She described the Parkinson's as Petitioner's "biggest problem at the moment." She described Dr. Carlson's care as "excessive," indicating the work accident did not require weekly follow-up for months. She recommended that Petitioner see a neurologist and start medication for the Parkinson's. She indicated that any work restrictions would be from the Parkinson's and not the work accident. She took the step of contacting Respondent's attorney "so that he could contact [Petitioner's] lawyer and let him that [Petitioner] does need treatment for Parkinson's." She indicated that Petitioner's Parkinson's was not drug-induced, noting that none of the medication Petitioner had been taking would cause Parkinson's.

Dr. Levin opined that Petitioner reached maximum medical improvement from the work accident within several weeks of the accident. She described Petitioner's prognosis from his non-work-related Parkinson's as "very poor." RX 3.

On January 8, 2015, Dr. Carlson issued a note indicating Petitioner remained totally disabled. PX 4.

On March 11, 2015, Petitioner saw Dr. Ungar-Sargon. The doctor's note of that date sets forth a history of the prior C6-C7 surgery and the work accident of April 9, 2014. The doctor noted that Petitioner described his neck as having been "jerked forward" at the time of the accident.

Dr. Ungar-Sargon noted that Petitioner complained of severe neck pain, severe occipital headaches, pain radiating to both shoulders, arms, forearms and hands and low back pain radiating to both buttocks and down both legs, primarily on the left. The doctor also noted that Petitioner complained of "tremor and shaking in the neck, shoulders, arms, wrist and hands" as well as numbness in the right leg and foot, tremors in the right leg "most of the day" and "weakness in all the right side of the body." The doctor indicated that Petitioner reported being unable to work on a computer or perform any household tasks such as washing dishes.

On cervical spine examination, Dr. Ungar-Sargon noted hypertonicity, spasm and tenderness on the right side and tenderness at the manubriosternal joint and paracervical muscles. On right shoulder examination, the doctor noted joint asymmetry, swelling and

"dropped shoulder" as well as limited flexion and positive Hawkins and apprehension testing. On right elbow examination, the doctor noted swelling and tenderness over the lateral epicondyle. On right hand examination, the doctor noted a painful range of motion and tenderness to palpation over the hypothenar eminence. On lumbar spine examination, the doctor noted spasm and positive straight leg raising on the right at 60 degrees. On right hip examination, the doctor noted tenderness over the groin and SI joint as well as 3/5 strength of the upper right proximal muscle.

On sensory examination, the doctor noted a "loss of all modality in the upper extremities" and positive Tinel's on the left. He also documented "involuntary movements such as spasms and spasmodic torticollis."

Dr. Ungar-Sargon diagnosed various conditions, including carpal tunnel syndrome and brachial plexus injury. He recommended an EMG, SSEP testing and a CT scan. He directed Petitioner to return to him in two weeks. PX 1.

Petitioner underwent the EMG the same day. Dr. Ungar-Sargon interpreted the study as showing "acute changes in upper trunk muscles on the right." He indicated his impression was "focal acute right brachial plexopathy." PX 1, p. 8.

On March 12, 2015, Dr. Carlson noted that Petitioner had seen a local neurologist who was not affiliated with workers' compensation. He noted a gait problem but indicated Petitioner's gait was not festinating. He noted a persistent resting tremor in the right arm but no "pill rolling" or lip smacking. PX 4.

Petitioner returned to Dr. Ungar-Sargon on March 20, 2015. The doctor's examination findings were unchanged. He performed another EMG. He interpreted this study as showing "focal denervation in left leg and paraspinals." His impression was "focal left lumbar radiculopathy." He recommended a soft neck collar and a lumbar epidural injection. He prescribed Norco and Flexeril and directed Petitioner to return in two weeks. PX 1, pp. 10-11.

On April 1, 2015, Dr. Ungar-Sargon performed a lumbar spine facet block and medial branch block at the Merrillville Plaza Surgery Center. PX 1, pp. 22-23, 81. PX 3.

On April 6, 2015, Dr. Carlson noted that Petitioner received a lower back injection the previous week "to no avail." He again noted the right arm tremor. He indicated Petitioner remained totally disabled. PX 4.

On April 8, 2015, Dr. Ungar-Sargon noted a new complaint of bilateral wrist pain and numbness and tingling in the right ring and small finger. The doctor discontinued the Flexeril and started Petitioner on Percocet. PX 1, pp. 25-27.

On April 22, 2015, Petitioner underwent a CT scan of the right shoulder. The radiologist interpreted the scan as showing no fracture, dislocation or bone destruction. He indicated the

acromioclavicular joint appeared intact. He saw a "tiny nonspecific calcification at the anterior superior margin of the right acromioclavicular joint" which he indicated might relate to some minimal hydroxyapatite deposition disease.

Petitioner underwent cervical spine and brain CT scans the same day. The radiologist interpreted the cervical spine scan as showing evidence of the prior surgical fusion at C6-C7 and mild degenerative disc disease at C5-C6. He interpreted the brain CT scan as showing mild bilateral posterior ethmoid sinus disease, "likely chronic." PX 1, pp. 33-36.

On April 29, 2015, Dr. Ungar-Sargon noted a complaint of sharp neck pain radiating to the right shoulder, arm, wrist and hand as well as low back pain and primarily left-sided leg pain. The doctor's examination findings were unchanged. He refilled Petitioner's medications. PX 1, pp. 39-40.

On May 6, 2015, Dr. Ungar-Sargon performed a lumbar epidural injection at L4-L5. PX 3.

On June 4, 2015, Dr. Carlson noted that Petitioner was still complaining of pain and tremor but told him that the tremor would decrease to the point where it stopped when he was at home. PX 4.

On June 16, 2015, Dr. Carlson noted that a neurologist retained by workers' compensation had diagnosed Petitioner with Parkinson's. He indicated that his own evaluation "did not support that diagnosis." He noted that at no time in his office did Petitioner exhibit cogwheel rigidity of any extremity or a festinating gait. He again noted a right upper extremity tremor. PX 4.

Dr. Ungar-Sargon performed EEG testing on June 29, 2015. He found no electrophysiological evidence for encephalopathy. PX 1, p. 59.

On July 1, 2015, Dr. Ungar-Sargon noted that Petitioner complained of severe pain in multiple body parts and reported experiencing only two days of relief following the May 2015 injection. The doctor refilled the Norco prescription and prescribed a cervical collar and another lumbar injection. PX 1, pp. 55-57.

Dr. Ungar-Sargon testified by way of evidence deposition on July 8, 2015. PX 6. The doctor testified he attended medical school in England, came to the United States in 1974, did a residency in neurology at Columbia, underwent fellowship training thereafter and went into private practice in Merrillville, Indiana in 1988. PX 6 at 6. He is board certified in pain management and neurodiagnostic medicine and board eligible in neurology and psychiatry. PX 6 at 7. He limits his practice to neurology, which includes disorders of the brain and spine. PX 6 at 7-8. He is affiliated with Jasper County Hospital. PX 6 at 8.

Dr. Ungar-Sargon testified he independently recalls Petitioner. Petitioner remains under his care. PX 6 at 6.

Dr. Ungar-Sargon testified he has never reviewed Dr. Ross's report. He regularly deals with patients who have Parkinson's disease and tremors but he is not a "movement disorder neurologist." Such a neurologist would practice in a university setting and enroll patients in various drug trials. PX 6 at 10.

Dr. Ungar-Sargon testified that he does not believe Petitioner has Parkinson's disease. Parkinson's is a degenerative syndrome that affects the elderly. Specifically, it affects the extremities and results in generalized tremors, gait instability and rigidity in the limbs. Petitioner has some tremors in his right arm but "one symptom does not make a diagnosis." PX 6 at 11. A brain MRI might enable you to diagnose the syndrome in its very late stages but the early stages cannot be diagnosed via an MRI or brain wave test. The diagnosis has to be made clinically. PX 6 at 13. The "last test" you might use to try to diagnose Parkinson's is an EMG so he does not understand why Dr. Ross recommended this. PX 6 at 13.

Dr. Ungar-Sargon testified he first saw Petitioner on March 11, 2015, at which time Petitioner provided a history of the work accident. He performed a nerve conduction study, which showed that Petitioner has carpal tunnel syndrome. This syndrome may be occupation-related but it is not related to the work accident. It is an "incidental finding." PX 6 at 15, 18. The nerve conduction study results would have no bearing on the question of whether Petitioner has Parkinson's. PX 6 at 15.

Dr. Ungar-Sargon opined that the work accident resulted in a brachial plexus injury to the right shoulder, leaving Petitioner with denervation in those muscles. PX 6 at 15.

The following exchange then took place:

> "Q: You did, I believe, testify that you observed he had tremors in his right arm.
>
> A: Yeah. Uh-huh.
>
> Q: To what would you attribute those tremors?
>
> A: I don't know.
>
> Q: Is it an involuntary movement of the arm?
>
> A: Yes, it is.
>
> Q: Based upon your expertise and in the course of your practice, are there more likely than not certain causes of that?
>
> A: I mean, there are a number of causes. One is familial. One

> is benign essential tremor that occurs in middle-aged people. He had this tremor before the accident although he does tell me it was made worse by the accident. He kept insisting on that."

PX 6 at 16.

Dr. Ungar-Sargon testified he was very surprised by the amount of nerve damage to the neck and brachial plexus Petitioner sustained. This told him that Petitioner "must have really fallen and really injured that part of his body." PX 6 at 16. Because Petitioner already had surgical hardware in his cervical spine, he was more likely to suffer a severe result from the work accident than a person whose neck was not fused. PX 6 at 17. The CT scan Petitioner underwent after the accident showed a broad-based bulge at C5-C6 which "could have been related to" the work accident. PX 6 at 17-18. He also believed the accident caused bicipital tendonitis, or inflammation in the tendons of the biceps from the stretch injury. PX 6 at 18. Petitioner also complained of low back pain radiating into his left thigh, "which never happened before the injury." PX 6 at 18. Given that Petitioner denied any significant prior issues with his neck or back, it was reasonable for him to assume the accident caused the neck and back problems. PX 6 at 19. Petitioner's neck and back problems are wholly unrelated to possible Parkinson's. PX 6 at 20. The left leg EMG he performed on March 20, 2015 showed acute nerve irritation as well as chronic changes. PX 6 at 20-21. He originally believed Petitioner's radicular complaints came from the L4-L5 level, which is why he performed a medial branch block in April. The block was "quite successful." PX 6 at 22. He felt he did not need to order a lumbar spine MRI because of the dramatic EMG results. PX 6 at 22.

Dr. Ungar-Sargon testified that Petitioner requires a "pretty heavy dosage of narcotics" to control his pain and spasms. To date, Petitioner has undergone one lumbar injection. Petitioner reacted favorably to this injection but recently indicated his pain is back up to 7/10. PX 6 at 24, 26. The doctor testified he has not yet recommended a second injection. Petitioner's brachial plexus stretch injury is much harder to treat. Therapy makes it worse and the "literature is very muddy" as to whether injections or blocks would help. He is therefore just bringing Petitioner along with opiates, rest and splinting. PX 6 at 24, 29. He is trying to keep Petitioner away from surgeons because they would love to remove the cervical disc. He does not think that removal of this disc would be helpful in light of Petitioner's brachial plexus injury. As of Petitioner's last visit, on July 1, 2015, his lumbar prognosis was that Petitioner would continue to improve with injections. In terms of the brachial plexopathy, however, that is a "permanent nerve injury that is unlikely to improve because of the severe denervation shown on the EMG." Petitioner needs 30 milligrams of opium per day "just to keep him functioning." PX 6 at 29.

Dr. Ungar-Sargon testified that Petitioner is currently totally disabled and unable to perform even sedentary duty. PX 6 at 30. Petitioner has to alternate lying down with standing and any activity involving his right hand exacerbates the pain and weakness. PX 6 at 30.

Dr. Ungar-Sargon testified he "absolutely" wants to avoid referring Petitioner to a surgeon. PX 6 at 30.

Under cross-examination, Dr. Ungar-Sargon testified that symptoms of Parkinson's include difficulty with speech, a "masked face," tremors on both sides of the body, rigidity, difficulty getting up out of a chair or bed, a stooped posture, a shuffling gait, poor stability and a change in handwriting. When patients come to his office, they either fill out paperwork on their own or get assistance from a loved one. PX 6 at 32-33.

On redirect, Dr. Ungar-Sargon testified he has not observed the foregoing symptoms in Petitioner. His only explanation for Dr. Levin's finding that Petitioner has Parkinson's is that she may be looking to find an excuse not to reimburse Petitioner for his work injury. He does not see how she could say Petitioner has a "masked face" since she saw Petitioner only once. Petitioner's tremor could cause difficulty with writing but "just because you have tremors does not mean you have Parkinson's." He cannot believe she found cogwheeling, rigidity and tremors in the left arm. Petitioner's tremor is only in his right arm. He has followed Petitioner for four months. Petitioner does not have Parkinson's. PX 6 at 34. The recommended medication for Parkinson's is L-Dopa. It is a heavy duty medication. Injections are not used to treat Parkinson's. PX 6 at 34-35. The fact Petitioner responded positively to the lumbar injection helps confirm that Petitioner is honest. PX 6 at 35. An EMG looks at the peripheral nervous system and Parkinson's is a disorder of the central nervous system. PX 6 at 35-36. The EEG he performed was normal. If Petitioner had Parkinson's, the EEG would not have been normal. PX 6 at 36.

Under re-cross, Dr. Ungar-Sargon testified that Petitioner did not tell him what he is hoping to receive from his claim. Some of his patients embellish, fake and malinger. Such patients would not report improvement from an injection. PX 6 at 37.

Petitioner continued seeing Dr. Carlson throughout this period. On August 11, 2015, the doctor noted that Petitioner was "still taking Percocet for pain in neck, back and throughout body." He noted no change in the right arm tremor. PX 4.

On September 1 and 14, 2015, shortly before the hearing, Dr. Carlson noted ongoing back, neck, arm and wrist pain as well as a right arm tremor. He also noted that Petitioner was seeing a neurologist. He described Petitioner's gait as antalgic but not festinating. PX 4.

On September 2, 2015, Dr. Ungar-Sargon noted ongoing complaints of back pain and administered another lumbar epidural injection. PX 1, pp. 70-72.

Petitioner testified he attempts to control the tremor in his right arm by using his left hand to hold the arm in a fixed position. He experiences the tremor "24/7." The tremor lessens a little when he is relaxed but it never goes away. He cannot use his right hand to write and it bothers him to move his right arm. His neck and arms get numb at night. His low back pain prevents him from sleeping well. He continues to see Drs. Carlson and Ungar-Sargon on a

regular basis. These doctors have kept him off work. At Dr. Ungar-Sargon's direction, he takes Oxycodone twice daily. He is scheduled to return to Dr. Ungar-Sargon on October 3, 2015. He is not sure what treatment is planned for that date. The medical bills in PX 5 relate to his work accident.

Under cross-examination, Petitioner testified he has been honest with his treating physicians. He has no reason to lie to them. He was "on [his] own" before the work accident. He was off work, drawing unemployment benefits, between January and March 2014. It was seven years ago that he was off work for a more substantial period. Following the accident, he first underwent care on April 10, 2014. There were two trucks at the jobsite where the accident occurred. Both trucks had to be driven by CDL-qualified drivers. After the accident, he got in one of these trucks but was not able to use his right hand to shift the gears. He has undergone two EMGs. He does not recall the first EMG being stopped. He is not aware that his records state he complained of left-sided tremors. He has no real difficulty with his speech, except when he is nervous. He has difficulty getting up out of a chair. He has to change positions frequently.

On redirect, Petitioner testified he underwent the first EMG after being examined by Dr. Ross. He later underwent a second EMG.

No witnesses testified on behalf of Respondent.

In addition to the exhibits previously summarized, Respondent offered into evidence a print-out of the benefits it has paid to date in connection with Petitioner's claim. This print-out reflects that Respondent paid temporary total disability benefits from April 10, 2014 through January 21, 2015 along with an advance of $2,113.36 and various medical expenses. RX 1.

Arbitrator's Credibility Assessment

Petitioner's testimony concerning the claimed work accident was detailed, believable and unrebutted. Petitioner lacked credibility, however, as to his pre-accident state of health and treatment.

Petitioner's testimony concerning the onset of his tremor conflicts with that of his treating neurologist, Dr. Ungar-Sargon. Petitioner flatly denied having any tremor prior to the work accident but Dr. Ungar-Sargon testified otherwise:

> "[Petitioner] had this tremor before the accident although he does tell me it was made worse by the accident. He kept insisting on that."

Petitioner's testimony concerning the extent of his tremor also conflicts with Dr. Ungar-Sargon's records. Petitioner insisted he experiences tremors only in his right hand and arm but Dr. Ungar-Sargon's initial history of March 11, 2015 reflects that Petitioner complained of

tremors in multiple body parts. Under cross-examination, Petitioner testified he was honest with his treating physicians. He expressed the belief that Dr. Ungar-Sargon made a mistake when recording his tremor-related complaints. The Arbitrator does not share Petitioner's belief on this point.

Arbitrator's Conclusions of Law

Did Petitioner sustain an accident on April 9, 2014 arising out of and in the course of his employment?

The Arbitrator finds that Petitioner met his burden of proof on the issue of accident. Petitioner's testimony concerning the circumstances of the accident and the mechanism of injury was detailed and corroborated by his treatment records. This testimony establishes Petitioner was on the clock, performing a work-related task, at the time of the accident. Respondent provided an Employer's First Report of Injury to its second examiner, Dr. Levin, but did not offer this document into evidence. Respondent did not call any witnesses to contradict Petitioner's account of the accident.

Did Petitioner establish a causal connection between his April 9, 2014 accident and his current claimed conditions of ill-being?

The Arbitrator finds that Petitioner established causation only as to the following conditions: a brachial plexus and/or shoulder condition, bicipital tendonitis, a cervical strain superimposed on a pre-existing, post-fusion condition and a lumbar spine condition with a left-sided radicular component. The Arbitrator views this radicular component as not significant, disability-wise, since Petitioner's dorsiflexion weakness is in his right foot, according to Dr. Carlson. PX 4. The Arbitrator attributes Petitioner's documented gait issues to a pre-existing and progressive neurological condition, whether Parkinson's or otherwise, that is unrelated to the work accident. See further below.

In finding causation as to a brachial plexus and/or shoulder condition, the Arbitrator relies on the opinions expressed by Dr. Ross, Respondent's first examiner, and the opinions expressed by Dr. Ungar-Sargon. In finding causation as to bicipital tendonitis, the Arbitrator relies on the opinions expressed by Dr. Ungar-Sargon. The Arbitrator also relies on Petitioner's credible description of the mechanism of injury. Petitioner indicated he was squatting next to a manhole, holding a 4-inch hose in his hands, when the hose suddenly moved, causing Petitioner's head to be pulled backward while his body was pulled forward, with Petitioner having to avoid falling into the manhole. This mechanism could certainly have caused a "stretch" type of injury to the brachial plexus and an injury to the biceps. The Arbitrator views Petitioner complaint of right upper extremity weakness as multi-factorial, with both his underlying, as yet undiagnosed neurological condition and his work-related brachial plexus injury and bicipital tendonitis contributing to the weakness.

In finding causation as to cervical and lumbar spine conditions of ill-being, the Arbitrator relies on the following: 1) Dr. Carlson's records, which document neck and back complaints from April 11, 2014 forward; 2) Dr. Ungar-Sargon's opinions; and 3) the March 20, 2015 EMG, which showed focal left lumbar radiculopathy.

The Arbitrator further finds that Petitioner failed to establish causation as to any tremor-producing neurological condition, whether Parkinson's or otherwise. Petitioner was not credible when he insisted his tremor started immediately after the accident and was confined to his right hand. His own physician, Dr. Ungar-Sargon, acknowledged that Petitioner reported having a tremor before the accident. That same physician recorded complaints of tremors in various body parts on March 11, 2015. PX 1, pp. 1-3. It may well be that Petitioner's pre-existing neurological condition progressed after the work accident but there is no credible evidence indicating that the accident caused or accelerated the progression. Dr. Ungar-Sargon acknowledged he does not know the cause of Petitioner's tremor.

The Arbitrator also finds that Petitioner failed to establish causation as to the carpal tunnel syndrome diagnosed by Dr. Ungar-Sargon. The doctor testified this condition could be related to Petitioner's occupation but he did not link it to the accident.

Is Petitioner entitled to temporary total disability benefits? Is Petitioner entitled to prospective care?

Petitioner claims he was temporarily totally disabled from April 10, 2014 through the hearing of September 28, 2015. Respondent disputes this claim and claims an overpayment of temporary total disability benefits. Arb Exh 1.

Petitioner's overall appearance at the hearing leads the Arbitrator to conclude he is totally disabled. Petitioner exhibited a significant tremor in his right hand and arm, as well as difficulty rising out of his chair and walking a short distance in the hearing room. His affect was flat.

The Arbitrator attributes some of Petitioner's current total disability to his underlying, unrelated neurological condition, whatever that condition may be. The Arbitrator is not a physician but feels strongly that Petitioner, for his own sake and independent of this claim, with no liability on Respondent's part, should consult a board certified neurologist who specializes in movement disorders and practices in a university setting with access to medication trials. To the Arbitrator, it is the effects of the condition, rather than the condition's diagnostic label, that should matter at this point. As stated above, the Arbitrator does not attribute Petitioner's tremor and significant gait disorder to the accident. For Petitioner to continue a regimen of narcotic pain medication and give no consideration to alternative or additional medication that could address his tremor and mobility issues, makes no sense to the Arbitrator.

The Arbitrator finds that Petitioner's accident-related cervical and lumbar conditions have stabilized but continue to require some form of pain management. The Arbitrator finds it

reasonable for Dr. Ungar-Sargon to have administered one lumbar injection, on April 1, 2015, but finds it unreasonable for the doctor to have administered two additional injections in May and September 2015. Dr. Ungar-Sargon testified that Petitioner had a positive response to the first injection but Dr. Carlson's records tell a very different story, with the doctor indicating the first injection was "to no avail." The Arbitrator finds that Petitioner's shoulder/brachial plexus injury is unstable and requires evaluation and treatment. Because the Arbitrator views Petitioner's shoulder/brachial plexus injury as accident-related and unstable as of the hearing, and based on Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010), the Arbitrator awards temporary total disability benefits from April 10, 2014 through the hearing of September 28, 2015, with Respondent receiving credit for the $26,192.25 in benefits it has paid. Arb Exh 1.

Petitioner seeks prospective care in the form of ongoing management by Drs. Carlson and Ungar-Sargon. The Arbitrator declines this request because she views neither of these physicians as sufficiently qualified or specialized to address Petitioner's needs. There is no evidence indicating Petitioner is improving under their care. At each visit, including the most recent visit of September 2, 2015, Dr. Ungar-Sargon documented complaints of very severe pain. The Arbitrator finds Respondent liable for prospective care in the form of an evaluation by a board certified, preferably fellowship-trained, physician who specializes in brachial plexus injuries.

Is Petitioner entitled to reasonable and necessary medical expenses?

Petitioner seeks an award of various medical and prescription bills. These bills are included in PX 5. The Arbitrator has reviewed all of the bills and compared them against the treatment records in evidence.

The Arbitrator awards the Franciscan Physician Network (Dr. Carlson) bills to the extent of Respondent's payment, i.e., $3,018.63, as documented in RX 1, on the theory that a paid medical bill is deemed to be reasonable and necessary.

The Arbitrator awards the Mea-Munster, LLC charges of $501.00, subject to the fee schedule and with Respondent receiving credit for the $450.90 payment it made to said provider. RX 1. These charges relate to care rendered at the Emergency Room on April 10, 2014. The charges are not supported by correlating medical records but both of Respondent's examiners referenced those records in their reports.

The Arbitrator awards the Imaging Associates of Indiana charges of $84.00, subject to the fee schedule and with Respondent receiving credit for the $80.33 payment it made to said provider. RX 1. These charges relate to cervical and lumbar spine X-rays performed on April 14, 2014.

The Arbitrator declines to award the $457.46 bill from Internal Medicine Associates for services provided by Dr. Venkatachalam. The bill in evidence contains no date of service. Nor does it contain any description of the services provided.

The Arbitrator awards the Munster Radiology Group charges of $77.00, subject to the fee schedule. These charges relate to shoulder and wrist X-rays performed at Community Hospital on April 10, 2014. The charges are not supported by correlating medical records but both of Respondent's examiners referenced the April 10, 2014 Community Hospital Emergency Room records in their reports.

The Arbitrator awards the Neurology & Pain Management Rensselaer (Dr. Ungar-Sargon) charges to the extent of $13,094.01, subject to the fee schedule. The Arbitrator declines to award the claimed charges of $2,879.80 relating to the injections Dr. Ungar-Sargon performed on May 6 and September 2, 2015.

The Arbitrator awards the incurred CVS prescription expenses of $91.99.

The Arbitrator awards the Merrillville Plaza Surgery charges of $225.00, the Merrillville Anesthesia charges of $1,225.00 and the Merrillville Plaza Surgery charges of $6,305.70, subject to the fee schedule. All of these charges relate to the lumbar injection and branch block Dr. Ungar-Sargon performed on April 1, 2015. The Arbitrator finds it reasonable for the doctor to have administered this care, given Petitioner's ongoing back complaints.

The Arbitrator declines to award the Merrillville Plaza Surgery charges of $4,352.85, $225.00, $225.00 and $1,350.00 relating to the lumbar injection Dr. Ungar-Sargon administered on May 6, 2015. The Arbitrator finds it not reasonable for Dr. Ungar-Sargon to have pursued additional lumbar injections after the injection of April 1, 2015, based on Dr. Carlson's records, which show that Petitioner described that injection as unhelpful. Petitioner did not testify to obtaining relief from any of the three injections he has undergone to date.

The Arbitrator finds it reasonable for Petitioner to have undergone cervical spine and lumbar spine X-rays at Franciscan St. Anthony Hospital on April 14, 2014 but does not award the $888.00 in charges relating to these X-rays because the explanation of benefits document in PX 5 shows a $0 balance. Respondent's print-out reflects a payment of $692.64 to Franciscan St. Anthony for services provided on April 14, 2014. RX 1.

The Arbitrator declines to award the Lab Pro expenses of $1,867.50 for services provided by Dr. Ungar-Sargon on July 1, 2015. The doctor's records reflect he refilled the Norco prescription and provided a cervical collar on July 1, 2015. It is not clear how these services correlate with $1,867.50 in charges. Petitioner did not testify to obtaining any durable equipment from Dr. Ungar-Sargon.

The Arbitrator awards the $478.00 charges of William Mason, M.D. relating to the CT scans Petitioner underwent on April 22, 2015, subject to the fee schedule.

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

WILSON, SHANNON Case# **11WC047868**

Employee/Petitioner

DEPARTMENT OF HUMAN SERVICES

Employer/Respondent

On 10/20/2015, 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:

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0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

OCT 20 2015

RONALD A. RASCIA, 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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Shannon Wilson
Employee/Petitioner

Case # 11WC 47868

v.

Department of Human Services
Employer/Respondent

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 **7/9/2015**. 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. [ ] 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, 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 $**39,226.20**; the average weekly wage was $**754.35**.

On the date of accident, Petitioner was **55** years of age, ***married*** with **0** children under 18.

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 $**0.00**.

Respondent is entitled to a credit under Section 8(j) of the Act for all medical bills paid through it's group medical plan. Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit. But, by so doing, Respondent is responsible for Petitioner's co-pays.

ORDER

Respondent shall pay reasonable and necessary medical services of $9,270.00, as provided in Section 8(a) and 8.2 of the Act. Respondent shall pay any unpaid, related medical expenses according to the fee schedule and provide documentation with regard to said fee schedule payment calculation to Petitioner.

Respondent shall authorize the treatment as prescribed by Dr. Stachniw.

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

10/13/15
Date

ICArbDec19(b)

OCT 20 2015

FINDINGS OF FACTS:

Petitioner testified that she became employed by Respondent in 2000. Petitioner indicated that her job was clerical/receptionist. Petitioner stated that she was laid off in 2002. During that lay off, she worked for the Department of Corrections, Henry Hill as timekeeper. She spent approximately 14 weeks doing that job. As the timekeeper, she had to sign in and sign out each employee which totaled about 360 a day. Petitioner provided that she primarily used her right hand to write the names and she would then have to file them. Petitioner worked at the desk from 2005 to 2013. At that time, she was promoted to a case worker.

Petitioner testified that there were seventy-five (75) to two-hundred (200) people who would come to the front desk on a daily basis. They would ask questions about applying their benefits and other processes. For each of those individuals, she would have to look up their file on the computer. As an office assistant, she would have to type (keyboard), file, handwrite items, and work the file, all of which involved use of both the left and right hand.

Petitioner described her desk as being approximately 3 feet high. Her computer keyboard sat on that desk. She had to reach across the desk to a window which was higher from floor than the desk. At trial, she demonstrated that her reach was approximately 2 feet higher than the desk while leaning over the desk. Petitioner provided that she also leaned the left forearm and elbow on the desk when she worked.

Petitioner testified that her job duties also involved accepting phone calls. Petitioner provided that received between two-hundred (200) and three-hundred (300) telephone calls. Those too required her to look up the individual on the computer. Sometimes the conversations were short, ten (10) seconds, merely looking for the identity of the case worker or other times they were appreciably longer, five (5) to ten (10) minutes. Petitioner also stated that recipients or potential recipients would also walk in without appointment.

Petitioner testified that in 2009 she was required to move a substantial amount of material to a different office. She had to clear the shelves of files to be sent and box them. The boxes were heavy and were lifted more than once before she was done with them.

Her duties were to handle the case and transfer files. There were 25 file cabinets. The files were in expanding folders of various sizes and weights. When dealing with handling the file, she would have to pull them out no less than 2 times and sometimes 4 or 5 times in handling. She demonstrated how she reached down with her palms to grasp the files. She would grab the file in one or both hands and physically pull it up out of the cabinet. Sometimes the files got caught and had to be pulled forcefully.

In 2010, she transferred 450 transcripts out. She got 581 files in cases and 1,108 pages. She had to pack 103 boxes, each box being assembled by her and weighing anywhere around 40 to 50 pounds. Petitioner testified in detail to the boxes she packed and moved, office supplies she carried and unpacked, the number and times she pulled files in and out of boxes or file drawers.

Her duties also involved receiving office supplies which she would have to place on shelves. That involved grasping and picking things up with one or both hands. There were also pamphlets, brochures, paper and folders that she had to unpack and put on shelves.

Medical records submitted show Petitioner was seen by Dr. John Mahoney of Midwest Orthopedic on May 6, 2008. At that time Petitioner complained of increased numbness and tingling in both hands, more left

than right. Petitioner provided that the symptoms had been present for two months and were bothersome at night and while driving. She had been dropping things and had difficulty with fine motor tasks. Dr. Mahoney concluded that she had bilateral carpal tunnel syndrome with mild signs of left cubital tunnel syndromes. The doctor fitted her for a cock-up splint and ordered an EMG/NCV study. The study when performed on May 30, 2008 demonstrated normal findings with no evidence of right or left median or ulnar neuropathy nor any left upper limb radiculopathy. (RX 3) Petitioner testified that she never returned to the doctor's office nor did she did see Dr. Mahoney after the negative EMG.

On July 20, 2010 Petitioner filed a "Workers' Compensation Employee's Notice of Injury" informing Respondent she injured her "right and left hands, wrists" while "picking up items, typing, writing, filing." Petitioner described her duties as computer work, typing, filing, purging, stocking paper, supplies." (RX 1)

Petitioner sought medical care on August 11, 2010 with Dr. Myron Stachniw of Midwest Orthopedic Services. She complained of a gradually increasing pain, weakness and numbing in her hand with the repetitive constant work with both hands. She described the pain as throbbing and had symptoms of weakness and numbness. Since the problem started, it became worse, causing her to wake up in her sleep. She tried braces on her own. He also noted that on the left side the 4th and 5th fingers would go to sleep when her arm was flexed. On physical exam, he noted atrophy of the thenar eminence and positive Tinel's on both wrists and the left elbow. He was certain that she was suffering from carpal tunnel syndrome and probable left cubital tunnel syndrome. (PX 1)

On August 19, 2010, Dr. Stachniw completed his initial workers' compensation medical report noting his diagnosis and prognosis. Dr. Stachniw referred Petitioner to Borislav Nikolov MD of Galesburg Clinic who obtained a history of complaints of numbness and paresthesia in both hands with pain in the wrist and fingers, that her left hand was worse than her right. He performed the EMG which showed mild right carpal tunnel syndrome. There was no evidence of medial focal neuropathy on the left side. There was some denervation changes in the primary C6 myotome on the left raising question about cervical radiculopathy. His conclusion was that the study performed was abnormal with evidence of right medial focal neuropathy at the wrist but no evidence of left carpal tunnel syndrome or ulnar neuropathy. (PX 1)

Petitioner returned to Dr. Stachniw on November 16, 2010 and told her that he concluded she had right carpal tunnel syndrome and probably radiculopathy on the left. He was of the opinion she would need to have a ligamentous release on the right. He suggested an MRI of the cervical spine. (PX 1)

On September 22, 2010 Petitioner underwent a cervical MRI at OSF St. Mary's. Dr. Williams who performed the test, noted at C6-7 that there was a broad based posterior disc protrusion measuring about 3 mm in thickness which mildly effaced the anterior dural sac but did not significantly compromise the spinal canal or neural foramina. (PX 2)

On October 4, 2010, Dr. Stachniw reviewed the MRI noting some arthritis in the neck. The doctor also noted Petitioner still had numbness on the left side even though the electrodiagnostic studies didn't show any radiculopathy. He felt that she had carpal tunnel on the right and indicated, "I told her she should have that done." The doctor indicated he advised her not to wait more than nine (9) months before getting a carpal tunnel release. At that visit, the doctor started her on home cervical traction. (PX 1)

On December 6, 2010, Dr. Stachniw noted that Petitioner's left wrist was still symptomatic. He was sure she had carpal tunnel syndrome and ordered a MRI. The MRI when completed on December 15, 2010 demonstrated 1.) prominent size and edema in the median nerve, likely related to carpal tunnel syndrome; and, 2.) mild areas of edema in the distal navicular and in the lunate, arthritic in nature. (PX 1)

On December 20, 2010, Dr. Stachniw reviewed the MRI noting some arthritis and swollen median nerve, which he indicated was consistent with carpal tunnel syndrome. The doctor provided that Petitioner should be treated with outpatient surgery. He felt that her condition was work-related. (PX 1)

Petitioner testified and the medical records submitted show Petitioner continued to treat conservatively for her carpal tunnel syndrome diagnoses. Dr. Stachniw continues to recommend surgery.

At Respondent's request, Petitioner underwent a Section 12 examination with Dr. Chris Wottowa on August 1, 2012. In his report signed on August 8, 2012, Dr. Wottowa agreed that it appears she has bilateral carpal tunnel syndrome and possibly cubital tunnel syndrome. As to whether she reached maximum medical improvement, Dr. Wottowa stated that she had not as she was still suffering the symptoms of the irritation of her median nerve and the ulnar nerve. In his report, Dr. Wottowa indicated he was asked to determine whether the work caused, aggravated or accelerated her condition. The doctor responded, "By her own description, her symptoms have been aggravated, but I hesitate to say that they were caused by her work activities because it is primarily clerical work". The doctor went on to state that activities such as reading a newspaper, talking on the phone at home, preparing meals or driving a car could have been aggravating factors as well. (RX 2)

Dr. Stachniw testified via deposition in this matter. The doctor provided that when he first saw Petitioner, she described her job as an office assistant, i.e., "...computer work, administrative work, will move stuff around the office, just does everything in the office...repetitive, constant work with her hands." Dr. Stachniw was asked to assume the following facts: "...[Petitioner] began work for the State of Illinois in an office assistant capacity in 2000. And in that job she was required to do typing, which I believe is computer work, keyboarding technically,...for a good part of the day. She did writing with her dominant right hand. She did filing, and by that I mean she would assemble files, pick them up, pull files apart in the drawer, and shove files in. And during the course of her day that was primarily what she did eight hours a day..." When asked his opinion as to whether or not there was a causal relationship between the above referenced and Petitioner's bilateral carpal tunnel syndrome, the doctor testified that same either caused or aggravated her conditions. (PX 6, pgs. 12-14)

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 the following:

The Arbitrator finds that Petitioner sustained an accident that arose out of and in the course of her employment on July 20, 2010 and that her bilateral carpal tunnel and cubital tunnel syndrome conditions of ill-being are causally related to said conditions.

It is well known that the work activity need not be the major cause. A workman's existing physical structure, whatever it may be, gives way under the stress of his usual duties establishing a compensable injury. ***LaClede Steel Company v Industrial Commission***, 6 Ill.2d 296 (1955) The employer is not relieved of liability under the Illinois Workers' Compensation Act because an injury arose from a pre-existing condition. ***AC&S v Industrial Commission***, 304 Ill.App.3d, 875, 882 (2000) The Petitioner need to show only that some act of the employment was a causative factor not the sole or principle cause of the resulting injury. ***Teska v Industrial Commission,*** 266 Ill.App.3d, 740, 742 (1994)

In this case, Petitioner's testimony regarding her work activities is unrebutted. Both Dr. Stachniw, Petitioner's treating physician, and Respondent's evaluating physician, Dr. Wottowa, provided an affirmative causal connection opinion. Specifically, Dr. Stachniw noted on December 20, 2010, that her condition was work-related. The doctor also confirmed same during his deposition when he testified that her work activities

either caused or aggravated her conditions. Although Dr. Wottowa indicated he hesitated to say that her conditions were caused by her work activities, he also provided "By her own description, her symptoms have been aggravated..." As noted above, Petitioner's testimony regarding her work activities is unrebutted. The Arbitrator notes that both of the doctors opinions were rendered without specific knowledge of what Petitioner's job duties entailed or their frequency.

As summarized in ***Williams v Industrial Commission***, 244, Ill.App.3d, 204, 209 (1993), an employee suffering from a repetitive trauma injury must point to a date within the statute of limitations on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person. Here, clearly Petitioner did not appreciate that her job caused or contributed to her bilateral carpal tunnel and left cubital tunnel syndromes until July 20, 2010. There is no indication she was aware that the carpal tunnel and ulnar nerve condition described by Dr. Mahoney in May 2008 was related to her job. The medical inquiry history fails to reflect that she attributed her wrist pain and numbness to work. No reference was made in the records that Petitioner's condition was related to a work injury. In addition, she continued to perform the same activities aggravating that condition every workday, whether it was with the Department of Human Services or the Department of Corrections. There is no evidence presented that Petitioner knew her bilateral carpal tunnel and left ulnar nerve condition were caused by her job.

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 the following:

Petitioner submitted the following bill:

Midwest Orthopedic Specialists/Myron Stachniw, MD - $647.00	
Borislov Nikolov, MD	
9/8/2010	$1,575.00
5/8/2013	no bill furnished
OSF St. Mary's Medical Center	
9/22/2010 MRI	$2,908.00
12/14/2010 MRI	$3,199.00
Jeffery Hershkowitz, MD	
7/24/2013	$ 124.00
Clinical Illinois Radiologists	
9/22/2010	$ 451.00
12/14/2010	$ 356.00
TOTAL	$9,270.00

Having found the requisite accident and casual connection, the Arbitrator finds that Respondent shall pay the above referenced medical providers. Said payment shall be made consistent with the medical fee schedule. If payment has been made by group insurance, funded in whole or in part by Respondent, Petitioner shall be held harmless for those payments made. In addition thereto, Respondent shall reimburse Petitioner any out of pocket medical expenses and co-pays should group insurance have paid her medical bills.

In support of the Arbitrator's decision relating to (K.) Is Petitioner entitled to any prospective medical care, the Arbitrator finds the following:

Petitioner's treating physician, Dr. Stachniw, prescribed bilateral carpal tunnel surgery and considered doing an ulnar nerve transposition based upon his findings. Respondent's evaluating physician, Dr. Wottowa, agreed that all three surgeries were necessary.

Having found that Petitioner's conditions of ill-being is causally related to her employment, the Arbitrator finds that Respondent shall authorize the treatment as prescribed by Dr. Stachniw.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

COFFEY, KEVIN Case# **12WC038918**

Employee/Petitioner

CITY OF PEORIA

Employer/Respondent

On 10/19/2015, 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 0.08% 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:

4707 LAW OFFICE OF CHRIS DOSCOTCH
2708 N KNOXVILLE AVE
PEORIA, IL 61604

0980 HASSELBERG WILLIAMS GREBE ETAL
JOHN DUNDAS
124 S W ADAMS ST SUITE 360
PEORIA, IL 61602

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

Kevin Coffey
Employee/Petitioner
v.

City of Peoria
Employer/Respondent

Case # **12** WC **38918**

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, 2015**. 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. [ ] 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 **October 5, 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 $**56,160.00**; the average weekly wage was $**1,080.00**.

On the date of accident, Petitioner was **32** 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 $**9,900.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**9,900.00**.

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

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $**6,185.00,** as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**648.00**/week for **125** weeks, because the injuries sustained caused the **25**% 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.

Arbitrator Anthony C. Erbacci

October 15, 2015
Date

OCT 19 2015

FACTS:

On October 5, 2012, the Petitioner sustained undisputed accidental injuries arising out of and in the course of his employment with the Respondent as a maintenance worker. The Petitioner testified that on that date he was carrying a concrete form that weighed approximately 75 lbs. when he felt the immediate onset of low back pain followed by the onset of pain into his left leg.

On October 7, 2012 the Petitioner reported to the OSF Medical Center Emergency Department and gave a consistent history of his injury. An MRI was performed and reported to demonstrate decreased height and signal for the L4-L5 intervertebral disc with irregularity and abnormal signal of the endplates and associated vertebral bodies.

On October 8, 2012 the Petitioner was seen by Dr. Moody, who reviewed the MRI Report and noted a prominent disc protrusion at L4-L5. Dr. Moody referred the Petitioner for a consultation with a spine surgeon.

On October 9, 2012 the Petitioner was seen by Dr. Andrew Tsung at the Illinois Neurological Institute. The Petitioner gave a consistent history of his injury and reported that his pain was initially in his back, and then progressed into his left leg. Due to the pain and weakness in the left foot and toes, an MRI was performed that showed a herniated disc at L4-L5. Dr. Tsung recommended surgery and on October 11, 2012 Dr. Tsung performed a left L4-L5 decompressive lumbar laminectory and microdiscectomy on the Petitioner.

The Petitioner underwent a post-surgical course of physical therapy with the Institute of Physical Medicine and Rehabilitation during which it was noted that the Petitioner had complaints of right buttocks pain.

On November 7, 2012 the Petitioner was seen by Dr. Moody, who noted that there were no significant surgical complications, but that the Petitioner had some low back pain going into the right gluteal region. The Petitioner's left lower extremity was noted to be essentially pain free, and there was improvement in the left foot.

On December 21, 2012, the Petitioner was released by the Illinois Neurological Institute to return to work with a weight restriction of 20 pounds. On January 2, 2013 the Petitioner was seen again by Dr. Moody and was noted to be doing well, with no left lower radicular symptoms and improved left lower extremity weakness. The Petitioner was noted to have complaints of some mild low back pain going into the right gluteal region but reported that he was doing essentially normal activities of daily life. Dr. Moody authorized the Petitioner to return to work with a 20 pound lifting restriction.

The Petitioner returned to Dr. Moody on February 5, 2013 and it was noted that his left lower extremity strength had improved but he was having pain in his gluteal region and some right lateral calf pain. An MRI was performed which showed post-operative changes, but no structural lesions to explain the Petitioner's right lower extremity pain.

On February 11, 2013 the Petitioner was seen at the Illinois Neurological Institute and was released from all weight restrictions, and allowed to increase his activity as tolerated. On February 21, 2013 the Petitioner was seen by Dr. Moody, and Dr. Moody increased the Petitioner's lifting restriction to 30 pounds. On February 22, 2013 the Petitioner was noted to have complaints of occasional right hip and lateral shin pain and he was referred to pain management, and told there was no need to return to neurosurgery for follow-up.

On March 13, 2013 the Petitioner was seen at the Central Illinois Pain Center with a complaint of back pain and right buttocks pain. On March 21, 2013 a transforaminal epidural injection was administered to the Petitioner and on April 4, 2013 a trigger point injection was administered to the Petitioner.

On April 9, 2013 the Petitioner underwent a Functional Capacity Assessment at OSF Industrial Rehabilitation. The Petitioner was found to be able to meet all of the demands of his heavy duty job, which includes lifting up to 100 pounds and he was released to return to full duty work.

Following his return to work, the Petitioner continued to follow-up with Dr. Moody for complaints of right gluteal pain. The Petitioner also received additional trigger point injections for his right buttocks pain on April 25, 2013, July 24, 2013, October 9, 2014 and October 23, 2014. The Petitioner then received additional lumbar epidural injections for his right buttocks pain on November 26, 2013 and January 9, 2014. The Petitioner testified that the trigger point injections did provide him relief from his right buttocks pain and that he has not received another injection since the October 23, 2014 trigger point injection.

At the request of the Respondent, the Petitioner was examined by Dr. Lawrence Nord, an orthopedic surgeon, on May 6, 2014. Dr. Nord prepared a Permanent Medical Impairment Report per the AMA's Guides to the Evaluation of Permanent Impairment, 6th Edition and reported that the Petitioner had a Whole Person Impairment Rating of 8%.

On September 5, 2014 the Petitioner had an MRI which showed evolution of reactive/postoperative changes involving the posterior surgical bed at L4-L5 and L4-L5 endplates. (Petitioner's Exhibit 4) There was disc/osteophyte complex at L4-L5 that encroached upon the ventral thecal sac, flattening it, more so on the right. There was enhanced epidural tissue at the level of superior L5 endplate adjacent/contiguous with the extradural right L5 nerve root/sheath complex.

The February 23, 2015 evidence deposition testimony of Dr. Nord was admitted into the record as Respondent's Exhibit 2. Dr. Nord testified as to the records he reviewed and his examination of the Petitioner. Dr. Nord noted the Petitioner's complaints, including complaints of right hip pain, and opined that the Petitioner's work injury was responsible for the Petitioner's disc herniation for which he underwent surgery. Dr. Nord opined that the care and treatment the Petitioner had received up to the time of his examination was appropriate and related to the Petitioner's inury. Ultimately, Dr. Nord agreed that the Petitioner's right buttock and leg complaints were related to the Petitioner's work injury.

At the request of the Respondent, a review of the Petitioner's medical records was performed by Dr. Jay Levin who prepared a Records Review Report dated May 8, 2015 and a supplemental report dated July 21, 2015. Dr. Levin opined that the Petitioner's ongoing complaints were consistent

with his work injury but he did not give specific opinions on the issues of MMI, necessity of treatment and future medical care because he wanted to perform a physical examination of the Petitioner. While Dr. Levin did not specifically opine as to the reasonableness of the trigger point injections the Petitioner received, he indicated that "...classically trigger point injections are not indicated for complaints of post-decompressive laminectomy and diskectomy." Dr. Levin did not examine the Petitioner subsequent to his report.

The Petitioner testified that he did return to his regular work following his release to full duty on April 9, 2013, and that he has continued to worked full duty at his regular job through the present time. The Petitioner testified that he continues to have pain in his low back radiating into his right buttock and that that he experiences these symptoms daily. The Petitioner rated the pain in his low back and right buttock to range from between 1 to 6 out of ten. The Petitioner testified that activities such as prolonged sitting or heavy work such as shoveling aggravate his symptoms. The Petitioner testified that his right buttock and leg pain improved since the last trigger point injection and that his current right leg pain is more localized to the buttock and is not as severe. With regard to his left leg, the Petitioner testified that he has improved but that he continues to have some residual weakness in the left foot and some loss of sensation. The Petitioner also testified that his condition does not limit him in any life activities and that he continues to be able to fish and hunt.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

It is not disputed that the Petitioner sustained accidental injuries arising out of and in the course of his employment with the Respondent on October 5, 2012. It is also not disputed that, as a result of those injuries that Petitioner sustained a disc herniation at L4-L5 for which he underwent an L4-L5 decompressive lumbar laminectomy and microdiscectomy. Following the surgery, the Petitioner continued to have some complaints relating to his low back and left leg as well as complaints of pain in his right buttock and leg. The Respondent does not dispute the casual relation between the Petitioner's injury and his left lower extremity condition but disputes only the casual relation between the Petitioner's injury and his right buttock and leg pain.

The Arbitrator notes that the Petitioner's right buttock and leg pain are consistently noted in the medical records and began well prior to the Petitioner's examination by Dr. Nord. Dr. Nord acknowledged that the Petitioner complained to him of right hip pain and Dr. Nord was aware that the Petitioner had undergone injections for those complaints prior to the time he examined the Petitioner. Dr. Nord opined that that the care the Petitioner had received up to the time that he examined the Petitioner was appropriate and related to the Petitioner's work injury. Ultimately Dr. Nord opined that the Petitioner's right buttock and leg complaints were related to the Petitioner's work injury.

Based upon the nature of the Petitioner's undisputed injury, the lack of any right buttock and leg complaints prior to the injury, the Petitioner's consistent complaints of right buttock and leg complaints as noted in the medical records, the Petitioner's testimony, and the opinions and

testimony of Dr. Nord, the Respondent's examining physician, the Arbitrator finds that the Petitioner's right buttocks and leg complaints are casually related to the work injury of October 5, 2012.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the work injury of October 5, 2012.

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:

The Petitioner introduced into evidence outstanding medical bills totaling $6,185.00. With the exception of the initial physical therapy bills to IPMR, the majority of the outstanding medical bills relate to the epidural and trigger point injections the Petitioner received for his right buttock and leg complaints. The Arbitrator notes that Dr. Nord agreed that the Petitioner's medical treatment was appropriate and related to the work injury and the Arbitrator has found that the Petitioner's right buttocks pain is causally related to the work injury. The Arbitrator also notes that the Petitioner testified that the treatment provided relief and increased his function. Thus, the Arbitrator finds that the outstanding medical bills totaling $6,185.00, as evidenced in Petitioner's Exhibit 11, are reasonable, necessary and causally related to the Petitioner's work injury of October 5, 2012.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

The Petitioner's undisputed injury occurred after September 1, 2011. Therefore, Section 8.1(b) of the Act requires consideration of the following criteria in determining the level of permanent partial disability:

* The reported level of impairment based upon the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment;
* the occupation of the injured employee;
* the age of the employee at the time of the injury;
* the employee's future earning capacity; and
* evidence of disability corroborated by the treating medical records.

In the instant case, the Petitioner sustained a disc herniation at L4-L5 for which he underwent an L4-L5 decompressive lumbar laminectomy and microdiscectomy.

With regard to the reported level of impairment pursuant to Section 8.1(b), the level of impairment reported by Dr. Lawrence Nord pursuant to the American Medical Association's Guides to Evaluation of Permanent Impairment is 8% of the whole person. The Arbitrator notes that impairment

does not equate to permanent partial disability under the Workers' Compensation Act but considers the relatively high impairment rating to be a significant factor in determining the Petitioner's disability.

With regard to the occupation of the injured employee, the Petitioner's occupation is that of maintenance worker/laborer, which the Arbitrator notes requires heavy physical work. The Arbitrator concludes that the Petitioner's ability to perform the duties of his employment will be more adversely affected by his permanent partial disability than would the ability of an individual who performs lighter work. Thus, the Arbitrator considers the Petitioner's occupation to be a significant factor in determining the Petitioner's disability and concludes that the Petitioner has sustained a greater amount of permanent partial disability than an individual who performs lighter work.

With regard to the age of the employee at the time of injury, the Petitioner's age at the time of injury was 32 years old. The Arbitrator considers the Petitioner to be a younger individual and considers the Petitioner's relatively young age to be a significant factor in determining the Petitioner's disability as the Petitioner will be affected by his permanent partial disability for a greater period of time than an older individual.

With regards to the employee's future earning capacity, the Arbitrator notes that there was no evidence presented which indicates that the Petitioner's future earning capacity will in any way be diminished. The Petitioner has been released to return to work with no restrictions and he continues to perform his regular full-duty for the Respondent.

With regard to the evidence of disability corroborated by the treating medical records, the Petitioner credibly testified that he currently continues to have pain in his low back radiating into his right buttock and that activities such as prolonged sitting or heavy work aggravate his symptoms. The Petitioner also testified that his left leg pain is improved but he continues to have some residual weakness in the left foot and some loss of sensation. The Arbitrator notes that the Petitioner's testimony regarding residual low back pain radiating into his right buttock and lower extremities is corroborated by the medical records admitted into the record. The medical records reflect that the Petitioner has had these complaints throughout his care post operatively and that the Petitioner's symptoms wax and wane with activities. The Petitioner's complaints as supported by the medical records, evidences a disability as indicated by Commission decisions regarded as precedent pursuant to Section 19(e).

The determination of permanent partial disability is not simply a calculation but an evaluation of all 5 factors as stated in the Act. In making this evaluation of permanent partial disability, consideration is not given to any single enumerated factor as the sole determinant. Therefore, having considered the factors enumerated in Section 8.1(b) of the Act, 820 ILCS 305/8.1(b), the Arbitrator finds that as a result of his accidental injuries the Petitioner has sustained a 25% disability to his whole person.

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

MOORE, DANIEL W Case# **14WC038043**

Employee/Petitioner

ELGIN TOYOTA

Employer/Respondent

On 9/28/2015, 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:

2208 CAPRON & AVGERINOS PC
DANIEL F CAPRON
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

0210 GANAN & SHAPIRO PC
BENJAMIN W SCHROEDER
210 W ILLINOIS ST
CHICAGO, IL 606054

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
19(b)

Daniel W. Moore
Employee/Petitioner

v.

Elgin Toyota
Employer/Respondent

Case # **14** WC **38043**

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 **Brian Cronin**, Arbitrator of the Commission, in the city of **Elgin**, on **May 6, 2015**. 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. [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, **January 29, 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.

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

In the year preceding the injury, Petitioner earned $**50,762.92**; the average weekly wage was $**976.21**.

On the date of accident, Petitioner was **30** years of age, **married** with **2** dependent children.

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

Respondent shall be given a credit of $**14,411.16** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**7,000.00** (advance on permanency) for other benefits, for a total credit of $**21,411.16**.

ORDER

Temporary Total Disability Benefits

Respondent shall pay Petitioner temporary total disability benefits of $**650.81**/week for **45-3/7** weeks, commencing **February 3, 2014** through **March 31, 2014** and **August 19, 2014** through **May 6, 2015**, as provided in Section 8(b) of the Act.

Prospective Medical Care

Respondent shall authorize and pay for the cervical disc surgery that Dr. Stadlan has recommended, in accordance with Section 8(a) and subject to Section 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.

Signature of Arbitrator

September 26, 2015
Date

SEP 28 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION

Daniel W. Moore,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 14 WC 38043**
	)	
Elgin Toyota,	)	
	)	
Respondent.	)	

ATTACHMENT TO ARBITRATOR'S DECISION

I. Findings of Fact.

The petitioner is an automobile mechanic who has been in the employ of the respondent for the past five or six years. This is a heavy trade that sometimes requires an individual to lift over a hundred pounds. On January 29, 2014, the petitioner felt a slight pain in his shoulder while replacing a transmission. The pain worsened and on February 2, 2014, the petitioner was seen at the emergency room of Northwest Community Hospital.

The emergency room records reflect that the petitioner complained of neck and shoulder pain of three days' duration. Patient states he was lifting transmissions prior to onset of pain. (PX 4, p. 10 of 34) The petitioner was diagnosed with a muscle strain. (PX 4, p. 11 of 34)

The petitioner followed up with Dr. Francis Lamberta of Illinois Bone & Joint on February 5, 2014, at which time he complained of neck pain radiating down his right arm since January 31. Dr. Lamberta suspected a herniated disc at C4-C5. (PX 5)

Dr. Dale Charletta offered the following impression of the cervical MRI of February 6, 2014:

> *Degenerative changes with mild spinal stenosis at C5-6 and to a greater extent C6-7 where there is a small right posterior paracentral disc herniation. Multi-level neural foraminal stenosis as detailed above. No evidence of spinal cord compression or signal alteration.* (PX 5)

The petitioner underwent a regimen of physical therapy. On February 20, 2014, a cervical epidural steroid injection at C6-C7 was administered which helped to relieve the petitioner's symptoms. He returned to work on April 1, 2014. His work duties increased gradually over time following his return. Over the ensuing three months, the petitioner noticed that he had trouble making it through the workday, particularly if he was performing heavier tasks. Pain would radiate down his right arm and he would need to take frequent breaks. On or about July 3, 2014, the petitioner was performing another transmission job when his symptoms increased. He continued working and his condition worsened throughout the month of July. For the first time, he began to feel numbness in his fingers and thumb.

The petitioner was referred by Dr. Lamberta to a neurosurgeon, Dr. Noam Stadlan, on August 7, 2014. He gave a history of neck and right-sided arm pain since February. The petitioner further reported that he had been successfully treated with physical therapy and epidural injections, but that his symptoms returned around the 4th of July after lifting a transmission at work. (PX 6, p. 8) At Dr. Stadlan's direction, a new MRI was performed on September 7, 2014.

The MRI of September 2, 2014 showed a minimal central disc protrusion at C4-C5, a small broad-based foraminal disc protrusion on the right at C5-C6 and a moderate right paramedian extruded disc herniation at C6-C7.

On September 29, 2014, Dr. Stadlan reviewed the MRI and recommended a C6-C7 anterior cervical discectomy with either a fusion or an artificial disc. (PX 6, p. 3)

The petitioner was examined at the request of the respondent by Dr. Andrew Zelby on October 22, 2014 pursuant to Section 12 of the Act. Dr. Zelby agreed that the petitioner suffers from cervical radiculopathy stemming from a large disc herniation at C6-C7. He also agreed that the petitioner was a candidate for a cervical decompression and fusion. He felt, however, that this diagnosis and treatment recommendation were unrelated to the petitioner's accident at work on January 29, 2014. (RX 1)

On three different dates in September 2014, the respondent conducted surveillance on the petitioner. The surveillance video depicts the petitioner standing in the parking lot of his apartment complex, chatting with his friends, smoking cigarettes and playing with a remote control car. Dr. Zelby reviewed this video and authored a supplemental report on January 30, 2015 in which he indicated that he saw no evidence of pain behavior. Dr. Zelby felt that the petitioner should be able to work in a "light-medium" capacity, and that his cigarette smoking would have adverse implications if he were to undergo surgery. (RX 2)

The petitioner testified that he has been off work since August 19, 2014, that he desires to undergo the prescribed surgery and that he has reduced his cigarette smoking to two or three cigarettes per day.

II. Conclusions of Law.

In support of the Arbitrator's decision on whether the petitioner's current condition of ill-being is causally connected to the accident ("F"), the Arbitrator concludes as follows:

The petitioner testified that he had no history of neck problems prior to his accident at work on January 29, 2014. The treating records corroborate this testimony.

The petitioner's symptoms began after he performed a transmission job, which is a manual job that is carried out underneath a car that has been elevated on a hoist. He was diagnosed with a herniated cervical disc. Although the petitioner's symptoms improved with physical therapy and an epidural steroid injection, they did not disappear. The petitioner testified credibly that his symptoms would wax and wane following his return to work on April 1, 2014, and would generally correspond to the difficulty level of the work that he was called upon to perform. One specific event at work on July 3, 2014, another transmission repair job, caused a discernible increase in the petitioner's radiating neck pain.

The respondent's causation defense to this claim is based on the examining report of Dr. Andrew Zelby. Dr. Zelby felt that the petitioner's accident on January 29, 2014 resulted in a "very modest disc abnormality at C6-7," and that the MRI conducted in September 2014 revealed a "dramatic change" which "would require another force on his spine." According to Dr. Zelby, the petitioner reported "no other incident or injury associated with the increase in pain around July, 2014." Therefore, according to Dr. Zelby, the petitioner's current condition could not be related to the original work accident, from which he would have attained MMI "by June-July 2014 at the latest."

It is apparent that Dr. Zelby relied upon incorrect information in formulating his opinion. By the time the petitioner saw Dr. Zelby on October 22, 2014, he had already been seen by Dr. Noam Stadlan on August 7, 2014. The records of Dr. Stadlan reflect that the petitioner was seen on that date for a "work related injury." (PX 6, p. 16) Moreover, the petitioner reported to Dr. Stadlan complaints of right-sided radiating neck/arm pain "since February." Patient tried physical therapy and had two cervical epidural steroid injections with some improvement in symptoms. Symptoms subsequently returned around the 4th of July "after lifting a transmission at work." (PX 6, p. 8)

The Arbitrator gives weight to the following factors in deciding the issue of causation:

--the petitioner had no prior history of neck problems;

-- the petitioner sustained an undisputed accident at work on January 29, 2014 resulting in a herniated cervical disc;

--the petitioner's condition improved, but did not disappear following conservative treatment;

-- the petitioner's symptoms worsened significantly following his return to work in a heavy trade, with a particular aggravation on July 3, 2014 while lifting a transmission;

--the petitioner's testimony is corroborated by the records of Dr. Stadlan regarding the work-related origin and worsening of his condition;

--there is no evidence of any non-work related intervening trauma;

--Dr. Zelby relied upon erroneous assumptions in his opinions denying causation.

Based on the foregoing, the Arbitrator concludes that the petitioner's current condition of ill-being relative to his herniated cervical disc is causally connected to his work accident on January 29, 2014.

In support of the Arbitrator's decision relating to the period of temporary total disability ("L"), the Arbitrator concludes as follows:

The parties have stipulated that the petitioner was temporarily totally disabled for the period from February 3, 2014 through March 31, 2014. (Arb. Exhibit #1) Therefore, the period in dispute is from August 19, 2014 through May 6, 2015, which was the date of the Section 19(b) hearing.

It is undisputed that the petitioner is employed in a heavy trade as an automobile mechanic.

Dr. Stadlan first saw the petitioner on August 7, 2014 and released him to return to light-duty work at that time. Dr. Stadlan also ordered a new cervical MRI at that time. (PX 6, p. 9) The petitioner testified that he has been off work since August 19, 2014. Clearly, the petitioner had not yet attained maximum medical improvement and has not been cleared to return to his regular duties as an automobile mechanic.

The respondent obtained surveillance video of the petitioner on several days in September 2014, none of which depict the petitioner performing acts inconsistent with this claim of disability. Even Dr. Zelby, after reviewing the surveillance, concluded that the petitioner should be limited to a "light-medium" duty restriction of 25 to 40 pounds lifting occasionally and 10 to 20 pounds frequently.

The petitioner's regular job as an automobile mechanic does not fit within this restriction.

After reviewing the surveillance video, Dr. Zelby noted no evidence of pain with neck movements or arm movements. Petitioner had indicated that neck movements aggravate his symptoms. Also, Dr. Zelby voiced concern over Petitioner's smoking habit as Petitioner underestimated the number of cigarettes he smoked when he reported a history of smoking to Dr. Zelby at his initial examination.

Based on the foregoing, the Arbitrator concludes that the petitioner has been temporarily totally disabled for the period from August 19, 2014 through May 6, 2015.

In support of the Arbitrator's decision relating to whether the petitioner is entitled to prospective medical treatment ("K"), the Arbitrator concludes as follows:

The basis of the respondent's denial of surgery appears to have been based solely on the causation question. Both Dr. Stadlan and Dr. Zelby agree that the petitioner's herniated cervical disc requires surgery. Having determined that the petitioner's current condition of ill-being is causally connected to his accident at work, it necessarily follows that the respondent shall authorize the treatment required to cure or relieve the effects of that condition.

Based on the foregoing, the Arbitrator concludes that the respondent shall authorize and pay for the cervical disc surgery that Dr. Stadlan has prescribed, in accordance with Section 8(a) and subject to Section 8.2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WERNSMAN, JEFFREY Case# **10WC040229**

Employee/Petitioner

CITY OF BLOOMINGTON

Employer/Respondent

On 10/9/2015, 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 0.06% 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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0000 RUSIN & MACIOROWSKI LTD
MARK COSIMINI
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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

Jeffrey Wernsman
Employee/Petitioner

Case # **10** WC **40229**

v.

City of Bloomington
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 13, 2015**. 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?
[x] 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

FINDINGS

On **January 3, 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 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*** causally related to the alleged accident.

In the year preceding the injury, Petitioner earned $**63,381.24**; the average weekly wage was $**1,218.87**.

On the date of the alleged accident, Petitioner was **40** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**55,836.61** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**55,836.61**.

Respondent is entitled to a credit of $**36,034.26** under Section 8(j) of the Act.

ORDER

The Petitioner failed to prove that a compensable accident occurred and the Petitioner's claim for compensation is, therefore, denied.

No benefits are awarded herein.

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 9, 2015
Date

OCT 9 2015

FACTS:

On January 3, 2009 the Petitioner was employed by the Respondent as a police officer, having been so employed since June of 2004. The Petitioner testified that he previously worked as a Police Officer for the City of Metamora from 1990 to 1994. He then became the Chief of Police for the City of Metamora and remained in that position until 2004. The Petitioner testified that he began his employment with the Respondent as a patrolman on June 7, 2004 and that he worked in that capacity up through December 29, 2011.

The Petitioner testified that on January 3, 2009, he was attending a mandatory briefing prior to going out on patrol. The Petitioner testified that he had punched in on the clock and was sitting amongst his fellow officers waiting for the briefing to start, when he was approached from behind by a fellow officer who he described as husky and strong. The Petitioner testified that the officer informed him that he was sitting in her chair and, when he refused to get up, the fellow officer grabbed his head and pulled his head backwards in an attempt to get him up out of the chair. The Petitioner testified that he then felt increased pain in his neck.

The Petitioner testified, and the evidence demonstrates, that the Petitioner had sustained an injury to his neck prior to January 3, 2009, while he was participating in a training exercise on January 18, 2006. Following that incident, the Petitioner complained of pain in the upper back and lower neck region and he sought treatment with a chiropractor, Dr. Kaufman. An MRI was performed on June 15, 2006 and was reported to demonstrate a moderate left-sided disc herniation at C5-6. The Petitioner testified that he continued to treat with Dr. Kaufman and received as many as 70 chiropractic treatments. The Petitioner testified that Dr. Kaufman's chiropractic treatment did not really help and Dr. Kaufman referred him to a neurosurgeon, Dr. Klopfenstein. Petitioner was first examined by Dr. Klopfenstein on July 17, 2007. Thereafter the Petitioner underwent physical therapy and cervical injections.

On December 13, 2007, the Petitioner was examined by Dr. Lange at the request of the Respondent. Dr. Lange found that the Petitioner had a symptomatic C5-6 herniation which he opined was likely causally related to the January 2006 incident. Dr. Lange recommended an anterior cervical fusion and on February 15, 2008, Dr. Klopfenstein performed a C5-6 anterior cervical fusion and discectomy.

Following the surgery, the Petitioner followed up with Dr. Klopfenstein and, on July 1, 2008, the Petitioner was released to return to regular full-duty work. The Petitioner continued to follow-up with Dr. Klopfenstein through October 7, 2008. On that date, the Petitioner complained of pain at the base of his neck and pain in the trapezius when flexing his neck in either direction. The Petitioner rated his pain as a 4 on a 10-point scale. He also complained of occasional pain in the intrascapular area and reported increased pain with increased activity. It was noted that the Petitioner reported that, overall, he was 75% better than he was prior to the surgery. The Petitioner was still taking Lyrica, Skelaxin, and high doses of ibuprofen. Physical therapy was recommended, but the Petitioner did not wish to pursue that course of action, and a referral was also made to Dr. Kevin Henry for trigger point injections. A follow-up visit was scheduled for three months later at which time cervical spine flexion/extension x-rays were to be repeated.

The Petitioner testified that he settled his Workers' Compensation claim for the injury of January 18, 2006 for $75,000.00 which corresponded to approximately 29.3% of a person as a

whole. The Arbitrator notes that the Settlement Contracts in that case (08 WC 8529) were approved on November 25, 2008.

The Petitioner testified that he did return to work in a full-duty capacity on July 1, 2008 and that he continued working in a full-duty capacity through the time of the alleged accident of January 3, 2009.

The Petitioner testified that at the time of his injury January 3, 2009, he had a previously scheduled follow-up appointment with Dr. Klopfenstein set for January 13, 2009. The Petitioner testified that his pain continued to worsen, but he knew this appointment was coming up so he waited until then to seek medical treatment. When the Petitioner presented to Dr. Klopfenstein on January 13, 2009, Dr. Klopfenstein noted that the Petitioner reported that he was doing well until 1 week prior when a coworker grabbed him by the neck, pulling his head backwards. Dr. Klopfenstein also noted that the Petitioner reported that he developed intrascapular pain a few days following the incident. The Petitioner rated his pain as a 3-4 on a 10-point scale and also indicated he was 75% to 80% better than he was prior to surgery. It was also noted that x-rays revealed a known screw fracture at the C5 level of the cervical spine which was also noted in August 2008. Dr. Klopfenstein recommended that the Petitioner continue with home exercise and ibuprofen.

The Petitioner then followed up with his chiropractor, Dr. Kaufman, and he testified that he underwent a total of 110 chiropractic treatments between April 4, 2009 and May 10, 2010. The Petitioner testified that the chiropractic treatments would help temporarily, but that, overall, they were no help. The Petitioner testified that he continued to work throughout his chiropractic treatment with Dr. Kaufman.

The Petitioner testified that on May 24, 2010, he followed up with his primary care provider, Dr. Hughes, who recommended that he lighten his load by using nylon gear instead of leather gear. The Petitioner testified that he underwent physical therapy at the recommendation of Dr. Hughes beginning in August of 2010. On August 18, 2010, the Petitioner returned to see Dr. Hughes and reported that the physical therapy was making his neck pain worse. The Petitioner also complained of radicular symptoms extending to the back of his scapula as well as shooting pain down the right arm. The Petitioner indicated he did not want to return to see Dr. Klopfenstein, and Dr. Hughes referred the Petitioner to Dr. Seibly.

On September 27, 2010 the Petitioner saw Dr. Seibly and provided a history of being pain-free for approximately 9 months prior to the reported incident of January 3, 2009. He also advised Dr. Seibly that he had immediate severe pain in his neck and shoulders following the January 3, 2009 incident. Dr. Seibly ordered a myelogram and CT-scan which was performed November 3, 2010 and noted to demonstrate a non-union at the C5-6 interspace. Dr. Seibly also noted fractures of two screws in the C5 vertebral body with gross instability. Dr. Seibly recommended surgery to remove the previously installed hardware and "redo" the fusion at the C5-6 level.

At the request of the Respondent, the Petitioner was evaluated again by Dr. David Lange on November 30, 2010. Dr. Lange diagnosed an aggravation of a pre-existing nonunion at C5-6 level and he opined that that the January 3, 2009 incident aggravated the pre-existing non-union at C5-6. Dr. Lange recommended surgery to redo the fusion.

On February 15, 2011 the Petitioner underwent an anterior cervical fusion revision at C5-6. Following the surgery, the Petitioner remained under the care of Dr. Seibly through October 10, 2011. The Petitioner testified that he went through a course of physical therapy, which did not help, and he tried to go through a work hardening program, but he was not able to do it due to increased pain in his neck. The Petitioner testified that his pain continued and was not getting any better.

A cervical MRI completed on April 12, 2011 was reported to demonstrate postsurgical changes of anterior cervical discectomy and fusion at C5-6, stable mild central canal stenosis at C3-C4 and C4-C5, and diffuse disc bulge with superimposed right paracentral broad-based disc herniation causing mild abutment of the right anterior aspect of the thecal sac at C6-7.

On July 5, 2011 the Petitioner underwent a functional capacity evaluation which was reported to be valid. The functional capacity evaluation concluded that the Petitioner demonstrated the physical capacity to perform at the light-medium to medium level of function, which was not at the level of function of required by his pre-injury job.

The Petitioner testified that pursuant to his application for a disability pension, he was examined by three physicians chosen by the Pension Board. The Petitioner testified that he was examined by Dr. Samo on November 15, 2011, Dr. Skaletsky on November 22, 2011, and Dr. Gnatz on December 2, 2011. The reports of those physicians were admitted into the record as Petitioner's Exhibits 11, 10, and 12, respectively. The Petitioner had a hearing on his application on December 29, 2011 and the Board of Trustees of the Police Pension Fund issued a Decision which was admitted in evidence as Petitioner's Exhibit 19. The Decision indicates that the Petitioner was not capable of returning to work as a Police Officer, but the basis for his inability to perform his duties was not due to an "act of duty." Based upon that finding, the Petitioner was awarded a non-duty disability pension.

At the request of the Respondent, the Petitioner was examined by Dr. Andrew Zelby on January 11, 2012. Dr. Zelby's deposition testimony of May 22, 2013 was admitted into the record as Respondent's Exhibit 11. Dr. Zelby testified as to his examination of the Petitioner and the medical records that he reviewed. Dr. Zelby indicated that the diagnostic films from before and after the January 3, 2009 incident were unchanged and that there was no anatomical change which could be attributed to the January 3, 2009 incident. Dr. Zelby also indicated that the Petitioner's symptoms were the same before and after the January 3, 2009 incident. He diagnosed the Petitioner with a cervical strain in the context of an underlying spondylosis and pseudoarthrosis and he opined that the Petitioner would have reached maximum medical improvement from the cervical strain within 8-12 weeks. Dr. Zelby testified the January 3, 2009 incident had no impact on the fusion not being solid and he opined that there was no way a pseudoarthrosis could be aggravated by the described incident. Dr. Zelby specifically opined that the fusion revision performed by Dr. Seibly February 15, 2011 was not related to the January 3, 2009 incident.

With respect to the Petitioner's ability to return to work, Dr. Zelby noted that the Petitioner demonstrated an ability to work without restrictions with the pseudoarthrosis for an extended period of time, and that there was no medical basis to suggest he could not return to work in a full-duty capacity now that the pseudoarthrosis was fixed. He pointed out Petitioner's cervical spine is better now than it was when he was working in a full-duty capacity. He testified Petitioner had a normal neurological exam and the same degenerative changes in the cervical spine as he had all along.

The Petitioner testified that he was next evaluated by his primary care provider, Dr. Hughes, on March 19, 2013 with complaints of pain, headaches, and muscle cramps in his neck and shoulders. Dr. Hughes prescribed medication and referred the Petitioner to a pain clinic where he underwent medial branch blocks and cervical blocks for pain management between April 9, 2013 and December 23, 2013. The Petitioner testified that those procedures did not help and that Dr. Hughes did not offer him any future treatment. The Petitioner was last evaluated by Dr. Hughes on March 5, 2014 and was prescribed gabapentin and flexeril.

The April 15, 2013 deposition testimony of Dr. Seibly was admitted into the record as Petitioner's Exhibit 17. Dr. Seibly testified as to the history provided to him by the Petitioner and the course of treatment he rendered to the Petitioner. Dr. Seibly noted that prior to the January 3, 2009 incident, the Petitioner was having some discomfort and was not completely recovered from the first injury but was much more functional and his pain was at a much less intense level. Dr. Seibly testified that he reviewed the Petitioner's CT myelogram and noted that there were two fractured screws at the C5 level without evidence of bony fusion. Dr. Seibly testified he did not attribute the fractured screws in the C5 vertebrae to the incident with the co-worker. Dr. Seibly testified that he performed a revision fusion at the C5-6 level on February 15, 2011. Dr. Seibly testified that he last saw the Petitioner on October 10, 2011, when he released him to return to light duty work with restrictions of no lifting over 25 pounds, no overhead work, no repetitive activities greater than 15 minutes at a time, and no pushing or pulling over 25 pounds. Dr. Seibly opined that the January 3, 2009 episode exacerbated the Petitioner's neck pain based on Petitioner's return to work before the episode, the history of accident provided by Petitioner, and his physical examination of Petitioner.

The Petitioner testified that he currently continues to have constant pain in his neck and shoulders as well as a constant headache. He testified that he uses a TENS unit and he takes Gabapentin for pain and cyclobenzaprine as a muscle relaxer.

The Petitioner testified that following the incident of January 3, 2009 he continued to work until November 3, 2010 when he was taken off work by Dr. Seibly. The Petitioner's current restrictions prevent him from returning to his employment with the Respondent and he testified that, if he were still employed in his previous position, he would be earning $80,116.64. At some point after November of 2010, the Petitioner began a "self-directed vocational effort". The Petitioner did not specifically testify as to when he began that effort or what that effort entailed but he testified that he obtained a job as a groundskeeper at a golf course beginning April 1, 2012. The Petitioner testified that the employment was seasonal and ended in October and that he worked 30 hours a week at that job during both 2012 and 2013. The Petitioner testified that he earned $9.25 to $9.50 per hour at that job. The Petitioner testified that in 2014, he only worked for the golf course for a couple months.

The Petitioner also testified that he tried to help his ten year old son start a new lawn mowing business. The Petitioner testified the business did not become profitable to him until mid-June of 2013 and that he now works 20 hours a week for the lawn-mowing business and averages $187.00 week of income as a result.

The Petitioner testified that he is currently employed by Snyder Village performing general maintenance. Petitioner testified he began that employment on February 9, 2015 and that his job duties include light maintenance work. The Petitioner testified that his employment with Snyder Village pays $12.50 per hour and that he works 40 hours per week. The Petitioner testified that

adding the $500.00 a week pay from Snyder Village with the $187.00 week from his son's lawn mowing business, results in his current gross income of $687.00 per week:

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, the Arbitrator finds and concludes as follows:

The Petitioner testified that on January 3, 2009, he was attending a mandatory briefing prior to going out on patrol. The Petitioner testified that he was sitting amongst his fellow officers waiting for the briefing to start, when a fellow officer grabbed his head and pulled his head backwards in an attempt to get him up out of the chair. The Petitioner testified that he then felt increased pain in his neck.

The Petitioner testified that the actions of his fellow officer were not the result of or related to a dispute concerning actual police work or any conduct associated with police work and there is no evidence from which to conclude that the Petitioner was the victim of horseplay. There is no indication or evidence that the Petitioner's fellow officer was trying to be funny or had a history of engaging in physical shenanigans. The incident of January 3, 2009 can only be described as an assault.

An altercation which results from a conflict that has its origin in the work, such as a dispute as to how the work should be performed, is generally compensable. Similarly, if the work is to be done in some environment which poses a unique danger, the time and place of the employment may be found to have increased the risk of an assault or injury, and the claim may be compensable. Injuries sustained by an employee as the result of an unprovoked assault are, however, not compensable unless the evidence demonstrates that there was a work related reason or motive for the attack. This is also true for injuries due to an assault by a co-worker.

In the instant matter, the only dispute was the attacker's desire to sit in the chair occupied by the Petitioner. The assault had nothing to do with police work or the conduct of police work and it occurred in the police station prior to the commencement of any actual police work. While the Arbitrator recognizes that there is a certain amount of danger inherent in the job of a police officer, there is no increased risk of an assault by a co-worker inside a police station as opposed to any other work place. Thus the Arbitrator finds that the Petitioner's employment did not expose him to a risk greater than that to which the general public is equally exposed.

Based upon the foregoing, the Arbitrator finds that the Petitioner failed to prove he sustained accidental injuries which arose out of his employment by Respondent.

As the Arbitrator has found that the Petitioner failed to prove that his injury arose out of his employment with the Respondent, determination of the remaining disputed issues is moot.

The Petitioner's claim for compensation is denied.

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, and to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

Assuming, arguendo, that the Petitioner's injury on January 3, 2009 did arise out of and in the course of his employment with the Respondent, the Arbitrator would find that the Petitioner's current condition of ill-being is causally related to the injury. In so finding, the Arbitrator would rely on the opinions of Dr. Seibly, the Petitioner's treating physician, as well as the opinions of Dr. Skaletsky and Dr. Gnatz who examined the Petitioner at the request of the Police Pension Fund, and Dr. Lange who examined the Petitioner at the request of the Respondent. While the Arbitrator notes the opinions of Dr. Zelby, who also examined the Petitioner at the request of the Respondent, the Arbitrator finds the opinions of Dr. Seibly, together with the opinions of Dr. Skaletsky and Dr. Gnatz, to be sufficiently credible, reliable, and persuasive so as to satisfy the Petitioner's burden of proof. The Arbitrator also notes that prior to the injury of January 3, 2009, the Petitioner had been released to return to regular work and he had, in fact returned to regular work.

While the Arbitrator would find that the Petitioner met his burden with regard to causation, the Arbitrator would find that the Petitioner failed to prove entitlement to a wage differential award under Section 8(d)1 of the Act. In so finding, the Arbitrator notes that the Petitioner failed to provide sufficient evidence from which to conclude that he conducted a sufficient job search and failed to provide sufficient evidence of what he would be able to earn in some other suitable employment. The Petitioner provided no testimony or evidence as to the details of his alleged job search and he merely testified as to what his earnings were in the three jobs he chose to take. The Arbitrator would find that, at most, the Petitioner's injury resulted in a loss of his career as a police officer and would award permanency based on disability to the whole person under Section 8(d)2 of the Act.

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

LOPEZ, MARICRUZ Case# **12WC011027**

Employee/Petitioner

DEBBIES CUSTOMIZED STAFFING ET AL

Employer/Respondent

On 10/19/2015, 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 0.08% 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:

1

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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
19(b)

Maricruz Lopez
Employee/Petitioner

v.

Debbies Customized Staffing et al
Employer/Respondent

Case # **12** WC **11027**

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 **Bocanegra**, Arbitrator of the Commission, in the city of **Chicago**, on **August 11, 2015**. 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. [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. [x] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On the date of accident, **March 14, 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 $**17,160**; the average weekly wage was $**330**.

On the date of accident, Petitioner was **34** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**15,840.00** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**N/A** for other benefits, for a total credit of $**15,840.00**.

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 **$220**/week for **177-6/7th** weeks, commencing **March 12, 2012** through **August 11, 2015**, as provided in Section 8(b) of the Act. Respondent is entitled to a credit in the amount of **$15,840.00** for any and all TTD benefits paid to date. Ax1.

Respondent shall authorize, approve and pay for the MRI arthrogram as ordered by Dr. Fernandez and any such related medical care.

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

10/19/15
Date

OCT 19 2015

BACKGROUND

Maricruz Lopez ("Petitioner") and Debbie's Customized Staffing ("Respondent") proceeded to arbitration on 8/11/15 on all disputed issues in case number 12 WC 11027 for which Petitioner alleged a 3/14/12 accident arising out of and in the course of her employment with Respondent. At issue were the following: causal connection, temporary total disability benefits and future medical under Section 8(a). Ax1, Ax2.

FINDINGS OF FACT

On direct examination, Maricruz Lopez ("Petitioner") testified, via Spanish translator/interpreter Paul Krompier, that she sustained an undisputed work accident to her right hand on 3/14/12 during the course of her employment with Debbie's Customized Staffing ("Respondent"), a temporary work office that loaned her to Gold Eagle Company ("Borrowing Employer"). Ax1. On said date of accident, Petitioner was a 34 year-old machine operator for the Borrowing Employer.

According to Petitioner's testimony, a plastic molding machine caught her right wrist and then pressed on the radial portion of her wrist, just below the thumb. The machine also applied pressure to the ulnar side of the wrist. Petitioner said she was stuck like this in the machine for approximately 20 minutes. A co-worker released her from the machine and Petitioner reported the accident to Martha Hinojosa.

On the same date of the accident, She then sought medical attention at Clearing Clinic on the date of accident. Clearing Clinic documented a crushing type injury to both the right hand and wrist after a machine caught her hand. Physical exam showed gross effusion of the right second digit, contusion over the second MCP joint, deformity and effusion of the distal radius, bony tenderness over distal radius and overlying deformity over the second metacarpal and phalanges. There was no snuff box tenderness. She was diagnosed with right hand and wrist contusion. Petitioner was given restrictions of no use of the right hand. Respondent was unable to accommodate this restriction. Clearing Clinic continued these restrictions thru March. On 3/23/12, Petitioner followed up with Clearing Clinic who noted that Petitioner continued to complain of pain and tingling in the right hand made worse with movement. She also noted tingling in the fingers and the palm. Exam noted pain on the right dorsolateral wrist and throughout the second finger
Petitioner's unrebutted testimony was that at some point in the weeks following the accident, Petitioner had a conversation with the Borrowing Employer and Respondent where Petitioner came away with the impression she was no longer employed.

On 6/5/12, Petitioner sought medical treatment with Dr. John Fernandez, a hand specialist at Midwest Orthopedics at Rush. Px2a. the doctor noted Petitioner's work accident and treatment history. He noted pain along the dorsoradial wrist, numbness and tingling in the index and middle fingers, worse at night, and some dorsal greater than volar wrist complaints. Neurologic testing showed irritability of the median nerve with positive Tinel's, positive Phalen's and positive median nerve compression. Dr. Fernandez diagnosed right wrist dorsoradial sensory neuritis, carpal tunnel syndrome and forearm intersection syndrome. He ordered an EMG, MRI and issued medications and light duty work restrictions. On 7/13/12, MRI of the right wrist was unremarkable. Px2a:65. EMG of the right arm confirmed the diagnosis of right carpel tunnel and also diagnosed right cubital tunnel. Id. at 63.

On 8/16/12, Dr. Fernandez administered a right wrist carpal tunnel injection. Id. at 19. Petitioner's follow up form noted symptoms in the first three digits and along both sides of the wrist. Id. at 21. The doctor

noted some improvement in dorsoradial pain but tenderness along the wrist dorsally and particularly ulnarly at the ulnocarpal joint. Light duty restrictions continued. Dr. Fernandez eventually recommended then performed right carpal tunnel release/ median nerve decompression. Id. at 43-44, 49-50. On 11/15/12, Petitioner followed up with Dr. Fernandez and indicated she saw no improvement in her numbness and tingling following surgery. the doctor noted full range of motion of the hand, wrist and elbow. He diagnosed myofascial pain and right elbow cubital tunnel syndrome based on positive EMG although she was then asymptomatic. Id. at 30. Restrictions continued.

In December 2012, hand therapy notes documented a variety of pains and symptoms, including pain along the dorsum of the hand and dorsal forearm, activity limitation, difficulty lifting heavy objects, squeezing, touching over the scar and thenar pain. therapists assessed that Petitioner's DASH score was out of proportion compared to the diagnosis and procedure and that behaviorally, she does not exhibit signs of pain at a level of 8 out of 10 as reported. however, grip strength was significantly decreased compared to the left. Id. at 25.

On 1/9/13, Petitioner followed with Dr. Fernandez stating she felt better. She was having intermittent numbness and tingling into the index and middle finger. Exam showed discomfort over palmar aspect of her hand consistent with pillar pain and digital stiffness 1 centimeter from the fingertip to the palm. Px2b:12, Rx2. Light duty and an arthrogram were prescribed. In February 2013, Petitioner was discharged from therapy and poor attendance was noted. Px2b:22.

On 6/25/13, Petitioner followed up with Dr. Fernandez who noted right ulnar-sided wrist complaints along with the same complaints of intermittent numbness and tingling into her index and middle fingers. Px2b:10. He noted that Petitioner had not returned to work since leaving on her own accord back in March 2013. Exam showed tenderness over the ulnar fovea, pain with ulnar sided pronation and supination. He diagnosed right wrist ulnar sided wrist pain, right myofascial pain in the forearm, wrist and hand and cubital tunnel syndrome. Petitioner was provided a splint and an MRI was ordered. According to Petitioner's testimony on direct examination, prior to the June 25th visit, Petitioner was under the impression that Dr. Fernandez focused on the right index finger and the right middle finger but not the ulnar side of the wrist. T:29.

On 10/17/14, Dr. Fernandez issued a narrative report, noting Petitioner's initial treatment history and complaints. He mentioned providing conservative care for ulnar-sided wrist pain. Px4. He diagnosed right ulnar-sided wrists pain and asymptomatic right elbow cubital tunnel. He opined that her right wrist pain complaints as of his last visit with Petitioner were causally related to her work injury. He also believed his recommendation for an arthrogram related to that pain to also be causally related. He disagreed with Dr. Vender's diagnosis of extensor carpi ulnaris tendinitis was not related to a work injury based on Petitioner's initial treatment records documenting right wrist injury and symptoms.

8/11/14, Petitioner was evaluated by Dr. Michael Vender at the request of Respondent. Rx1. Petitioner recalled a machine came down on her hand and wrist. Exam showed self limitation of flexion and extension, significant tenderness along the extensor carpi ulnaris and it was difficult to determine whether there was tenderness over the ulnar sling. The doctor felt Petitioner exhibited pain behaviors. He diagnosed probable flexor stenosing tenosynovitis of the right middle and ring fingers based on pain complaints and findings near the palm and ring fingers and probable distal extensor carpi ulnaris tendinitis based on pain complaints and findings near the ulnar wrist. Regarding causation, Dr. Vender believed the carpal tunnel syndrome to be related based on the mechanism of injury and immediate onset and location of pain and numbness. He opined that ulnar wrist injury not appearing in the records would render the new diagnoses unrelated.

Dr. Vender subsequently testified via evidence deposition on 11/7/14. Rx1. Dr. Vender testified to diagnosing Petitioner with post carpel tunnel release, extensor carpi ulnaris tendonitis and flexor stenosing tenosynovitis of the right middle and ring fingers. He was not certain of the latter two diagnoses, stating: "The less certain diagnoses related to flexor stenosing tenosynovitis of the right ring and middle finger and also the possibility of extensor carpi ulnaris tendonitis." He opined that these were not diagnosed at anytime prior and appeared to have developed separate and after Petitioner's initial injury. He did not find causal connection between the two new possible diagnoses and the original work accident. Dr. Vender believed Petitioner was at maximum medical improvement and that further treatment was both unnecessary and unrelated.

On 3/20/15, Dr. Fernandez testified regarding his medical opinions and conclusions related to Petitioner's injuries via evidence deposition. Px3. He noted that at her initial visit with him there was pain to palpation along the inner section of the forearm. He noted that in August 2012 she continued to have pains along the wrist dorsally and ulnarly without instability. He testified that her pain diagram was consistent with his clinical findings. When Petitioner followed up with the doctor in June 2013, he noted she was having loss of motion and pain along the ulnar aspect of the wrist with rotation, pronation and supination. The doctor opined that a causal relationship existed between the work accident and the ulnar-sided wrist complaints. He explained that if there appeared to be a delay in symptom reporting, although he stated she immediately complained of wrist pain consistent with her current diagnosis, then it may be from splinting and restrictions. On cross, he acknowledged he had not seen Petitioner for some time. He did not believe she exhibited pain behaviors but rather myofascial pain. He also testified that without the MRI arthrogram he previously recommended, Dr. Fernandez was unable to articulate a working diagnosis.

CONCLUSIONS OF LAW

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

The Arbitrator adopts and incorporates the findings of fact as though fully set forth herein. After careful review of the available medical evidence as well as Petitioner's credible and unrebutted testimony, the Arbitrator concludes that Petitioner's current condition of ill-being is casually related to her undisputed work accident, including her conditions of right wrist carpal tunnel syndrome, right ulnar wrist pain and her asymptomatic right cubital tunnel syndrome. In so finding, the Arbitrator relies on the testimony of Petitioner and on the treating records and opinions of Dr. Fernandez over those of Dr. Vender for the reasons that follow.

As an initial matter, the Arbitrator notes that it does not appear from the record there is any genuine dispute that Petitioner's right carpal tunnel syndrome and related care is causally related based upon the opinions of both Drs. Fernandez and Vender stating as much. Ax1. Nevertheless, the Arbitrator formally concludes the carpal tunnel syndrome to be causally related based on those opinions. The primary dispute on this issue centers on Petitioner's right ulnar-sided wrist complaints.

In reviewing the medical record, the Arbitrator finds that Petitioner's mechanism of injury is consistent with Dr. Fernandez's diagnosis of right ulnar-sided wrist complaints. Initial treatment records document that Petitioner's right hand and wrist became stuck in a machine after the machine pulled her arm into it. Px1. Clearing Clinic did not differentiate between the ulnar or radial side of the wrist in terms of what was caught or crushed in the machine. The Clinic did not do so either with the hand. Dr. Fernandez found this mechanism of injury the type of which could cause damage to structures in and around the wrist and hand. Petitioner's trial testimony was also consistent in stating that both the ulnar and radial sides of her wrist became trapped or

crushed by the machine on the date of her accident and that she was stuck this way for approximately 20 minutes. The Arbitrator finds this mechanism consistent, credible and capable of causing her current condition.

The Arbitrator also finds that Petitioner's complaints and medical records support Dr. Fernandez's current diagnosis of right ulnar-sided wrist pain. Again, Clearing Clinic diagnosed crush injury both the hand and the wrist. Px1. Dr. Fernandez testified that at Petitioner's first visit with him, he found clinical evidence of right wrist pain and diagnosed wrist dorsoradial sensory neuritis, carpal tunnel syndrome and forearm intersection syndrome. By her August 2012 follow up, Petitioner's pain diagram noted pain located on both sides of her wrist. In subsequent visits with Dr. Fernandez, ulnar-sided wrist pain complaints are noted. Dr. Levin, however, testified that she did not complain of ulnar-sided pain until June 2013. He did not address the ulnar side complaints in the August 2012 visit. Additionally, Dr. Fernandez credibly explained that Petitioner did not exhibit any behaviors or exaggerations beyond what he diagnosed.

Dr. Levin noted he did not believe probable flexor stenosing tenosynovitis or probable distal extensor carpi ulnaris tendinitis to be causally related to the injury as they were not identified at anytime in her treatment records until after her injury. Rx1:5:14. The Arbitrator is not persuaded by this analysis. First, the fact that the diagnoses are not in the treatment records necessarily depends on adopting those diagnoses in the first place. Dr. Fernandez, in the Arbitrator's opinion, credibly testified that while those were possible diagnoses, it was unclear exactly what Petitioner's diagnosis/es, other than ulnar-sided pain, would be exactly without the arthrogram. Second, the only reason those diagnoses are not in the treatment record is because Dr. Levin is the only doctor diagnosing such conditions. In this regard, Dr. Levin did not adequately address the evidence in the medical record of the wrist crushing injury and the wrist complaints. The Arbitrator adopts Dr. Fernandez's opinion on this point over Dr. Levin, as he is the treating physician and has acknowledged that without further diagnostic testing, he cannot diagnose Petitioner further beyond ulnar-sided wrist pain.

To the extent Petitioner's medical record appears to have delay in symptom reporting as Dr. Levin suggests, the Arbitrator is unwilling to infer such a delay. For example, two months passed between Petitioner's initial visit with Dr. Fernandez and the next visit. In addition, from March 2012 to June 2012, there appears to be no treatment. The available medical during these times do document right wrist pain and symptoms consistent with Dr. Fernandez's testimony and the Arbitrator cannot assume that Petitioner did not have ulnar-sided symptoms or pain complaints between visits simply because there is no medical record.

The preponderance of the evidences shows that Petitioner's mechanism of injury caused right ulnar-sided wrist complaints, which are corroborated by her unrebutted testimony and her medical records. Therefore, the arbitrator concludes that Petitioner's current condition of ill-being of the right wrist is causally connected to the 3/14/12 work accident.

ISSUE (K) Is Petitioner entitled to any prospective medical care?

The Arbitrator adopts the findings of fact and conclusions of law as contained and incorporates them herein by reference. At this time, Dr. Fernandez has recommended an MRI arthrogram of the right wrist based on Petitioner's ulnar-sided wrist complaints. Dr. Fernandez testified that the arthrogram would aid in obtaining a definitive diagnosis of Petitioner's current condition in the right wrist. Accordingly, based on Dr. Fernandez's treatment recommendations and on the Arbitrator's determination on the issue causation, the Arbitrator concludes that Petitioner is entitled to prospective medical care in the form of an MRI arthrogram and such related care. Respondent shall authorize, approve and pay for the MRI arthrogram as ordered by Dr. Fernandez and any such related medical care.

ISSUE (L) What temporary benefits are in dispute?

The Arbitrator adopts the findings of fact and conclusions of law as though fully set forth herein. Having found in favor of Petitioner on the issues of causation and prospective medical, the Arbitrator finds and concludes that Petitioner's current condition of ill-being has not yet stabilized or otherwise reached a state of permanency and that remains temporarily and totally disabled per the medical opinions of Dr. Fernandez. *Freeman United Coal Mining Co. v. Indus. Comm'n*, 318 Ill.App.3d 170, 175-176, 741 N.E.2d 1144, 1148-1149 (5th Dist. 2000).

The medical evidence at hearing established that Petitioner was on light duty from the date of the accident until her final visit with Dr. Fernandez on 6/25/13. At her last visit, she remained on light duty of a 5-10 pound lifting restriction pending additional treatment and evaluation. Dr. Fernandez has not placed Petitioner at maximum medical improvement or otherwise opined that her condition has stabilized. At Dr. Fernandez's evidence deposition in March 2015, he did not indicate any change from his last work restriction that last time he saw Petitioner. At hearing, Respondent did not present evidence that it offered light duty to Petitioner and Petitioner's unrebutted testimony at trial was that she was not offered light duty or an opportunity to return to work.

Therefore, Respondent shall pay Petitioner temporary total disability benefits of **$220**/week for **177-6/7th** weeks, commencing **March 12, 2012** through **August 11, 2015**, as provided in Section 8(b) of the Act. Respondent is entitled to a credit in the amount of **$15,840.00** for any and all TTD benefits paid to date. Ax1.

ARBITRATOR SIGNATURE **10/19/15**
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 Employment Affirm no accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Cynthia Muench,

Petitioner,

vs. NO: 10 WC 39602

Lee Erickson D/B/A Wrigleyville North ,
Illinois State Treasurer Ex-Officio of the
Injured Workers' Benefit Fund

15IWCC0758

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 employment relationship, accident, causal connection, medical expenses, notice, temporary total disability and permanent disability and being advised of the facts and law, reverses the Decision of the Arbitrator as it pertains to the employment relationship but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Petitioner testified that she was hired by Lee Erickson to be a bartender at Wrigleyville North. She further testified that Lee Erickson took taxes out of her check and that she was given a W-2 form. (Transcript Pgs. 24-25) This testimony went unrebutted. Therefore, Petitioner successfully proved that she and Lee Erickson were in an employer-employee relationship. The Arbitrator is reversed in that regard.

The Commission affirms and adopts the rest of the Arbitrator's findings in regard to the Petitioner's failure to prove she sustained accidental injuries arising out of the scope and course of her employment on September 30, 2010. Petitioner saw Dr. Ghodsizadeh on October 1, 2010 and gave him a history of abdominal pain for 1 month and vomiting. Nothing in the history mentions anything about her alleged accident the day before. (Petitioner Exhibit 8)

IT IS THEREFORE ORDERED BY THE COMMISSION that the Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment on September 30, 2010.

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: OCT 7 - 2015

Charles J. DeVriendt

Joshua D. Luskin

Ruth W. White

HSF
O: 8/12/15
049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MUENCH, CYNTHIA Case# **10WC039602**

Employee/Petitioner

LEE ERICKSON D/B/A WRIGLEYVILLE NORTH AND ILLINOIS STATE TREASURER AS EX-OFFICIO OF THE INJURED WORKERS' BENEFIT FUND

Employer/Respondent

15IWCC0758

On 10/30/2014, 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 0.05% 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:

0014 ARNOLD & KADJAN
PAUL M EGAN
203 N LASALLE ST SUITE 1650
CHICAGO, IL 60601

2214 FLADER AND HACES
YOLANDA HACES FLADER
134 N LASALLE ST SUITE 1515
CHICAGO, IL 60602

5165 ASSISTANT ATTORNEY GENERAL
JEANNIE D SIMS
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

15IWCC0758

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

Cynthia Muench
Employee/Petitioner

Case # **10** WC **39602**

v.

Consolidated cases:

Lee Erickson d/b/a Wrigleyville North and IL State Treasurer as ex-officio 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 **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Chicago**, on **August 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. ☒ Other **Insurance.**

FINDINGS & ORDER

On **September 30, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

No benefits are awarded 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.

Signature of Arbitrator

10/30/14
Date

OCT 30 2014

ILLINOIS WORKERS' COMPENSATION COMMISSION

CYNTHIA MUENCH,	)	
	)	
Petitioner,	)	
	)	
VS	)	NO: 10 WC 39602
	)	
LEE ERICKSON d/b/a WRIGLEYVILL NORTH and STATE TREASURER as ex-officio Custodian of the ILLINOIS WORKERS' BENEFIT FUND	)	**15IWCC0758**
	)	
Respondent,	)	
	)	

ADDENDUM TO ARBITRATION DECISION

FINDINGS OF FACT

This action was pursued under the Illinois Workers' Compensation Act by Petitioner. Petitioner seeks relief from Respondent-Employer, Lee Erickson d/b/a Wrigleyville North. This action also sought relief from the Illinois Injured Workers' Benefit Fund because the employer allegedly did not maintain workers' compensation insurance. A hearing was held before Arbitrator Jessica Hegarty on August 11, 2014. Petitioner notified the employer of the hearing by mailing notice to the employer's counsel of record. The employer did not appear for any of the arbitration proceedings and employer's counsel of record also did not appear. Employer's counsel of record did send a letter to counsel for Petitioner acknowledging the hearing date. (PX 2). The Illinois Attorney General's Office appeared on behalf of the Illinois State Treasurer, as *ex-officio* custodian of the Injured Workers' Benefit Fund, and participated in the arbitration proceedings.

Petitioner testified she was 41 years old, unmarried, with three dependent children on the alleged date of accident. Petitioner testified her daughter Mary was born on September 18, 1992, which would make Mary 18 years old on the alleged date of accident. Petitioner testified a second daughter Amber was born on December 20, 1995, which would make Amber 14 years old on the alleged date of accident. Petitioner testified her son Joseph was born on September 7, 2002, which would make Joseph 8 years old on the alleged date of accident.

Petitioner testified that she began working at Wrigleyville North a few years prior to the alleged date of accident. Petitioner testified that Wrigleyville North is a bar located at 3900 North Sheridan Road in Chicago and is owned and operated by Lee Erickson. Petitioner interviewed with and was hired by Lee Erickson's husband on a Friday night. Petitioner testified that Lee Erickson usually just came into the bar to collect the money. Petitioner testified that she was a bartender whose duties included closing the bar at night, and stocking and cleaning the bar. Petitioner testified she worked five nights a week and her usual shift was from 6 p.m. until 2 a.m.

Petitioner testified she made approximately $500 or $550 per week including tips while working for Wrigleyville North. Petitioner testified she was paid a salary of $5.00 per hour and was paid by check. Petitioner testified Wrigleyville North withheld taxes from each paycheck.

Petitioner did not submit evidence of receiving any payment from either Wrigleyville North or Lee Erickson.

Petitioner testified that on September 30, 2010, she was closing up the bar that night when she grabbed a case of beer and turned and heard a "pop" in her left knee. Petitioner testified there were no witnesses to the alleged accident; however, she told the doorman and a customer about her knee pain immediately after the alleged accident occurred. Petitioner identified the doorman as "Detroit" and the customer as Annie. Petitioner testified "Detroit" cut Petitioner's jeans due to the swelling in her knee. Petitioner also testified she called Lee Erickson that night as was her usual custom and told Lee during the call that Petitioner injured her knee.

Petitioner worked the night following her alleged accident. Petitioner testified she was off Friday through Sunday. Petitioner testified she called Lee Erickson on the Monday following her alleged accident and Lee told her she was not on the schedule. Petitioner testified Lee Erickson fired her the next week.

Petitioner testified she called her primary care physician, Dr. Ghodsizadeh, the day after the alleged accident. According to Petitioner, Dr. Ghodsizadeh told her that she needed to see a specialist for her knee.

On October 1, 2010, Dr. Ghodsizadeh notes indicate Petitioner's complaints of ongoing abdominal pain. The doctor did not note any complaints with respect to Petitioner's left knee or Petitioner having suffered a work accident the previous day. (PX 8).

On October 5, 2010, Dr. Ghodsizadeh's records reveal Petitioner's complaints of left knee pain and occasional popping. Petitioner reported that she twisted her left knee but made no mention of the injury occurring at her place of employment. The doctor ordered an x-ray of the left knee.

On October 26, 2010, Petitioner consulted with Dr. Elias on October 26, 2010. (PX 6). On that date Petitioner did report suffering an injury at work on September 26, 2010. Dr. Elias had previously treated Petitioner for an injury to her left knee. Petitioner reported difficulty with climbing, yard work, running, and lifting. Dr. Elias noted x-rays of the left knee showed no acute bony findings but did note some mild changes along the medial tibifemoral compartment which the doctor opined might be related to her prior knee condition. Dr. Elias diagnosed Petitioner with a medial meniscal tear that may be overlapped with a traumatic chondromalacia. Dr. Elias ordered an MRI of the left knee and gave Petitioner a work status note restricting her from working. *Id.* An October 30, 2010 MRI of the left knee revealed an ACL tear and a subchondral cyst of the tibial plateau. *Id.* Dr. Elias noted Petitioner had all the signs of an ACL tear such as instability, swelling, and buckling and recommended surgery to repair the ACL tear.

On December 17, 2010, Dr. Elias performed a left knee arthroscopy with included a left patella tendon quad graft ACL reconstruction, arthroscopic assist, pain pump, left femoral nerve block, and a left knee arthroscopy on December 17, 2010. (PX 5). The post-operative diagnosis was left knee ACL and meniscal tears. *Id.*

On December 28, 2010, Dr. Elias noted Petitioner had a left knee hemarthrosis or effusion and aspirated Petitioner's knee. (PX 6). Dr. Elias prescribed physical therapy and continued to restrict Petitioner from work. Petitioner continued to develop effusions and Dr. Elias continued to aspirate fluid from Petitioner's left knee in the first few weeks following the surgery. *Id.* By January 18, 2011, Petitioner was able to walk without support.

On February 1, 2011, Dr. Elias noted Petitioner was improving but had very significant atrophy grossly visible in her left quadriceps. *Id.* Dr. Elias reinforced the importance of Petitioner performing her home exercises as well as attending physical therapy. *Id.*

On March 9, 2011, Dr. Elias completed disability paperwork at Petitioner's request for submission to the Western and Southern Life Insurance Company. *Id.*

On March 17, 2011 Dr. Elias examined Petitioner and determined he would begin Orthovisc injections in April due to Petitioner's continued pain and swelling. *Id.* Dr. Elias gave Petitioner a knee brace and noted Petitioner was doing well. He also recommended that she slow down until she started the prescribed physical therapy.

On March 31, 2011 Dr. Elias again aspirated Petitioner's knee and also performed an injection of Orthovisc. Dr. Elias again advised Petitioner she should start physical therapy. *Id.* Dr. Elias performed three more injections from April 2011 through the middle of May 2011. *Id.* Petitioner showed improvement in May 2011 and Dr. Elias gave Petitioner a stabilizing knee brace to help ease Petitioner's pain with exertion.

On May 31, 2011, Dr. Elias advised Petitioner that she needed to attend the prescribed physical therapy and noted that her quadriceps muscles were atrophic and that Dr. Elias could see a divot in the muscle. (PX 7). Dr. Elias performed another injection in June of 2011 and also requested an arthritis panel work up for Petitioner. Dr. Elias prescribed additional physical therapy and continued Petitioner's pain medication. *Id.*

On July 18, 2011, Petitioner fell directly on her left knee developed an effusion. *Id.*

On July 19, 2011, Dr. Elias aspirated Petitioner's left knee and administered an injection.

On August 11, 2011, Dr. Elias again aspirated Petitioner's left knee and administered an injection. *Id.*

On September 1, 2011, Dr. Elias noted Petitioner was doing remarkably well. He noted again that Petitioner would benefit from additional physical therapy.

On September 15, 2011, Dr. Elias noted Petitioner's left knee looked "great." *Id.* at 93. The doctor also noted Petitioner reported feeling better and that Petitioner no longer had the recurring effusion. *Id.*

On September 29, 2011, Dr. Elias noted increased pain in Petitioner's right knee. *Id.* Dr. Elias noted Petitioner had developed a baker cyst in the right knee. Petitioner also for the first time complained of pain in her lower back. Dr. Elias noted Petitioner had back surgery a decade ago and recommended proceeding with a medial branch block in the future to treat her low back.

On October 20, 2011, Dr. Elias aspirated the left knee and performed an additional injection. Dr. Elias noted that Petitioner had a motor vehicle accident and required treatment related to that accident. *Id.*

On November 3, 2011, Dr. Elias cleared Petitioner to work light duty with lifting restrictions as well as limits regarding bending, climbing, sitting, and standing. Dr. Elias also mentioned again that Petitioner required treatment for the motor vehicle accident. *Id.*

On November 15, 2011, Dr. Elias noted Petitioner needed to schedule injections for her lumbar spine.

On December 6, 2011, Dr. Elias examined Petitioner and noted she had not proceeded with the recommended lumbar epidural injection and medial branch block on the left side. *Id.* at 81. Dr. Elias stated, "...in my opinion this issue with respect to her knee is definitely affected and is causally connected to her back..." *Id.* Petitioner reported increased pain in her left knee and Dr. Elias further noted that Petitioner had been able to go a prolonged period of time without needing her left knee aspirated. *Id.* Dr. Elias again indicated Petitioner needs to schedule the recommended lumbar injections and medial branch block.

Petitioner continued to treat for respiratory issues as well as knee and back pain relating to the September 2011 motor vehicle accident from January 2012 through June 2012. *Id.* Dr. Elias performed additional injections into the left knee and also aspirated the knee on a few occasions during that time period. Dr. Elias also noted on various occasions that Petitioner's knee pain was related to her ongoing back injury. Dr. Elias also continued to strongly urge Petitioner to continue to wear her knee brace and attend physical therapy so she could strengthen her muscles. *Id.*

On May 29, 2012, Dr. Elias noted Petitioner's knee was doing much better and exhibited full range of motion and no effusion. *Id.* Dr. Elias noted weakness in the left quads and believed Petitioner was likely ready to be discharged from care.

On June 19, 2012, Dr. Elias again aspirated the left knee and performed an injection. Dr. Elias noted his belief that the effusion was inflammatory in nature. *Id.*

Petitioner did not return to Dr. Elias until November 2012. Dr. Elias apparently completed additional paperwork for Petitioner's disability claim with Western and Southern Life Insurance Company in June of 2012.

Petitioner returned to Dr. Elias for a final time on November 15, 2012. At that time Dr. Elias indicated an Oswentry score of 60% and a VAS of 5 due to her left knee with an effusion and Petitioner's low back. Dr. Elias noted Petitioner had treated with another doctor who ordered MRIs of Petitioner's left knee and spine. *Id.* According to Dr. Elias, the MRI of the left knee revealed a lateral meniscal tear, effusion, and also some changes in the possible loose bodies. *Id.* Dr. Elias aspirated the left knee and performed a final injection.

Petitioner testified she did not return to Dr. Elias after the November 2012 visit because the doctor did not accept her insurance. Petitioner testified that she began treating with Dr. Souza at some point after that and continued to treat with Dr. Souza for her shoulder, back, knee, and high blood pressure at the time of the hearing.

The Arbitrator notes Petitioner submitted no medical records supporting this testimony and there is no mention of Dr. Souza in any of medical records submitted.

The medical records in evidence show Petitioner ceased treatment after November 15, 2012.

Petitioner testified she currently takes pain medication for her back, shoulder, and knee. Petitioner testified that she continues to experience severe pain and swelling in her left knee. Petitioner testified that she can carry a baby but is unable to pick up her four year old grandson. Petitioner also testified that her left knee occasionally locks up. On a scale of 1 to 10 with 10 being the worst pain, Petitioner testified her left knee pain was a 6 at the hearing. Petitioner testified that occasionally her pain in her left knee is as high as 12 out of 10 on a scale of 1 to 10. Petitioner testified that she occasionally uses heating pads and takes hot baths. Petitioner testified she still performs some of her stretches at home.

Petitioner testified she suffered a previous injury to her left knee in either 1998 or 1999. The records show Dr. Elias treated Petitioner for this prior injury and performed a left knee scope at that time. Petitioner testified she had suffered no other injuries to her left knee neither prior to the alleged injury nor after the alleged work injury. Petitioner testified she experienced no problems with her left knee during the ten or eleven years that had passed since her prior surgery.

Petitioner testified she remained off work from October 1, 2010, until November 3, 2011. A review of the medical records reveals no doctor restricted Petitioner from working until Dr. Elias did so on October 26, 2010. The records do reflect that Dr. Elias restricted Petitioner from working from October 26, 2010 through November 3, 2011. Dr. Elias released Petitioner to light duty work on November 3, 2011. Petitioner testified she received no compensation from Respondent during the time she remained off work. Petitioner testified that although Dr. Elias completed disability insurance paperwork at Petitioner's request, Petitioner's claim was denied and she never received any payments. Petitioner also testified that the policy with Western and Southern Life Insurance was her personal insurance her mother obtained when she was younger. Petitioner testified she did return to Wrigleyville North on or around November 4, 2011 and continued to work there for some time before she was let go again. Petitioner testified that she initially kept Lee Erickson's husband updated regarding her treatment, but that she stopped communicating with him soon after the accident.

Petitioner testified she is currently working in a bar but is not a bartender. Petitioner testified she works behind the bar and primarily cleans up the bar. Petitioner testified she does not have to do a lot of lifting in this position. She is no longer employed by Wrigleyville North.

Petitioner submitted bills from Six Corners Same Day Surgery, LLC and the Bone and Joint Center PC. (PX 4). The Arbitrator notes that these two companies appear to be the same medical provider operating under multiple names. The billing statements show charges for dates of service from October 26, 2010, through November 15, 2012. Petitioner testified that Dr. Elias did not accept the insurance she had through the State of Illinois insurance program for her children. Petitioner also testified that Respondent never paid any of her medical bills. The billing statement shows an outstanding balance of $92,001.00.

CONCLUSIONS OF LAW

A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

Petitioner testified that at the time of the alleged accident she was employed by Wrigleyville North and Lee Erickson was the owner of the business. Petitioner testified that Wrigleyville North is a bar that serves both alcohol to the public. The Arbitrator finds that the employer Wrigleyville North is subject to the automatic coverage provision of Section 3.12 of the Act.

B. Was there an employee-employer relationship?

Petitioner testified she learned of an open bartender position at Wrigleyville North through a friend a few years prior to the alleged accident. Petitioner testified she met with Lee Erickson's husband on a Friday night and was hired as a bartender. Petitioner testified she worked at Wrigleyville North a few years prior to the alleged accident, but could not remember the month or the actual year she began her alleged employment. Petitioner presented no evidence of her alleged employment. Petitioner testified she was paid by check by Wrigleyville North and the company deducted taxes from each check. However, despite testifying she worked for the bar for several years, Petitioner presented no evidence of ever having received any wages or salary from either Wrigleyville North or Lee Erickson.

Based on the foregoing, the Arbitrator finds Petitioner failed to prove the existence of an employee – employer relationship.

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? And,

D. What was the date of the accident?

The Arbitrator has already found no employee-employer relationship existed between Petitioner and Respondent Lee Erickson d/b/a Wrigleyville North on the alleged date of accident. Thus, no benefits are awarded.

Assuming Petitioner had provided sufficient evidence to prove the existence of an employer-employee relationship on the date of her alleged accident, the Arbitrator finds that Petitioner failed to prove that an accident arose out of and in the course of employment with Respondent Lee Erickson d/b/a Wrigleyville North.

Petitioner testified her usual duties as a bartender included closing the bar at night, cleaning, and stocking the bar. Petitioner testified that she began closing the bar between 1:30 a.m. and 2:00 a.m. on September 30, 2010 and suffered an injury to her left knee during that time. Petitioner testified she grabbed a case of beer, and felt and heard a "pop" in her left knee when she turned while holding the case of beer.

A review of the record does not establish that an accident occurred on September 30, 2010, as Petitioner claims. Petitioner testified she felt immediate excruciating pain and her knee immediately

began to swell. Petitioner testified she was alone when the actual injury occurred, but two other people were present in the bar and saw her immediately following her injury. Petitioner testified the doorman known as "Detroit" was present and actually cut Petitioner's pants as a result of the swelling in her knee. Petitioner also testified a customer named "Annie" was present and saw Petitioner immediately following the alleged injury. The Arbitrator notes Petitioner did not produce either of the alleged witnesses to testify at the hearing.

Furthermore, Petitioner failed to report a work related accident the day after her alleged work injury to treating MD Dr. Ghodsizadeh. The doctor saw Petitioner on October 1, 2010 and noted Petitioner's complaints of ongoing abdominal issues. (PX 8).

Petitioner returned to Dr. Ghodsizadeh on October 5, 2010 reporting decreased abdominal pain and left knee pain. Petitioner did not tell Dr. Ghodsizadeh that her left knee pain was caused by a work related injury on September 30, 2010.

The records of Dr. Elias cast further doubt on Petitioner's testimony that a work accident resulting in her left knee injury occurred on September 30, 2010. Petitioner first visited Dr. Elias on October 26, 2010. At that time Petitioner told Dr. Elias that she injured her left knee on September 26, 2010. (PX 6 at 135). Dr. Elias completed disability paperwork from Western & Southern Life Insurance Company at the request of Petitioner on multiple occasions. (PX 6 at 194-197; PX 7 at 9.) Dr. Elias certified to the life insurance company that Petitioner's injury occurred on September 26, 2010. The only reference to a September 30, 2010 accident date is found in correspondence from Petitioner's attorney to Dr. Elias. (PX 6 at 6).

Petitioner bears the burden of proving all aspects of her claim, including that an accident occurred that arose out of or in the course of her employment with Respondent. That burden includes proving the date of the alleged accident. The medical records conflict with Petitioner's testimony regarding when the alleged accident occurred.

The Arbitrator notes the November 15, 2012, medical record in which Dr. Elias noted Petitioner had a *new* lateral meniscal tear which was not present following the work accident. (PX 7). Dr. Elias' records also note that Petitioner was involved in a motor vehicle accident in September of 2011 which negatively affected the condition of her left knee. *Id.*

Based on the foregoing, the Arbitrator finds Petitioner failed to meet her burden of proof. Thus, the Arbitrator finds no accident arising out of or in the course of Petitioner's employment occurred on September 30, 2010.

With respect to the remaining issues in dispute:

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? And,
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?

L. What is the nature and extent of the injury?
O. Other: Insurance.

The Arbitrator has already found no employee-employer relationship existed between Petitioner and Respondent Lee Erickson d/b/a Wrigleyville North on the alleged date of accident. The Arbitrator has also found that no accident arose out of or in the course of Petitioner's employment on September 30, 2010. Thus, no benefits are awarded and the Arbitrator makes no findings in regards to the remaining issues in dispute.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LEGNER, DUSTIN Case# **14WC041871**

Employee/Petitioner

ROMEOVILLE POLICE DEPARTMENT

Employer/Respondent

On 10/20/2015, 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:

0154 KROL BONGIORNO & GIVEN LTD
JACK GILHOOLY
120 N LASALLE ST SUITE 1150
CHICAGO, IL 60602

1505 SLAVIN & SLAVIN
BRIAN H DRISCOLL
100 N LASALLE ST SUITE 2500
CHICAGO, IL 60602

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

- [ ] 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

DUSTIN LEGNER
Employee/Petitioner

v.

ROMEOVILLE POLICE DEPARTMENT
Employer/Respondent

Case # **14** WC **41871**

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **New Lenox**, on **10/15/2015**. By stipulation, the parties agree:

On the date of accident, **10/24/2014**, 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 $**83,295.16**, and the average weekly wage was $**1,601.83**.

At the time of injury, Petitioner was **32** years of age, ***single*** with **3** dependent children.

Necessary medical services and temporary compensation benefits have/will be provided by Respondent.

Respondent shall be given a credit of $**18,306.69** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**18,306.69**.

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 **$735.37**/week for a further period of **68.75** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **13.75% loss of use of the person as a whole**.

Respondent shall pay Petitioner compensation that has accrued from **10/24/2014** through **present**, and shall pay the remainder of the award, if any, in weekly payments.

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

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

Signature of Arbitrator

10/19/15
Date

OCT 2 0 2015

FINDINGS OF FACT

It is undisputed that Petitioner sustained injury to his left shoulder on October 24, 2014 while performing his duties as a police officer for the Romeoville Police Department. After the close of proofs in this case, the parties agreed that the only issue to be resolved was the nature and extent of the Petitioner's injuries.

Petitioner was initially diagnosed as suffering from a left shoulder strain. A subsequent MRI arthrogram performed on November 20, 2014 revealed a full thickness tear of the anterior labrum. On December 18, 2014, Petitioner underwent arthroscopic surgery consisting of a labral repair along with subacromial decompression and AC joint resection. Post-operatively, Petitioner underwent a course of physical therapy treatment. He returned to light duty work on February 23, 2015. He then underwent a course of work conditioning which actually aggravated his shoulder. He last saw his physician on April 23, 2015 at which time he was released to return to work on a full duty basis and was discharged from care.

Petitioner testified that he continues to note pain in his left shoulder on a frequent basis associated with his activity level. This includes the daily physical activities associated with being both a police officer and a member of the SWAT team. Furthermore, Petitioner must pass physical agility testing every six months to be certified for his job. Petitioner notes that the physical activity associated with that testing also causes an increase in his left shoulder pain. Petitioner rates his pain at 5-6/10. He uses over-the-counter pain medication (approximately 3-4 times per week) and ice to help relieve his left shoulder pain. He further notices left shoulder pain with range of motion activity above shoulder level.

CONCLUSIONS OF LAW

Pursuant to Section 8.1(b) of the Act, permanent partial disability from injuries that occur after September 1, 2011 are to be established using the following criteria: (i) the reported level of impairment to subsection (a) 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 the disability corroborated by the treating medical records. 820 ILCS 305/8.1b. No single enumerated factor shall be the sole determinant of disability. Applying these factors to this case, the Arbitrator addresses each factor below.

(i) Level of Impairment: Neither party submitted an AMA rating, and therefore, the Arbitrator places no weight on this factor.

(ii) Occupation: Petitioner is employed as a police officer for the Romeoville Police Department, and he is also a member of the SWAT team. His job requires heavy lifting (including the use of heavy equipment) as well as use of physical force for both restraint of combative subjects as well as lifting combative or intoxicated subjects. Petitioner's job duties also require that he pass physical agility tests to remain certified for his job. The Arbitrator places great weight on this factor.

(iii) Age. Petitioner's age on the date of arbitration was 33 years old. The Arbitrator finds the Petitioner to be a young individual who will need to cope with his injury over the course of his work life and thefore the Arbitrator places some weight on this factor.

(iv) Future Earning Capacity. There was no evidence presented regarding the Petitioner's future earning capacity and therefore the Arbitrator places no weight on this factor.

(v) Evidence of Disability. The medical records corroborates the evidence of Petitioner's disability and show that as a result of his accidental injury, the Petitioner sustained a full thickness labral tear which required surgery consisting of repair of the anterior labrum along with a subacromial decompression and AC joint resection. Petitioner continues to suffer from residual pain brought on by the physical activities associated with his job demands. He noted frequent pain in his left shoulder at a 5-6/10 level and he uses over-the-counter pain medication several times per week to help relieve his pain.

Based upon all of the above factors, the Arbitrator concludes that the Petitioner has sustained permanent partial disability to the extent of 13.75% loss of use of the man as a whole under Section 8(d)2.

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

BALLHURST, BENJAMIN Case# **14WC006856**

Employee/Petitioner

LIVINGSTON PIPE & TUBE

Employer/Respondent

On 10/20/2015, 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:

1580 BECKER SCHROADER & CHAPMAN PC
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GRANITE CITY, IL 62040

2250 LAW OFFICE OF STEPHEN H LARSON
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ST LOUIS, MO 63146

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
19(b)

Benjamin Ballhurst
Employee/Petitioner

Case # 14 WC 06856

v.

Consolidated cases: n/a

Livingston Pipe & Tube
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 27, 2015. 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. [ ] 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, August 13, 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 $22,381.32; the average weekly wage was $430.41.

On the date of accident, Petitioner was 29 years of age, single with 0 dependent child(ren).

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

Respondent shall be given a credit of $14,306.01 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $14,306.01. At trial, the parties stipulated that TTD benefits had been paid in full.

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 in the amount of $2,522.00 as identified in Petitioner's Exhibits 16 for medical services provided to Petitioner as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, the arthroscopic knee surgery recommended by Dr. Gordon Allan.

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 13, 2015
Date

OCT 20 2015

Findings of Fact

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 13, 2013. According to the Application, Petitioner slipped while working and sustained an injury to his right knee (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment. Respondent stipulated that Petitioner sustained a work-related accident; however, Respondent disputed liability for medical services provided to Petitioner subsequent to July, 2014, and prospective medical treatment on the basis of causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a saw operator and, on August 13, 2013, he sustained a twisting injury to his right knee. Petitioner testified that he sustained a prior injury to his right knee in July, 2012. This also involved a work-related accident and occurred when Petitioner was going up/down steps on a forklift.

Petitioner was treated by Dr. Khalad Saleh, an orthopedic surgeon, in connection with the prior accident. Petitioner testified that Dr. Saleh ordered an MRI scan, gave Petitioner a cortisone shot and that the right knee symptoms totally resolved. Petitioner stated that he had no right knee symptoms and had been working without restrictions for approximately one year when he sustained the accident on August 13, 2013.

Following the accident of August 13, 2013, Petitioner was initially evaluated by Dr. Timothy Ishmael, his family physician, who ordered an MRI scan. The MRI was performed on August 30, 2013, and it revealed moderate joint effusion, an abnormal signal within the anterior horn of the lateral meniscus suggesting a complex tear and focal fissuring of the articular cartilage of the medial patellar façet (Petitioner's Exhibit 1). Because of the MRI findings, Dr. Ishmael referred Petitioner to Dr. Saleh.

Dr. Saleh examined Petitioner on October 17, 2013, and reviewed the MRI. Dr. Saleh diagnosed Petitioner with a torn lateral meniscus and he recommended arthroscopic surgery. He also imposed work/activity restrictions (Petitioner's Exhibit 2).

At the direction of Respondent, Petitioner was examined by Dr. Michael Watson, an orthopedic surgeon, on November 19, 2013. In his narrative report, Dr. Watson referred to both the MRI scan that was performed on August 30, 2013, and the one that was performed in July, 2012, and noted that the earlier MRI did not reveal any evidence of a torn meniscus. He opined that Petitioner had a torn lateral meniscus causally related to the accident of August 13, 2013, and that arthroscopic surgery was appropriate (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Saleh performed arthroscopic knee surgery on February 4, 2014. That procedure consisted of medial and lateral meniscectomies, cyst decompression and patellofemoral chondroplasty (Petitioner's Exhibit 7).

Petitioner remained under Dr. Saleh's care and, when Petitioner was seen by him on February 20, 2014, it was noted that Petitioner still had persistent pain. Based on a tissue biopsy and

Petitioner's family history of gout, Dr. Saleh recommended Petitioner be seen by a rheumatologist (Petitioner's Exhibit 2).

Petitioner contacted Dr. Saleh's office on March 3, 2014. At that time, Petitioner's surgical incisions were draining a clear liquid (Petitioner's Exhibit 2). On that same day, Petitioner was seen by Dr. Robert Trapp, a physician with The Arthritis Center. Dr. Trapp noted the family history of gout and ordered lab tests to determine the level of uric acid (Petitioner's Exhibit 3).

Because of Petitioner's pain symptoms, Petitioner went to the ER of St. Francis Hospital on March 6, 2014. Petitioner was diagnosed with a septic knee and transferred to Memorial Medical Center (Petitioner's Exhibit 8).

Dr. Saleh treated Petitioner at Memorial Medical Center and, on March 6, 2014, he performed an arthroscopic irrigation and drainage of the knee. Petitioner remained in the hospital for four days until the infection was brought under control (Petitioner's Exhibit 11).

The lab tests ordered by Dr. Trapp revealed that Petitioner had an elevated level of uric acid. Dr. Trapp prescribed Colchicine. Petitioner was seen by Dr. Saleh on March 20, 2014, and Dr. Saleh advised that most of Petitioner's pain was because of the gout and he needed to continue to take the medication prescribed by Dr. Trapp (Petitioner's Exhibit 2).

Dr. Trapp again saw Petitioner on April 3, 2014. At that time, Dr. Trapp recommended Petitioner continue to take medication for the gout condition (Petitioner's Exhibit 3).

Dr. Saleh evaluated Petitioner on April 24, 2014. At that time, Petitioner informed Dr. Saleh that he was continuing to take medication for control of the gout condition but that he was no longer taking antibiotics for the infection. Dr. Saleh recommended Petitioner continue physical therapy and he released him to return to work with restrictions of walking less than 3 miles per day and no lifting in excess of 20 to 25 pounds (Petitioner's Exhibit 2).

Dr. Saleh again saw Petitioner on June 5, 2014, and the range of motion of Petitioner's knee had improved. He noted that Petitioner continued to be on medication for the gout condition (Petitioner's Exhibit 2).

Dr. Trapp saw Petitioner on June 10, 2014. At that time, Petitioner stated that the pain in his right knee was "terrible." Dr. Trapp noted that the level of uric acid had decreased since Petitioner was on medication; however, he did aspirate fluid from Petitioner's right knee (Petitioner's Exhibit 3).

At Dr. Saleh's direction, a functional capacity evaluation (FCE) was performed on July 17, 2014. The examiner noted that Petitioner gave a full effort when tested and, although Petitioner noted an increase in right knee pain during the evaluation, Petitioner could return to work without restrictions (Petitioner's Exhibit 12).

Petitioner did return to work on July 30, 2014, but continued to have right knee pain. When seen by Dr. Trapp on August 26, 2014, Dr. Trapp noted that Petitioner had right knee pain related to

structural changes following meniscus tear and septic arthritis and no evidence of active gout. He decreased Petitioner's gout medication (Petitioner's Exhibit 3).

Petitioner was again seen by Dr. Trapp on October 28, 2014, and complained of chronic right knee pain that occurred daily. Petitioner also complained of "clicking" in the right knee and he was fearful that the right knee might go out. Dr. Trapp again noted that the level of uric acid was under control and opined that most of Petitioner's current pain symptoms were related to the internal derangement and secondary osteoarthritic changes. He also opined that the gout was not contributing to Petitioner's current pain symptoms. He stated that he was going to refer Petitioner to Dr. Gordon Allan, an orthopedic surgeon (Petitioner's Exhibit 3).

Dr. Allan initially saw Petitioner on November 14, 2014. At that time, Petitioner advised Dr. Allan of the accident and the medical treatment he received thereafter. Petitioner complained of medial and lateral right knee pain aggravated by walking, stair climbing, squatting and twisting. Dr. Allan's initial assessment was right knee pain and he ordered an MRI scan (Petitioner's Exhibit 4).

The MRI was performed on December 5, 2014. Dr. Allan examined Petitioner on December 10, 2014, and reviewed the MRI. He noted that the MRI revealed an irregularity of the anterior horns of the lateral meniscus and a signal change of the lateral femoral condyle. He recommended Petitioner have another arthroscopic surgery for debridement of the meniscus and/or chondroplasty of the femoral condyle. In regard to causality his record of that date noted that the findings "...stemmed from his original injury..." (Petitioner's Exhibit 4 and 13).

On April 6, 2015, Petitioner was again examined by Dr. Watson at the direction of the Respondent. In connection with his examination of Petitioner, Dr. Watson reviewed medical reports/records provided to him by Respondent. On examination, Dr. Watson noted crepitations within the patellofemoral joint. He opined that the accident of August 13, 2013, caused medial and lateral meniscus tears that had been appropriately treated. He also opined that Petitioner had pre-existing chondrocalcinosis and gout in the right knee as well as chondromalacia or degenerative changes in the patellofemoral joint. He stated that "I do believe that the injury of August 13, 2013 most likely aggravated this or accelerated this condition." (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Watson further opined that Petitioner's current pain symptoms were from chondromalacia of the patellofemoral joint and symptomatic gout arthropathy. He stated that this condition was not related to the accident of August 13, 2013, and that the exacerbation of these conditions was temporary. He also stated that the surgery recommended by Dr. Allan was necessary, but not related to the work injury (Respondent's Exhibit 1; Deposition Exhibit 2).

Dr. Allan was deposed on June 3, 2015, and his deposition testimony was received into evidence at trial. In regard to his diagnosis and treatment, Dr. Allan's testimony was consistent with his medical records. In respect to causality, Dr. Allan was presented with a hypothetical question which summarized the accident and Petitioner's medical history through November 14, 2014, which asked whether the work-related accident was a factor in causing the need for the arthroscopic surgery that he recommended. Dr. Allan opined that there was a relationship and

noted that Petitioner's history was "...basically a contiguous sort of timeline." (Petitioner's Exhibit 15; pp 12-13).

On cross-examination, Dr. Allan stated that, at the time of his first examination of Petitioner, the gout condition was not impacting Petitioner's current symptomology but was just part of the medical history. Further, on re-direct examination, Dr. Allan stated that the staph infection could have damaged the cartilage and that this could be a factor in causing Petitioner's current symptoms. He also stated that the twisting injury Petitioner sustained could have aggravated and made symptomatic the chondromalacia of the patellofemoral joint (Petitioner's Exhibit 15; pp 21, 26-27).

Dr. Watson was deposed on June 17, 2015, and his deposition testimony was received into evidence at trial. Dr. Watson's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. In regard to his examination of April 6, 2015, he opined that Petitioner's symptoms were due to chondromalacia or arthritic changes in the patellofemoral joint as well as gout and was not related to the accident of August 13, 2013. When he explained his opinion, Dr. Watson noted that the findings on his first examination indicated that Petitioner had sustained a meniscal tear and possibly some aggravation of degenerative disease. He also noted that, according to Dr. Saleh's medical records, Petitioner was able to return to work without restrictions, that Petitioner had worked without restrictions for significant period of time and, when he examined Petitioner for the second time, Petitioner's subjective complaints were not as severe (Respondent's Exhibit 1; pp 19-21).

On cross-examination, Dr. Watson agreed that the chondromalacia and gout were aggravated by the accident of August 13, 2013, but that "...at some point in time the aggravation of those chronic problems ceased to exist, and then they just became chronic problems rather than being caused by the initial injury." He also stated that it was very difficult to determine when the temporary aggravation quits and when the chronic aggravation from degenerative changes takes over. Further, Dr. Watson conceded that if the aggravation continued and Petitioner had persistent complaints of pain all along, then he could not argue with that (Respondent's Exhibit 1; pp 27-29).

Dr. Watson also agreed that the staph infection could cause damage to the knee cartilage and that, if Petitioner was never pain free after the accident, the aggravation of any pre-existing condition could be a factor leading to the arthroscopic surgery recommended by Dr. Allan. He also agreed that he had no disagreement with Dr. Allan's surgical recommendation (Respondent's Exhibit 1; pp 38-41).

At trial, Petitioner testified that since the accident of August 13, 2013, he has never been pain free. Petitioner has continued to take pain medication to control the symptoms so he can work. Petitioner does want to proceed with the arthroscopic surgery recommended by Dr. Allan.

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 causally related to the accident of August 13, 2013.

In support of this conclusion the Arbitrator notes the following:

Petitioner credibly testified that prior to the accident of August 13, 2013, he was working without restrictions and had no right knee symptoms.

While Petitioner testified that he sustained a right knee injury July, 2012, he stated that the symptoms related to that prior injury had totally resolved. There was no evidence to the contrary.

Respondent stipulated that the medical treatment Petitioner received through July, 2014, was causally related to the accident of August 13, 2013.

Petitioner testified that he has had right knee symptoms since the accident of August 13, 2013. While he was able to return to work without restrictions, Petitioner stated that he took medication to control his pain so that he could work.

Petitioner was diagnosed with gout as well as chondromalacia/arthritis of the patellofemoral joint.

Both Petitioner's treating physician, Dr. Allan, and Respondent's Section 12 examining physician, Dr. Watson, agreed that Petitioner's pre-existing conditions were aggravated by the accident of August 13, 2013.

While Dr. Watson opined that the aggravation was temporary and had resolved prior to his second examination of Petitioner, he could not determine with any certainty when the temporary aggravation ended and the chronic degenerative condition began. Further, Dr. Watson concluded that if Petitioner had continuous knee symptoms that he could not argue with that.

Dr. Allan opined that Petitioner's current condition and the need for the repeat arthroscopic surgery he recommended were attributable to the accident of August 13, 2013.

Based on Petitioner's unrebutted testimony, the opinion of Dr. Allan and the rather equivocal opinion of Dr. Watson, the Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of August 13, 2013.

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, including the treatment provided subsequent to July 30, 2014, and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services of $2,522.00 as identified in Petitioner's Exhibit 16, 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:

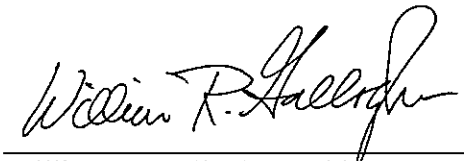
There was no dispute that all of the medical services provided to Petitioner were reasonable and necessary. The medical services awarded herein were rendered both before and after July 30, 2014.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, the arthroscopic knee surgery recommended by Dr. Allan.

In support of this conclusion the Arbitrator notes the following:

There was no dispute that the surgery recommended by Dr. Allan is reasonable and necessary. Respondent's Section 12 examiner, Dr. Watson, agreed that it is appropriate.



William R. Gallagher Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WHALEN, JASON R Case# **13WC007103**

Employee/Petitioner

CITY OF PEORIA

Employer/Respondent

On 10/9/2015, 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 0.06% 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:

1

1004 ROBERT W BACH
110 S W JEFFERSON
SUITE 410
PEORIA, IL 61602

1

0980 HASSELBERG GREBE SNODGRASS
KYLE M TOMPKINS
401 MAIN ST SUITE 1400
PEORIA, IL 61602

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

Jason R. Whalen
Employee/Petitioner

Case # **13** WC **7103**

v.

City of Peoria
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 17, 2015**. 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. [ ] 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 **February 18, 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 $**55,596.32**; the average weekly wage was $**1,069.16**.

On the date of accident, Petitioner was **27** 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.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $**641.50**/week for **10.75** weeks, because the injuries sustained caused the **5%** loss of 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 Anthony C. Erbacci

October 7, 2015
Date

OCT 9 2015

FACTS:

On February 18, 2013 the Petitioner was employed by the Respondent as a firefighter, having been so employed since June of 2008. As a condition of his employment, the Petitioner was required to exercise for one hour during each 24 hour shift. The Petitioner testified that the there was no requirement as to the specific type of exercise or workout that had to be performed but that the one hour requirement was enforced by the Respondent. The Petitioner testified that on February 18, 2013, he was performing "box jumps" by jumping onto the back bumper of a fire engine as part of his mandatory exercise. He testified that while doing these box jumps, he felt a sharp pain in his right knee with a popping sound, and it felt like his knee was "giving out".

The Petitioner testified that he was a "floater" at the time of the accident which meant that he worked at different fire stations each shift. The supervisor at each station was the captain on duty. The Petitioner testified that he had did the same box jumps, in the same manner, at each of the fire stations he worked at, with the knowledge of the captain on duty. The Petitioner testified that some captains did the same type of exercise and that he was not advised that this method of box jumping was prohibited.

After his injury, the Petitioner was seen by the City doctors at OSF Occupational. At an examination on the day of the accident by Dr. Edward Moody, the Petitioner complained of clicking in his knee and he was noted to have 1+ suprapatellar effusion with an otherwise negative examination. Dr. Moody put him on restricted duty and scheduled him for a further exam the next day. At that examination, the Petitioner was noted to have a positive McMurray test for lateral knee pain, and tightness and clicking in the knee with some giving way. Dr. Moody suspected a lateral meniscus tear and scheduled an MRI.

The MRI was performed on February 26th, and showed moderately severe chondromalacia at the lateral joint compartment with acute appearing multifocal chondral defects and bone marrow edema within the lateral femoral condyle as well as small joint effusion.

The Petitioner continued on restricted duty and began treatment with Dr. Brent Johnson of Midwest Orthopedic Center on March 8, 2013. The Petitioner complained of generalized aching about the knee and reported that he was taking meloxicam while avoiding impact type activities. Dr. Johnson's assessment was a stress reaction lateral femoral condyle with chondromalacia of the lateral femoral condyle. He released the Petitioner to return to regular duty with a follow up visit in four weeks.

At an exam by Dr. Roberts on April 15, 2013, the Petitioner reported that his knee was 50% better but he still had intermittent sharp dull aching type pain when he was on it for long periods of time. The Petitioner also reported that he had not returned to jogging or box jumps in his exercise regimen. Dr. Roberts' examination was essentially negative and he advised the Petitioner to continue to avoid impact type activities such as running. Dr. Roberts suggested a follow up appointment in three to four months but the Petitioner testified that he did not make a follow up appointment and did not follow up with any physician.

The Petitioner testified that he had two prior menisectomy surgeries on his right knee, the last in 2003. He testified that between 2003 and 2013 he had not had any problems with his right knee nor were his activities restricted in any way due to issues with the knee. The Petitioner testified that

prior to February, 2013, he was jogging 5-6 miles at a time and doing box jumps and that, when he was hired in 2008, he successfully completed agility testing and passed a physical examination. The Petitioner also testified that he underwent annual physical examinations since beginning his employment with the Respondent.

The Petitioner testified that since the accident, he avoids jogging altogether, no longer does box jumps, does not use the fire pole at work, and restricts his weight lifting to upper body exercises. The Petitioner testified that he does participate in "Cross Fit" training but he does not do leg exercises when doing so. The Petitioner testified that he currently notices that if he is on his feet for extended periods of time while at work, he has pain in his knee the next day with tightness in the joint which takes three hours to loosen up and that climbing a lot of stairs causes pain in his knee. The Petitioner testified that he coaches soccer and basketball at the high school level and now avoids participating in drills as part of his coaching. He testified that he has also given up playing in recreational adult basketball and soccer leagues. The Petitioner testified that when he has knee problems after activity, he uses over the counter pain medication, and that he takes glucosamine regularly now.

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, the Arbitrator finds and concludes as follows:

The Petitioner was required by contract to exercise for one hour during each 24 hours shift. He was not given any instructions concerning the type of exercises he could or should perform nor were any particular exercises prohibited. The Petitioner testified that the captains who supervised the stations where he performed the 'box jumps" onto the back bumper of fire machines were aware of this practice and some of them did it themselves.

The Arbitrator finds that at the time of his injury, the Petitioner was in the course of his employment and was performing activities which arose out of and in the course of his employment as a firefighter with the City of Peoria. While the risk of injury while exercising might be considered to be a "personal risk", because the Petitioner was required to perform one hour of exercise each shift as a condition of his employment, he was exposed to the risk of injury from that activity to a greater degree than the general public. Therefore, the Arbitrator finds that the Petitioner's injury arose out of and in the course of his employment with the Respondent.

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Petitioner had two prior surgeries on his right knee, the most recent on in 2003. Between 2003 and 2013 he had no treatment on his knee nor was he restricted in his activities due to any residual problems. The Petitioner's family doctor's records show no right knee treatment between 2003 and 2013. In addition, the Petitioner was hired by the Respondent in 2008 after passing agility testing and a pre-employment physical. He was also required to pass annual physicals as part of his employment. There is no evidence from these exams of any right knee problems of an ongoing

nature. The Petitioner testified that he was having no right knee issues at the time he injured himself at work on February 18, 2013 and no evidence was presented which rebutted or contradicted that testimony.

The Arbitrator notes that the evidence in the records substantiates a clear and distinct difference between the condition of the Petitioner's right knee before and after the injury. It is clear that the injury aggravated the preexisting condition of the Petitioner's right knee. In addition, the MRI performed after the injury demonstrated acute changes to the lateral femoral condyle consistent with the city doctor's initial diagnosis immediately following the injury.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds the Petitioner has sustained his burden to show a causal connection between his work injury and his current condition of disability.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

Applying the statutory factors set forth in §8.1(b) to the facts in this case, the Arbitrator notes that neither party submitted an AMA impairment rating. The Arbitrator therefore relies on the remaining four factors: (i) the occupation of the injured employee; (ii) the age of the employee at the time of the injury; (iii) the employee's future earning capacity; and (iv) evidence of disability corroborated by the treating medical records. Considering those factors the Arbitrator finds that the Petitioner's employment is a heavy duty occupation in which a good deal of strenuous physical activity involving the right knee is required. Thus, the Arbitrator assigns it significant weight.

The Petitioner's young age (27) at the time of the injury means he will be dealing with the issues affecting his knee for many years before he can retire. This factor is likewise assigned significant weight.

There is no evidence that Petitioner's earning capacity has been impaired by the accident. This factor is assigned no weight.

The medical evidence corroborated by the treating medical records is not substantial as the Petitioner was only treated for approximately seven weeks. However, at his last visit with Dr. Roberts on April 15, 2013, he continued to report a sharp dull aching pain in his knee which caused him to restrict his activities in much the same way(s) as he does currently. The Petitioner's testimony is uncontroverted and the Arbitrator finds him to be credible given the consistency of his testimony and the findings of his treating physician, Dr. Roberts. Thus, the Arbitrator finds there is credible evidence of some ongoing disability which is corroborated by the treating medical records and assigns that evidence significant weight.

Based on the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner has sustained 5% permanent partial disability to his right leg.

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

GOW, VICKIE Case# **14WC026143**

Employee/Petitioner

RICHLEE VANS

Employer/Respondent

On 10/13/2015, 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 0.06% 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:

0222 GOLDBERG WEISMAN & CAIRO
SANDY ECHEVESTE
ONE E WACKER DR 39TH FL
CHICAGO, IL 60601

0208 GALLIANI DOELL & COZZI LTD
ROBERT J COZZI
20 N CLARK ST SUITE 825
CHICAGO, IL 60602

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

VICKIE GOW
Employee/Petitioner

v.

RICHLEE VANS
Employer/Respondent

Case # **14** WC **26143**

Consolidated cases: **D/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 **MOLLY MASON**, Arbitrator of the Commission, in the city of **CHICAGO**, on **09/24/15**. 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. [ ] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD

M. [x] Should penalties or fees be imposed upon Respondent?

N. [x] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On the date of accident, **05/16/14**, 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.

For the reasons set forth in the attached decision, the Arbitrator finds that the accident of May 16, 2014 aggravated an underlying cervical spine condition of ill-being and brought about the need for additional testing and treatment, including the "add on" cervical spine surgery Dr. Bernstein has recommended. The Arbitrator further finds that Petitioner failed to prove a causal connection between the accident and the flank pain/urinary tract infection for which she underwent care at Palos Community Hospital between May 24 and May 25, 2014 and on June 5, 2014. PX 23.

In the year preceding the injury, Petitioner earned $**13,432.64**; the average weekly wage was $**258.32**.

On the date of accident, Petitioner was **45** years of age, ***single*** 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 $**1,976.26** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**1,976.26**.

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 $6,117.00 to Little Company of Mary Hospital and $291.05 to The Spine Center (Dr. Bernstein) as provided in Sections 8(a) and 8.2 of the Act. PX 23.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $258.32 per week, commencing 05/20/14 through 09/24/15, a period of 70 3/7 weeks, as provided in Section 8(b) of the Act, with Respondent receiving credit for the $1,976.26 in benefits it paid prior to the hearing.

Prospective Care

The Arbitrator awards prospective care in the form of a return visit to Dr. Bernstein along with the "add on" cervical spine surgery Dr. Bernstein has recommended.

Penalties/Fees

For the reasons set forth in the attached decision, the Arbitrator declines to find Respondent liable for penalties or fees.

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.

Molly C Mason

Signature of Arbitrator

10/12/15

Date

ICArbDec19(b)

OCT 13 2015

Vickie Gow v. Richlee Vans
14 WC 26143

Statement of Disputed Issues

Petitioner, a school bus driver with a complicated medical history, including a cervical spine fusion in December 2013, alleges a neck injury at work on May 16, 2014. She claims temporary total disability benefits from May 19, 2014 through the hearing of September 24, 2015 along with medical expenses, a prospective "add on" cervical spine fusion, as recommended by Dr. Bernstein, and penalties/fees. Arb Exh 1.

Arbitrator's Findings of Fact

Petitioner testified she began working as a school bus driver for Respondent on August 26, 2013. Prior to being hired by Respondent, she was a stay-at-home mom for 23 years. She testified she underwent and passed a pre-employment physical examination at Little Company of Mary Care Station prior to starting work for Respondent. She indicated her hiring was contingent on passing this examination. She denied being the subject of any disciplinary action between her hire date and her claimed work accident of May 16, 2014. She testified she passed a drug test before being hired and passed two additional drug tests in early 2014. PX 11.

Petitioner testified she transported about 14 students per day. The students she transported were disabled. She drove routes in the morning and afternoon. Her duties involved conducting pre-trip inspections, keeping the bus aisles clear, picking up/dropping off students and operating the bus lift. A bus attendant always rode with her. When she dropped off or picked up students from Aero School, a nurse also rode on the bus.

Petitioner acknowledged undergoing extensive treatment for various non-work-related medical problems before the work accident. Her records reveal a history of major lumbar spine surgery in 1996, 1997 and 2000, with the last of these performed by Dr. Bernstein. In 2003, she underwent a work-up for neck and bilateral arm pain, including a cervical spine MRI and EMGs. PX 15, p. 11. In approximately 2006, she was diagnosed with fibromyalgia. She was treated via medication. In early 2007, she was diagnosed with right arm sympathetic dystrophy, which Dr. Amine treated via medication and stellate ganglion blocks. PX 15, pp. 6, 15-16. In August 2008, Dr. Amine prescribed various medications, including Norco, for migraines. PX 15, p. 5. On April 14, 2011, Petitioner's primary care physician, Dr. Alawad, found her "not medically fit" for jury duty, noting a 10-year history of chronic pain, a history of three major operations and a fibromyalgia diagnosis. PX 14, p. 115. Petitioner testified she went through a stressful period in late 2012 and 2013 due to marital problems, divorce proceedings and her mother's death. On June 13, 2012, she saw Dr. Alawad and requested a Norco refill. The doctor noted that Petitioner was "potentially addicted" to Norco. He recommended a psychology consultation. PX 14, p. 27. On February 6, 2013, Petitioner underwent right shoulder surgery. PX 17. Later in

2013, Petitioner's former husband beat her, causing a neck injury. In October 2013, Dr. Curtin admitted her to the hospital for treatment of headaches.

Records in PX 15 include a cervical spine MRI report dated October 21, 2013, documenting a left paracentral disc extrusion at C6-C7 and a shallow left paracentral disc protrusion at C5-C6. PX 15, pp. 12-13. On November 26, 2013, Dr. Amine reviewed the MRI, prescribed Norco for neck and left arm pain and recommended cervical spine surgery. PX 15, p. 3.

Petitioner testified she saw Dr. Bernstein for a second opinion on December 9, 2013. On that date, Dr. Bernstein wrote to Dr. Alawad, noting Petitioner's remote lumbar spine revision fusion in 2000, her long history of migraines and her more recent complaints of neck pain radiating down her left arm. He indicated that Petitioner attributed these complaints to being abused by her husband. He noted that Petitioner was working as a school bus driver.

On examination, Dr. Bernstein noted a decreased range of cervical spine motion, a positive Spurling's maneuver and decreased sensation primarily in the mid digits of the left hand. He reviewed the October 21, 2013 cervical spine MRI. He interpreted this scan as showing a moderate to large left-sided herniation causing nerve root compression at C6-C7 and a "small shallow paracentral disc protrusion or herniation at C5-C6." He targeted the C6-C7 herniation as the cause of Petitioner's left-sided symptoms. He characterized the C5-C6 abnormality as "asymptomatic." He indicated he discussed various treatment options with Petitioner, with Petitioner electing to proceed with surgery as soon as possible. PX 4, pp. 66-67.

On December 18, 2013, Dr. Bernstein performed a left-sided anterior cervical discectomy with fusion at C6-C7. PX 9. Dr. Bernstein prescribed Norco postoperatively. PX 4, pp. 41-42. PX 9.

On December 26, 2013, Dr. Spencer (Dr. Bernstein's partner) wrote to Dr. Alawad, informing that Petitioner was "doing fine" and that her X-rays looked good. Dr. Spencer indicated he had released Petitioner to resume driving a bus as of January 6, 2014. PX 4, p. 65.

On January 3, 2014, Petitioner saw Dr. Lopez at the Little Company of Mary Care Station for purposes of a "fit to work" examination. In his note of that date, the doctor documented the December 18, 2013 cervical fusion and Dr. Spencer's full duty release. He also noted that Petitioner's current medications included Norco, Neurontin, Flexeril and Amytriptyline. He noted a full range of neck motion on examination. He found Petitioner fit to resume full duty as of January 6, 2014. PX 11, pp. 27-30.

Petitioner testified she resumed her normal bus driving duties for Respondent on January 6, 2014. She indicated she resumed working shortly after the surgery because she had a mortgage and other bills to pay. Before resuming work, she obtained clearance at Little Company of Mary Care Station. She needed to be cleared before she could resume driving.

On January 13, 2014, Dr. Bernstein wrote to Dr. Alawad, informing him that Petitioner was "dramatically improved from her pre-operative status." Dr. Bernstein also indicated that Petitioner's X-rays looked good but that he was recommending a bone stimulator due to Petitioner's smoking history. PX 14, p. 97.

On February 6, 2014, Dr. Bernstein wrote to Dr. Alawad and noted that Petitioner was experiencing neck pain but denied any radicular symptoms. Dr. Bernstein also noted that Petitioner felt she "went back to work too quickly." He indicated he prescribed Motrin, Flexeril and physical therapy. PX 4, p. 63.

On February 25, 2014, Dr. Spencer wrote to Dr. Alawad, indicating that Petitioner was "having some severe neck pain" following the fusion. He expressed hope that the pain was "just some muscle spasm," noting that Petitioner's X-rays looked good. He prescribed steroids, muscle relaxants and pain medication, indicating that a repeat MRI might become necessary. PX 4, p. 62.

On March 5, 2014, Petitioner saw Dr. Alawad, with the doctor noting complaints of right-sided rib cage pain, dizziness, depression, anxiety and neck pain. On cervical spine examination, the doctor noted limited flexion and extension. He prescribed Buspar and directed Petitioner to stop taking Norco. PX 14, p. 13.

Under cross-examination, Petitioner acknowledged she continued taking Norco after March 5, 2014 despite Dr. Alawad's instructions to discontinue the medication. On direct examination, Petitioner testified she passed drug tests at Little Company of Mary Care Station in March and April 2014. Petitioner further testified that Respondent would have terminated her had she failed these tests. Petitioner indicated that Respondent knew she was on medication and allowed her to continue working. She took her prescribed medication at the end of her work shifts and at bedtime.

Records in PX 11 reflect that Petitioner underwent random drug testing at Little Company of Mary Care Station on March 13, 2014. PX 11, pp. 21-26.

On March 20, 2014, Petitioner returned to Dr. Bernstein. The doctor noted that Petitioner's "acute flare-up appears to be improved." The doctor interpreted the recent repeat MRI as showing a "persistent left-sided disc protrusion at C5-6 which appears to be no worse and in fact be slightly improved." He found it "possible this is responsible for some of [Petitioner's] current pain" but went on to state: "nevertheless, she is functional – her radiculopathy is gone and her X-rays look good." After noting that Petitioner "may not have any insurance available due to her divorce," he recommended she "try to obtain some insurance for her benefits and her future." He recommended she follow up in three months. PX 4, p. 61.

On April 23, 2014, Petitioner saw Dr. Alawad and complained of a bladder infection as well as back pain and anxiety. The doctor started Petitioner on Cipro and recommended exercise and smoking cessation. PX 14, p. 10.

Petitioner denied reinjuring her neck at any point between January 2014 and May 2014. She testified she did not live with her former husband during this period.

Petitioner testified she was injured at work at about 8:40 AM on Friday, May 16, 2014. The accident occurred while her assigned bus was parked outside of Aero School in Burbank. Children on her bus were being dropped off at the school. Immediately before the accident, she was standing at the front of the bus. There were three other adults on the bus: Tamika Brown, a bus attendant who was filling in for the regular attendant that day, Karen, a nurse, and a teaching assistant from the school, who was on the front bus steps. The teaching assistant told a boy on the bus to get up. The boy stood up and Tamika guided him to the bus aisle. Then the boy came running toward Petitioner. The boy was about 9 years old. Petitioner testified that the boy made contact with her, causing her to fall backward into the dashboard. She managed to catch herself but felt as if the wind had been knocked out of her. She was shaken up.

Petitioner testified the bus was equipped with a surveillance camera. When she inspected the bus, at the start of her shift, she made sure this camera was on.

Petitioner testified she was able to finish her shift after the accident. She began experiencing headaches as the day went on. By early evening, she was experiencing "horrible pain" in her head and neck. The pain was different than the pain she had experienced before the work accident.

Petitioner testified she reported the accident to her supervisor, Candise Bradley, on Sunday, May 18, 2014. Petitioner testified that Bradley came to her house that day.

Under cross-examination, Petitioner acknowledged completing an accident report. [She testified she completed this report on May 19, 2014 but her supervisor, Candise Bradley, testified Petitioner actually started preparing the report on May 16, 2014. Bradley denied going to Petitioner's house on Sunday the 18th. Bradley testified that Petitioner did not complete the form to her satisfaction until May 20, 2014.] In this report, Petitioner indicated she was standing in the front of the bus at 8:40 AM on May 16, 2014 when a boy started walking down the aisle and then began running toward her, head first, striking her in the upper body and chest and "knocking [her] backwards into the dash and windshield." Petitioner complained of severe migraine headaches, nausea, fatigue and neck pain. She indicated she had previously seen Dr. Bernstein. She listed three witnesses to the accident. A note that appears to be in different handwriting indicates Petitioner "originally didn't want to go to clinic." RX 1.

Petitioner testified she reported to work on Monday, May 19, 2014, but managed to work only half a day. At about 11:24 AM that day, Petitioner saw a nurse and Dr. Brown at

Little Company of Mary Care Station. The nurse noted a history of the work accident and previous cervical spine surgery, a complaint of 9/10 pain and no observable signs of abuse. PX 11, p. 18. The doctor noted a past history of lumbar spine surgeries, neck surgery in December 2013 and migraines. She also noted a history of the work accident. She indicated that, at 8 AM on May 16, 2014, a "student ran into" Petitioner's neck area, with Petitioner describing her head as moving backward. The doctor indicated that Petitioner was "unsure whether [she] hit back of head on windshield" but experienced a "moment of dizziness." The doctor also indicated that it was later in the day on May 16, 2014, at about 4:30 PM, that Petitioner began experiencing headaches, nausea and more neck pain. On examination, Dr. Brown noted a reduced range of cervical spine motion, indicating that Petitioner reported being "unable to do chin to chest." She prescribed CT scans of the brain and cervical spine on a STAT basis, along with Zotran and Toradol. She took Petitioner off work and directed her to return the next day. She instructed Petitioner to seek Emergency Room care if she experienced vomiting, blurred vision or worsening headaches. PX 11, pp. 16-18. A note in PX 11 reflects that Petitioner's supervisor, Candise Bradley, approved the CT scans. PX 11, pp. 19-20.

Petitioner underwent the CT scans at Little Company of Mary Hospital on May 19, 2014. The brain CT scan was negative. PX 4, p. 37. The cervical spine CT scan showed the fusion hardware and no fracture or dislocation. The radiologist saw no large disc herniation. PX 4, pp. 35-36.

On May 20, 2014, Petitioner returned to the Little Company of Mary Care Station, as directed, and saw Dr. Skomurski. The doctor noted complaints of headaches, nausea and neck stiffness. He kept Petitioner off work and indicated she should apply heat/ice to her neck and seek Emergency Room care if she worsened. PX 11, pp. 13-14.

On May 21, 2014, Petitioner went to the Emergency Room at Palos Community Hospital. A triage note reflects that Petitioner complained of 9/10 head pain, nausea and "just not feeling right" since a work accident of May 16, 2014. The note sets forth the following account of that accident: "was struck to the chest by a student at work – fell backwards and struck head." Petitioner indicated she had seen a company doctor the previous day who had advised her to seek Emergency Room care if her symptoms worsened.

The Emergency Room physician, Dr. Chester, noted that Petitioner complained of head and neck pain since being struck in the chest by a 7-year-old student on a bus. Dr. Chester indicated that Petitioner reported falling backward into the dashboard after getting struck, striking her head on the windshield. He noted a past history of cervical and lumbar spine surgery, anxiety and migraines. He further noted that Petitioner reported being on Norco and Flexeril and "using narcotics while driving the school bus." It appears that Dr. Chester relayed this information to a Little Company of Mary company physician.

On examination, Dr. Chester noted no abnormalities other than elevated blood pressure. He ordered a head CT scan. The radiologist described this scan as unremarkable. PX 12, p. 24. Dr. Chester diagnosed blunt injury, cephalgia and cervical strain. He prescribed

Prednisone and Acetaminophen and recommended that Petitioner follow up with an orthopedist.

Petitioner returned to Little Company of Mary Care Station on May 22, 2014 and again saw Dr. Skomurski. The doctor noted that Petitioner complained of neck stiffness, worsening headaches and dizziness. He also noted the results of the CT scan performed at the Emergency Room. He kept Petitioner off work, recommended Fioricet with Codeine and indicated Petitioner might need physical therapy if she failed to improve. PX 11.

On May 24, 2014, Petitioner saw Dr. Brown at Little Company of Mary Care Station. The doctor noted complaints of headaches, blurred vision, nausea, dizziness and neck stiffness. A discharge note dated May 24, 2014 reflects that the doctor took Petitioner off work and sent her to the Emergency Room due to "no improvement of headache and now blood in urine." Dr. Brown's diagnoses included "blunt head trauma." PX 11. PX 12, p. 147.

Petitioner returned to the Emergency Room at Palos Community Hospital on May 24, 2014. A triage note reflects that Petitioner reported suffering blunt trauma on May 16, 2014, after being "attacked at work." The note also reflects that Petitioner complained of blood in her urine and 5/10 right upper abdominal pain.

The Emergency Room physician, Dr. Cairo, noted that Petitioner complained of nausea of eight days' duration, right-sided flank pain of five days' duration and hematuria of two days' duration. Dr. Cairo also noted that Petitioner reported having a mechanical fall on May 16th "where her right flank did hit the dashboard," with Petitioner expressing concern that this fall could have caused her current symptoms. On examination, Dr. Cairo noted very mild right upper quadrant abdominal tenderness. She started Petitioner on IV fluids and ordered lab work and CT scans of the abdomen and pelvis. The scans showed no stones or masses. Urinary studies showed red blood cells that were too numerous to count. Dr. Cairo started Petitioner on IV antibiotics and admitted her to the hospital.

A handwritten note dated May 25, 2014 reflects that Petitioner reported a history of multiple urinary tract infections. This note also reflects that Petitioner reported taking aspirin daily. PX 12, p. 101.

Petitioner saw a urologist, Dr. Steinberg, at the hospital on May 25, 2014. Dr. Steinberg noted that Petitioner reported "recent trauma to the back while on the job after she was tackled by a student and thrown backwards onto the steering wheel."

Dr. Steinberg's impression was "probable urinary tract infection with gross hematuria from aspirin daily plus possible effect of trauma while on anti-coagulants. The patient did suffer a blow to the back while on the job one week ago." He recommended that Petitioner stop taking aspirin, continue the antibiotics and follow up with him. Petitioner was discharged from the hospital on May 25, 2014. PX 12.

On May 29, 2014, Petitioner saw Dr. Bernstein, with the doctor noting a history of a "new injury on May 16th." The doctor indicated that Petitioner had resumed working before this injury and was "doing reasonably well without much in terms of pain complaints" when a "large, 8-year-old autistic child charged her." The doctor described the impact as causing a "whiplashing motion of [Petitioner's] neck" and complaints of neck and diffuse shoulder pain since that time. He interpreted the May 19, 2014 CT scan as showing a stable cervical spine fusion with no evidence of hardware or screw loosening. On examination, he noted a guarded range of cervical spine motion and tenderness to palpation.

Dr. Bernstein expressed hope that the new injury only involved soft tissue. He kept Petitioner off work, prescribed Norco and recommended physical therapy and follow-up. PX 4, p. 60.

Petitioner saw Dr. Alawad on June 5, 2014, with the doctor noting that Petitioner reported being injured while working on May 16th due to a student "charging into her" on a bus. The doctor also noted that Petitioner reported feeling a "pop" in her lower right abdominal area the previous night. He diagnosed an abdominal contusion. PX 14, p. 9.

Petitioner returned to the Emergency Room at Palos Community Hospital on June 5, 2014. The triage note of that date reflects that Petitioner reported feeling something "pop" in her right abdomen the previous night and was now experiencing constant back pain as well as elevated blood pressure. The note also reflects that Petitioner reported seeing her primary care physician earlier in the day and being started on Amlodipine.

The Emergency Room physician, Dr. Elmosa, noted that Petitioner complained of right lower abdominal pain that had progressively worsened since the previous day. On examination, Dr. Elmosa noted soft mild tenderness to the right lower abdomen. He ordered lab work and an abdominal CT scan, which was unremarkable. PX 12, pp. 184-185. He started Petitioner on Macrobid after a urinalysis showed evidence of a urinary tract infection. He recommended that Petitioner follow up with Dr. Alawad. PX 12, pp. 158-161.

On June 16, 2014, Dr. Bernstein noted that Petitioner had not had a chance to begin therapy. He directed Petitioner to start therapy and remain off work. PX 4, p. 58. Petitioner began a course of physical therapy at ATI three days later. PX 13.

On June 30, 2014, Dr. Bernstein noted that Petitioner described therapy as "so-so" and was still complaining of neck pain, especially when turning her head to the right. He recommended a cervical spine MRI. PX 4, p. 57.

Petitioner underwent the recommended cervical spine MRI on July 9, 2014. The MRI showed evidence of the prior C6-C7 fusion, disc desiccation at C2-C3 to C5-C6 levels and a focal left paracentral disc protrusion indenting the thecal sac at C5-C6. The radiologist described the spinal canal as "compromised in its left half." PX 16.

On July 18, 2014, an adjuster at Gallagher Bassett Services, Inc. sent Petitioner a letter indicating that Respondent was temporarily suspending all medical and TTD benefits pending Petitioner's attendance at a Section 12 examination that was to be scheduled "within the next two to four weeks." PX 10.

Petitioner was discharged from therapy on July 30, 2014, after undergoing seventeen sessions. At discharge, the therapist noted that Petitioner's symptoms were slowly getting better but that she was still symptomatic. PX 13.

Petitioner testified her bus driver certificate expired in August 2014. She submitted to a physical examination and drug testing at Work Right, in an effort to renew this certificate, but was told she could not be certified until after Dr. Bernstein had released her.

At Respondent's request, Petitioner saw Dr. Wehner for purposes of a Section 12 examination on August 15, 2014. Petitioner testified that Dr. Wehner spent about ten minutes with her.

Dr. Wehner's report sets forth the following account of the claimed work accident:

> "There was an autistic boy [who] did not want to get off the bus. The teacher came on the bus and spoke with him. [Petitioner] states the boy came charging at her and head-butted her on her chest and she went flying back into the dashboard and window. It buckled her knees but she did not fall to the ground. The teacher was nine months pregnant but she was able to get the boy under control. She then went back to drop her bus off. This was at 8:40 in the morning. She began having neck and head pain by early noon. By 5:00 PM she states she was in bed for the entire weekend. She states her boss came over Sunday afternoon on another matter and she told him [sic] then. She then went to Little Company of Mary Care Station. She ended up following with Dr. Bernstein [with] whom she had treated prior to this. She remains off work. She has been on Flexeril, Norco, Neurontin and Ibuprofen."

Dr. Wehner noted that Petitioner complained of 8/10 pain in the back of her neck radiating out to both shoulders and down both arms to her thumb, index and middle finger. She also noted complaints of pain radiating up from the back of the head to the forehead.

Dr. Wehner indicated she reviewed a cervical spine MRI report dated February 27, 2014 as well as a report and films concerning a cervical spine MRI performed on July 11, 2014. She indicated the February 27, 2014 report documented a left C5-C6 paramedian disc protrusion as well as surgical fusion of C6-C7. She interpreted the July 11, 2014 films as showing both the fused levels and focal left paracentral disc protrusion at C5-C6 indenting the thecal sac.

Dr. Wehner also indicated she reviewed a video of the accident and other treatment records, with the latter showing that Petitioner had been receiving Hydrocodone from both Dr. Amin and Dr. Bernstein simultaneously and was also obtaining Norco from a prior prescription from Dr. Amine. According to Dr. Wehner, Petitioner indicated she was proceeding in this fashion "because her insurance was ending after her divorce and she would no longer have the ability to get the Norco under her insurance."

Dr. Wehner indicated that Petitioner reported both chronic cervicalgia and an acute episode of cervicalgia occurring on May 15, 2014. Dr. Wehner opined, based on her comparison of the MRIs, that the alleged acute episode caused only a soft tissue injury "as there are no new MRI findings and [Petitioner] has had the same type of subjective complaints."

Dr. Wehner indicated she would find it helpful to review the records of Drs. Amine, Bernstein and Alawad. She found it reasonable for Petitioner to undergo twelve physical therapy sessions as a result of the soft tissue injury. She saw no need for any treatment beyond this therapy. She found Petitioner to be capable of full duty, noting that, according to records from ATI, Petitioner's job was sedentary in nature.

On September 12, 2014, Respondent's counsel sent Dr. Wehner's report to Petitioner's counsel and indicated that, based on the doctor's opinions, no temporary total disability benefits would be paid after August 15, 2014. PX 4, p. 77.

On October 2, 2014, Dr. Bernstein sent a report to Petitioner's counsel, outlining the pre- and post-accident care and indicating he had not seen Petitioner since June 30, 2014. He addressed causation as follows: "This patient is status post a new injury on May 16, 2014, superimposed on a prior fusion as well as a known cervical disc abnormality at the C5-C6 level." He opined that the work accident aggravated the C5-C6 condition, "resulting in chronic and continuous neck pain." He recommended follow-up care and described Petitioner as disabled from work "as a result of the new incident." PX 4, pp. 54-55.

Petitioner returned to Dr. Bernstein on October 16, 2014, with the doctor noting "progressively worsening neck pain" radiating into both arms. He interpreted the July 2014 cervical spine MRI as showing a "worsening disc herniation at the C5-C6 level." He linked this to the "recent work incident" and, after discussing various options, recommended an "add on anterior cervical decompression and fusion" at C5-C6. PX 4, p. 53.

In an addendum dated January 21, 2015, Dr. Wehner noted that Petitioner used narcotic pain medication after the 2013 cervical fusion and obtained a Norco refill through Dr. Bernstein the day before the work accident. She opined that the need for the C5-C6 surgery "was present based on [Petitioner's] subjective complaints, her need for narcotic pain medication and the MRI findings that were all present prior to the May 16, 2014 alleged injury." Wehner Dep Exh 3.

Dr. Wehner issued another report on April 22, 2015, after reviewing a number of pre-accident records dating back to 1998 and re-reviewing the MRIs. She opined that the MRI taken on July 11, 2014 showed findings at C5-6 "that are in the same location and the same size" as the findings on the pre-accident February 27, 2014 MRI. She indicated she had "no reason to believe [Petitioner] sustained any significant injury on the date of May 16, 2014." Wehner Dep Exh 4.

On June 24, 2015, Dr. Bernstein released Petitioner to work subject to multiple restrictions, including no lifting over 10 pounds, no repetitive bending, twisting, reaching or lifting and no bus driving. PX 4a. Petitioner testified she requested this release. She has not found work because of the nature of the restrictions and because her 8-year-old son had to undergo major hand surgery.

Dr. Wehner testified by way of evidence deposition on August 14, 2015. RX 8. Dr. Wehner testified she is a fellowship-trained, board certified orthopedic surgeon who devotes 90% of her practice to spinal issues. RX 8, p. 5. Wehner Dep Exh 1. She examined Petitioner once, on August 15, 2014. She summarized her history and examination findings. RX 8, p. 7.

Dr. Wehner testified she later compared the October 21, 2013 pre-fusion cervical spine MRI with the post-operative February 27, 2014 MRI. In her opinion, the two MRIs "showed similar findings." RX 8, pp. 11, 16. Later still, she reviewed another cervical spine MRI taken on July 11, 2014. This MRI showed no substantial change since February 27, 2014. RX 8, p. 18. It is commonplace for her to review and compare MRI images. The February and July 2014 MRIs were taken at different facilities. The shading can vary from facility to facility but, in her opinion, the two images that Dr. Bernstein referenced in his deposition are "clinically the same." RX 8, p. 20. Both show a left paracentral herniation at C5-C6 impinging on the thecal sac, which is the whitish area on the images, and without causing significant compression of the cord. "There's no difference between these two." RX 8, p. 22.

Dr. Wehner testified Petitioner was taking Norco, Flexeril, Ibuprofen and migraine medication before the work accident. In fact, Petitioner obtained 60 tablets of Norco the day before the accident. In her opinion, this meant that Petitioner was "having serious pain" before the accident. RX 8, p. 12. It is normal to have post-operative pain following a cervical fusion but not to the extent Petitioner complained of. If a patient is doing well following a fusion, there is no need to order a post-operative MRI. RX 8, p. 16.

Dr. Wehner testified she watched a video of the bus accident. The video showed Petitioner getting hit in the chest area by a student. Petitioner's "neck was not impacted" in the accident. RX 8, pp. 22-23. Based on what she saw on the video, the accident could not have aggravated the already damaged C5-C6 disc. RX 8, p. 23. Petitioner was hit in the chest, not the neck. "Getting hit in the chest is not really a mechanism for a whiplash injury or a neck injury." Petitioner did not fall down. She was standing in a "free space area." She was not restrained by anything. A kid hit her in the chest. RX 8, p. 23. Moreover, Petitioner "had pain

the day before," as evidenced by her obtaining Norco that day. Finally, the MRI findings did not change after the accident. RX 8, p. 23.

Dr. Wehner testified she has not changed any of her opinions since she issued her addendum on April 22, 2015. RX 8, p. 24.

Under cross-examination, Dr. Wehner testified she issued three reports. She charged $1200 for examining Petitioner and $250 to $300 for each report. RX 8, p. 25. She performs between five and ten IMEs per week. She does not know how many she routinely performs for Gallagher Bassett or Respondent's firm. She devotes 25 to 30% of her practice to IMEs. RX 8, p. 25. Almost all of the examinations she performs are for respondents. RX 8, p. 26. Petitioner told her she "went flying into the dashboard and window" but did not fall on the ground. RX 8, p. 26. Petitioner also told her that her knees buckled after getting hit and that she had the wind knocked out of her. RX 8, p. 28. Dr. Wehner testified she would not say that Petitioner returned to work "without any issues" after the fusion because she was still taking pain medication and muscle relaxants up to the time of the work accident. RX 8, p. 27. Petitioner should not have been taking Norco or Flexeril and driving a bus. RX 8, p. 27. She did not see any drug tests. RX 8, p. 27. Nor should Petitioner have been driving a bus 20 days after a cervical spine surgery. That is not a safe situation for children on the bus or other people around the bus. RX 8, p. 27. A whiplash injury occurs when someone is struck from the rear while seated and restrained, causing the neck to move back and forth on a stationary body. Petitioner's body was not restrained so she did not sustain a whiplash kind of injury. RX 8, p. 28-29. A true whiplash motion could cause a neck injury or aggravate an underlying neck condition. RX 8, pp. 29, 33. The video showed a child getting up and hitting Petitioner in the chest. The video "didn't show much after that." RX 8, p. 30. She never saw any footage showing Petitioner striking her head against a window. RX 8, p. 33. Petitioner reported to Dr. Bernstein that her condition dramatically improved after the cervical spine fusion. RX 8, pp. 30-31. As of August 15 report, she had reviewed the February 27, 2014 MRI report but not the film. As of her April 22, 2015 report, she had access to both MRI films. RX 8, p. 32. When a football player is tackled and hit in the chest, with his head snapping back, that is a hyperextension rather than whiplash injury. With a whiplash injury, you do not have to get hit in the neck in order for the neck to be injured. RX 8, p. 34. The color/clarity differences in the MRIs is due to the fact they were done at different facilities, using different machines. RX 8, p. 36. Both show disc herniations. RX 8, p. 36.

On redirect, Dr. Wehner testified she reviews many MRIs every day. She always tries to have MRIs done at the same facility because otherwise you can get caught up in little differences. RX 8, pp. 37-38. If a person is standing still but with freedom to move, and gets head butted, the natural instinct is for the whole body to go backward, not for the head to snap back and forth. RX 8, p. 40.

Under re-cross, Dr. Wehner testified she did not find that Petitioner was lying or embellishing. RX 8, p. 41. She finds causal connection in cases "every day" and not just in situations involving her own patients. RX 8, pp. 41-42.

Dr. Bernstein testified by way of evidence deposition on July 16, 2015. Dr. Bernstein testified he is a fellowship-trained, board certified orthopedic surgeon who has practiced at Lutheran General since 1991. PX 5 at 5. He teaches residents at the University of Illinois. PX 5 at 5. He has published a number of articles concerning spine surgery. PX 5 at 6. Bernstein Dep Exh 1.

Dr. Bernstein testified he has some recollection of Petitioner but needed his notes to testify. PX 5 at 7. He authored several reports at the request of Petitioner's attorney. In two of these reports, he responded to opinions expressed by Dr. Wehner, Respondent's examiner. PX 5 at 8.

Dr. Bernstein testified he operated on Petitioner's lumbar spine in 2000. After he released Petitioner in 2000, following that surgery, he did not see Petitioner again until December 13, 2013, at which time she consulted him concerning a cervical spine issue. PX 5 at 9. He performed a single level anterior cervical fusion on Petitioner on December 18, 2013. This surgery relieved Petitioner's arm pain but she had some residual neck pain. He evaluated this pain via an MRI "which was unimpressive." He "basically discharged" Petitioner at that point. PX 5 at 9. Petitioner returned to him on May 29, 2014 and indicated she had done well until a work accident in which a large eight-year-old boy "charged her," causing a whiplashing motion of her neck. PX 5 at 10. She complained of neck and diffuse shoulder pain. She denied arm pain. PX 5 at 11. When he examined her on May 29, 2014 he hoped she had suffered merely a soft tissue injury. He initially recommended therapy. On June 16, 2014, Petitioner reported slight improvement and told him she had not had the opportunity to undergo therapy. PX 5 at 12. On June 30, 2014, Petitioner complained of severe pain when turning her head to the right. He then recommended an MRI scan, which was performed on July 9, 2014. PX 5 at 13. That MRI "revealed a distinct disc herniation on the left side at C5-C6." PX 5 at 13.

Dr. Bernstein testified he compared the July 9, 2014 MRI to the MRIs Petitioner underwent in October 2013 and February 27, 2014. Both of the pre-accident MRIs showed a "small bulge of the disc at C5-C6 toward the left side but no distinct disc herniation." The July 9, 2014 MRI showed a "clear, distinct disc herniation that's distinctly different than the prior MRI scans." PX 5 at 13. He discussed the new MRI with Petitioner and presented surgery as an option. Petitioner wanted to proceed with surgery. PX 5 at 13-14.

Dr. Bernstein testified he disagrees with Dr. Wehner's opinions that the MRIs are similar and that Petitioner was symptomatic due to a C5-C6 disc herniation before the work accident. Petitioner definitely had some post-operative neck pain after the fusion healed, along with some degeneration at C5-C6, but she "clearly did not have a disc herniation at that level prior to the work accident." In his opinion, the May 16, 2014 work accident led to new or worsening symptoms. He is recommending a procedure known as an "add-on decompression and fusion at C5-C6." This would involve removing the existing C6-C7 plate, performing a discectomy at C5-C6 and then doing a fusion with instrumentation. PX 5 at 15.

In addition to the exhibits previously discussed, Respondent offered into evidence a two-page document showing the results of a "prescription monitoring program patient search" concerning Petitioner. This document shows the prescriptions Petitioner filled at various pharmacies between August 29, 2013 and July 31, 2014. The prescribed medications include Hydrocodone, Lorazepam, Oxycodone, Diazepam, Tramadol and Butalbital. The prescribing physicians include Drs. Bernstein, Amine, Al-Awad, Curtin, Pai and Najera. The list also reflects Hydrocodone prescriptions filled by a dentist on August 29, 2013 and July 30, 2014. The list reflects that Petitioner obtained a thirty-day supply of 5-325 mg Hydrocodone via Dr. Amine on April 23, 2014, a one-day supply of 10 mg-325 mg Hydrocodone via Dr. Bernstein on May 15, 2014 and a five-day supply of 10 mg-325 mg Hydrocodone on May 16, 2014, the date of the accident. RX 9.

Petitioner testified her neck is stiff and she experiences headaches "24/7." She self-treats via rest and ice packs. She finds it difficult to take care of her children and home.

Under cross-examination, Petitioner indicated she did not recall undergoing treatment for neck pain and arm symptoms in 2003 and 2004 but would not dispute her records if they reflect this. When she saw Dr. Amine in November 2013, she complained of neck and severe left arm pain. Dr. Amine recommended cervical spine surgery. She then consulted Dr. Bernstein. She was having neck problems before she began working for Respondent. In March 2013, she underwent treatment for these problems with Drs. Alawad and Najera. She last saw Dr. Najera on October 1, 2013. She also saw Dr. Curtin in October 2013 for migraines and neck pain. Dr. Bernstein operated on her neck in December 2013. Postoperatively, Dr. Bernstein directed her to use a bone stimulator due to her cigarette smoking. Dr. Bernstein told her that smoking could cause a sub-optimal surgical result. After she returned to work, in January 2014, she had good and bad days. She underwent therapy at Dr. Bernstein's direction. Dr. Bernstein ordered a cervical spine MRI after the surgery due to her persistent intermittent symptoms. Dr. Bernstein discussed the MRI results with her on March 20, 2014. Dr. Bernstein told her the MRI showed a "slight" protrusion at C5-C6. She does not recall him telling her this protrusion was causing some of her pain. She had health insurance as of that date but lost it later due to her divorce. She saw Dr. Alawad on March 5, 2014. She does not recall telling Dr. Alawad she had a C5 herniation. It is possible he noted very limited neck motion on that date. She was "still healing" at that point. He told her to stop taking Norco but she continued taking it on an "as needed" basis for headaches and neck pain. She filled a Norco prescription on May 15, 2014, the day before the accident. Three weeks earlier she had obtained Norco from a different prescription. She used Dr. Amine's prescription to obtain Norco between February and April 2014 even though she had not seen Dr. Amine since November 2013. She used a different pharmacy to obtain the refills via Dr. Amine's prescription. Her upper body made a "swaying motion" after the boy hit her in the chest, causing her to fall backward. She hit the dashboard but caught herself with one arm. She "could have" hit her head but is not sure because everything happened so fast. She was "shaken up" but did not feel neck pain at that time. The teacher who was outside the bus, waiting for the boy, came up a step and asked her if she was okay. After she got home that night, at about 5 or 6 PM, her headaches "got really bad." She could not get out of bed that evening. There was no one available to drive her to the

Emergency Room on Saturday. She owned a car but did not feel capable of driving. She does not know why she did not seek care on Sunday. RX 1, the accident report she completed, is accurate. Having reviewed it, she guesses she did hit the windshield. She was able to continue driving after the accident. It was not until later that day, in the afternoon, that her headache started. She did not tell a urologist at Palos Community Hospital that a student "tackled" her. She does not know whether she told him she hit her head in the process. On her last visit to Dr. Bernstein before the accident, he told her she needed insurance. He told her to "get a good job with benefits."

On redirect, Petitioner testified that her acute flare-ups had improved by March 20, 2014. On that date, Dr. Bernstein told her that her X-rays looked good. When she returned to work following the December 2013 surgery, she had good and bad days but was able to drive the school bus. After the work accident, she continued having migraines and neck pain but her headaches were different. The boy who struck her in the chest is autistic. He was supposed to be restrained. She is 5 feet, 4 inches tall. The boy came up to about her nose level.

Under re-cross, Petitioner testified was she was on public aid when she discussed insurance coverage with Dr. Bernstein. She does not recall him telling her to return to him in three months.

On further redirect, Petitioner acknowledged telling Dr. Bernstein in February 2014 that she felt she had returned to work "too quickly."

Under re-cross, Petitioner acknowledged continuing to take Norco through the day before the work accident but denied taking it every day.

Candise Bradley testified on behalf of Respondent. Bradley testified she has worked for Respondent for seven years. She started out as a bus driver and was promoted to safety compliance officer in November 2013. One of her duties in that position was to investigate accidents. She is now a manager who oversees training. She still has to drive a bus on occasion, as needed.

Bradley testified she learned of Petitioner's accident on May 16, 2014. Respondent's dispatcher called her and informed her of the accident. Petitioner began completing an incident report on that date but she told Petitioner to complete a different document called an "employee injury form." She (Bradley) subsequently realized the form was incomplete and unsigned. Petitioner did not complete and sign the form until May 20, 2014.

Bradley acknowledged going to Petitioner's house on two occasions after the work accident, in order to get some fish from Petitioner's pond, but denied visiting Petitioner on Sunday, May 18, 2014.

Bradley testified that each Respondent bus is equipped with a camera that is mounted above the dashboard and faces the rear of the bus. The camera is on while the bus is in operation.

Bradley testified that Petitioner drove bus #479 on the date of the accident. Bradley testified she obtained video footage taken on that date from this bus after the accident. She viewed the video in her office on May 19, 2014 and again on the morning of the hearing. The video she watched on the morning of the hearing is the same video she watched on May 19, 2014. The video is about 38 minutes long. RX 5.

The Arbitrator and counsel viewed the relevant portion of the video (i.e., footage starting at the 28-minute point) during the hearing. The video shows the center aisle and rear section of a small school bus. It does not show the driver's seat or the front of the bus. A boy can be seen getting out of his seat and coming down the center aisle of the bus to the front. The parties agreed that Petitioner was at the front of the bus and facing the rear of the bus at that point. Petitioner's arm can be seen, as she holds a backpack. There is no footage of the portion of the bus that is behind Petitioner. Nor is there any footage of the immediate aftermath of the contact between the boy and Petitioner. The audio portion reflects that Petitioner verbally reacted to the contact. Not long after the contact, Petitioner resumes driving the bus.

Bradley testified she has driven buses similar to the bus shown in the video. The video does not show the front of the bus. There is a distance of four feet between the first set of seats and the dashboard. There is a distance of six feet between those seats and the windshield. Based on these measurements, it would not have been possible for Petitioner to be thrown into the steering wheel or dashboard.

Under cross-examination, Bradley testified she has no ownership interest in Respondent. The video does not show the driver's seat or the accident.

On redirect, Bradley reiterated she is familiar with the configuration of the bus shown on the video. The video does not show the front of the bus but it does show Petitioner's arm. Based on Petitioner's position, it would not have been possible for her to have been thrown into the dashboard or windshield.

Under re-cross, Bradley acknowledged that anything is possible and that the video does not enable you to see what was going on in the front of the bus.

Arbitrator's Credibility Assessment

Petitioner's testimony as to the extent of her pre-accident cervical spine complaints was credible and supported by Dr. Bernstein's records. Petitioner readily acknowledged she continued to experience neck pain after the December 2013 cervical spine fusion but contended she was able to perform her bus driving duties between January 2014 and the work

accident. When Dr. Bernstein saw Petitioner on March 20, 2014, about two months before the accident, he described her as "functional" and devoid of radicular symptoms. He recommended general follow-up in three months but did not recommend any specific care, let alone more cervical spine surgery. The Arbitrator does not view his suggestion that Petitioner obtain health coverage as anything more than a reasonable recommendation any prudent physician would make to an uninsured patient with multiple health conditions.

Petitioner's account of the accident was detailed and in no way inconsistent with Respondent's video, which actually showed very little other than a boy moving down the center aisle of a small bus toward Petitioner. Petitioner credibly testified she was positioned between the boy and a teaching assistant affiliated with the school, who had started ascending the bus steps in order to take charge of the boy. Petitioner had reason to place herself there, given that the boy was unpredictable and the teaching assistant was nine months pregnant. Petitioner's supervisor, Candise Bradley, did not contradict Petitioner's testimony that the boy is autistic. Viewers of the video could disagree as to whether the boy is "good-sized," as Petitioner described him, but Petitioner is a petite individual. They could also disagree as to whether the boy "charged" Petitioner, as Drs. Bernstein and Wehner noted, but he is not moving slowly.

This is not to suggest that Petitioner was 100% believable on all points. Petitioner exhibited some tendency to exaggerate the effects of the work accident. For example, she attributed her flank pain and hematuria to the accident when she went to the Emergency Room on May 24, 2014, even though she did not testify to any flank injury. Overall, however, the Arbitrator found her credible.

Petitioner testified she informed Ms. Bradley of the accident when Ms. Bradley came to her house on Sunday, May 18, 2014. Ms. Bradley denied visiting Petitioner on that date but acknowledged having twice come to Petitioner's house to pick up fish from Petitioner's pond. The Arbitrator views the discrepancy as of little consequence, given the stipulation to notice (Arb Exh 1) and the fact that Petitioner partially completed an accident report on May 16, 2014. There was no delay in reporting but there was some delay in treatment, with that delay taking place over a weekend. It was on Monday, May 19, 2014, following an unsuccessful attempt to resume bus driving, that Petitioner sought care. The Arbitrator discounts the possibility that Petitioner suffered additional spousal abuse over the weekend, noting Petitioner's testimony that she was no longer living with her husband at that time and the Little Company of Mary Care Station nurse's notation that she observed "no signs of abuse" on the morning of May 19, 2014. PX 11, p. 18.

Respondent's examiner, Dr. Wehner, characterized Petitioner as a drug hoarder, citing the pharmacy records. The records do in fact document multiple prescriptions for narcotic pain medication (in varying amounts) but Petitioner explained she needed to obtain a supply of such medication prior to the divorce-related termination of her prescription insurance coverage. Dr. Wehner concluded that Petitioner must have been experiencing significant neck pain the day before the accident since she filled a Norco prescription on that day. The Arbitrator notes that Petitioner acknowledged having a number of pain-causing conditions having nothing to do with

the neck, including migraines and fibromyalgia, before the accident. Dr. Amine's records also suggest that Petitioner became dependent on Norco well before the work accident. This dependence is unfortunate but the fact Petitioner obtained Norco on May 15, 2014 does not automatically lead to the conclusion she was experiencing significant neck pain that day.

Dr. Wehner's credibility was undermined by her admission that she performs five to ten IMEs (at a price of $1,200 per IME) per week, almost all of which are for respondents.

Arbitrator's Conclusions of Law

Did Petitioner sustain an accident arising out of and in the course of her employment on May 16, 2014?

The Arbitrator finds in Petitioner's favor on the issue of accident. In so finding, the Arbitrator relies on the following: 1) Petitioner's credible accident-related testimony; 2) the fact Petitioner was on her assigned bus, performing a work-related task, when the autistic student made contact with her; 3) the fact Petitioner completed an accident report on May 16, 2014, complaining of neck pain and other symptoms; and 4) the initial treatment records, which reflect a student ran into Petitioner on the morning of May 16, 2014, with Petitioner beginning to experience severe headaches and neck pain by the afternoon/early evening on that date.

Did Petitioner establish causation as to her claimed current cervical spine condition of ill-being and the need for the "add on" cervical spine surgery Dr. Bernstein has recommended?

Having reviewed all of the evidence, the Arbitrator elects to rely on Dr. Bernstein rather than Dr. Wehner and finds that the May 16, 2014 accident was a factor leading to the need for additional cervical spine surgery. In so finding, the Arbitrator relies on the following: 1) the fact that, on January 3, 2014, providers at Little Company of Mary Care Station found Petitioner "fit to work" as of January 6, 2014; 2) the fact that Petitioner was able to perform her bus driving duties between January 6, 2014 and the work accident; 3) the fact that Dr. Bernstein documented improvement and described Petitioner as "functional" on March 20, 2014; 4) the fact that Petitioner did not return to Dr. Bernstein between March 20, 2014 and the work accident; 5) the fact that Dr. Bernstein did not recommend the "add on" cervical spine surgery until after the accident; 6) the fact that Dr. Bernstein treated Petitioner over an extended period, both before and after the accident, while Dr. Wehner saw Petitioner only once; 7) the doctors' respective MRI interpretations, with Dr. Wehner attempting to ascribe the differences between the pre- and post-accident scans to variations in facility techniques; 8) Dr. Wehner's reliance on the video in opining that Petitioner was standing in a "free space" as of the accident and that Petitioner's neck was "not impacted by" the accident; 9) Dr. Wehner's admission that she earns between $6,000 and $12,000 per week from IMEs, with the vast majority of those performed for respondents.

In addressing causation, the Arbitrator readily acknowledges that Petitioner had a cervical spine condition of ill-being prior to the work accident, with that condition bringing

about the need for the insertion of surgical hardware in December 2013. Despite this surgery, Petitioner was able to resume her regular duties on January 6, 2014, with a Little Company of Mary Care Station physician noting her current medications, including Norco, and finding her fit to work. PX 11. Under Illinois law, "it is axiomatic that employers take their employees as they find them," Baggett v. Industrial Commission, 201 Ill.2d 187, 199 (2002). Petitioner continued full duty after January 6, 2014 and passed a random drug screening on March 13, 2014.

The Arbitrator further finds that Petitioner failed to prove a causal connection between the work accident and the care she underwent at Palos Community Hospital from May 24-25, 2014 and on June 5, 2014. The records concerning this care document treatment for a urinary tract infection and a longstanding history of such infections. It appears that Petitioner targeted the work accident as a possible cause of her abdominal/flank discomfort but Petitioner never testified to striking this area of her body.

Is Petitioner entitled to temporary total disability benefits?

Petitioner claims she was temporarily totally disabled from Monday, May 19, 2014 through the hearing of September 24, 2015. Based on the foregoing accident- and causation-related findings, and noting that Petitioner acknowledged working part of the day on May 19, 2014, the Arbitrator finds that Petitioner was temporarily totally disabled from May 20, 2014 through September 24, 2015, a period of 70 3/7 weeks, with Respondent receiving credit for the $1,976.26 in benefits it paid prior to the hearing. The Arbitrator declines to award temporary total disability benefits at the weekly rate suggested by Petitioner, i.e., $286.00, because that figure exceeds the stipulated average weekly wage of $258.32. Arb Exh 1. The Arbitrator awards benefits at the rate of $258.32 per week.

In awarding these benefits, the Arbitrator relies in part on the Little Company of Care Station records, which reflect that Dr. Brown made various treatment recommendations and took Petitioner off work on May 19, 2014. PX 11. The Arbitrator also relies on Dr. Bernstein's records and reports, which reflect he kept Petitioner off work beginning on May 29, 2014. Px 4.

The Arbitrator has elected to rely on Dr. Bernstein rather than Respondent's examiner, Dr. Wehner, on the issues of causation, treatment needs and work capacity. After the work accident, Dr. Bernstein initially took a conservative approach, recommending therapy and a repeat MRI. He subsequently recommended an "add on" cervical spine surgery. The Arbitrator views Petitioner's causally related cervical spine condition as unstable prior to and as of the hearing, based on that surgical recommendation. Interstate Scaffolding v. IWCC, 236 Ill.2d 132 (2010). Dr. Bernstein did release Petitioner to work, subject to multiple restrictions (including no bus driving), on June 24, 2015 (PX 4a), but there is no evidence indicating that Respondent offered Petitioner work within those restrictions.

Is Petitioner entitled to reasonable and necessary medical expenses?

Petitioner offered various medical bills into evidence (PX 23). The Arbitrator, having reviewed these bills, notes that some show $0 balances while others relate to treatment of general health conditions having nothing to do with the work accident. The Arbitrator has previously found that Respondent is not liable for the care Petitioner underwent at Palos Community Hospital from May 24-25, 2014. To the extent that Respondent adjusted this bill or made payments toward it, as the bill reflects, Respondent is entitled to credit. Respondent is also not responsible for any billing for the subsequent Emergency Room visit of June 5, 2014.

The Arbitrator awards the following bills, subject to the fee schedule: 1) Little Company of Mary Hospital, 5/19/14, 5/20/14, 5/22/14 and 5/24/14, $6,117.00; and 2) The Spine Center (Dr. Bernstein), 5/29/14 and 6/16/14, $291.05.

Is Petitioner entitled to prospective care?

Having already found in Petitioner's favor on the issues of accident and causation, the Arbitrator awards prospective care in the form of a return visit to Dr. Bernstein along with the "add on" cervical spine surgery the doctor discussed during his deposition.

Is Respondent liable for penalties and fees?

At the hearing, Petitioner's counsel indicated he would be requesting an award of penalties and fees. He did not offer any penalties/fees petition into evidence but he did offer a letter sent to Petitioner by an adjuster on July 18, 2014, temporarily suspending the payment of all benefits pending Petitioner's attendance at a Section 12 examination that had yet to be scheduled. PX 10. The examination took place about a month later. Following the examination, Respondent's counsel sent Petitioner's counsel another letter on September 12, 2014, indicating Respondent would not pay any benefits after August 15, 2014 based on Dr. Wehner's opinions. PX 4, p. 77.

Petitioner maintains that Respondent failed to comply with Commission rules in sending a suspension letter in advance of, rather than in reliance on, a Section 12 examination. The Arbitrator does not disagree with this argument, as far as it goes, but declines to award penalties and fees. It appears to the Arbitrator that Respondent authorized some initial care and ultimately paid benefits through the date of Dr. Wehner's examination. PX 4, p. 77. Moreover, with Petitioner having undergone a cervical fusion in December 2013 and having followed up with her surgeon, Dr. Bernstein, as recently as two months before the May 16, 2014 work accident, the Arbitrator is unable to find that Respondent acted in an objectively unreasonable manner in relying on Dr. Wehner.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SCHMIDT, MICHELENE
Employee/Petitioner

Case# **15WC005245**

14WC024891
15WC005244

SENIOR SILVARDO LIVING
Employer/Respondent

On 9/29/2015, 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 0.10% 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:

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0507 RUSIN & MACIOROWSKI LTD
KISA P STHANKIYA
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

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

- [ ] 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)

MICHELENE SCHMIDT
Employee/Petitioner

v.

SENIOR SILVERADO LIVING
Employer/Respondent

Case # **15** WC **5245**

Consolidated cases: **14WC24891,15-5244**

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 **Falcioni**, Arbitrator of the Commission, in the city of **Rockford**, on **August 25, 2015**. 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. [ ] 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. [x] Is Respondent due any credit?

O. [x] Other Injurious practice, prospective medical care

FINDINGS

On the date of accident, **January 30, 2015**, 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**; the average weekly wage was $**420.00**

On the date of accident, Petitioner was **59** 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 reasonable and necessary medical services of an additional $2180.00, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $280.00/week for 27 1/7 weeks, commencing 1-31-15 through 8-25-15, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 2-11-15 through 8-25-15, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay to Petitioner penalties of $**1868.00**, as provided in Section 16 of the Act; $**4670.00**, as provided in Section 19(k) of the Act; and $**5190.00**, 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

Date 9/22/15

ICArbDec19(b)

SEP 29 2015

FACTS

The Arbitrator notes the facts and finding contained in the decision issued in 14 WC 24891 and incorporates them by reference thereto herein as the facts in this last accident, on January 30, 2015.

ISSUES AND CONCLUSIONS

ACCIDENT

The Petitioner testified that when she had returned to work on January 30, 2015, the person who was training her, Melody, had gone on a lunch break. It was at that time that Petitioner went to the rear door to let someone in and when she returned to her station, a resident had taken up her seat and grabbed her arms up in a jerking motion, reinjuring her right shoulder. The first medical care that she received was the next available appointment with Dr. Cummins, who she was still seeing from her original injury on March 18, 2014. That was on February 11, 2015. She gave a history at that time which is consistent with her testimony. The notes indicate: "Patient works at assisted living facility with dementia patients. On her first day back to work with restrictions she had a patient grab her arms and pull on them. This happened 1 ½ weeks ago. This caused her to wake up with returned pain in the right shoulder." (Pet. Ex. #2, p. 4). The Petitioner testified in a credible manner and her testimony is unrebutted. Based on this evidence and the record as a whole, the Arbitrator finds that Petitioner sustained an accident arsing out of and in the course of her employment with Respondent as alleged herein on January 30,2015.

NOTICE

The January 30, 2015 accident occurred on a Friday. The Petitioner testified that she called on that Sunday night to the Respondent and left a message with the receptionist that she was in too much pain and would not be able to come in on the next day, which was Monday. When Monday came around, Petitioner continued to testify that she notified Colleen Sheahen about the injury in a telephone call. Ms. Sheahen was present at the hearing and she confirmed Petitioner's testimony that they did, in fact have a conversation on that Monday whereupon the Petitioner notified her of the new injury. The Petitioner has satisfied the notice requirement.

CAUSAL CONNECTION

The Petitioner testified that her condition had been improving after her last visit with Dr. Cummins in January, 2015, just prior to her return to work on January 30, 2015. The doctor notes confirm her improved condition where he indicated "The patient is progressing appropriately" and clearing her for light duty (Pet. Ex. #2, p.7). The first visit after her January 30, 2015 injury, a history was taken that was consistent with the Petitioner's testimony, "first day back at work with restrictions she had a patient grab her arms and pull on them" (Id. p. 4). She was assessed with a complete rupture of rotator cuff which was then confirmed by the subsequent MRI taken on March 4, 2015 (Id. p. 25). There is no evidence of any other injuries or activities that caused this recurrent tear. Dr. Walsh, who did confirm the recurrent tear, opined that recurrent tears are common in those who have had previous tears and again, the mechanism of lifting of the arms would not cause the recurrent tear. Given the chronological connection between the alleged injury and immediate onset of symptoms, the Arbitrator can do ought other than find that Petitioner has met her burden of proof relative to causal connection between said accident and her recurrent shoulder rotator cuff tear.

MEDICAL

Subsequent to her January 30, 2015 injury, the Petitioner sought attention with her treating doctor immediately. The soonest she could get in was February 11, 2015. Another MRI was prescribed which confirmed the new rotator cuff tear and surgery has been prescribed as of the last visit on March 6, 2015 (Id. p. 2). Ms. Schmidt has been to see Dr. Cummins twice since her January 30, 2015 accident and incurred bills in the amount of $380 from him as well as $1800 for the additional MRI, for a total of $2180.00 that is still due and not paid by Respondent. Based n the above findings regarding Accidnet notice and causal connection, the Arbitrator finds that services provided for which these bills were incurred are reasonable and necessary to cure or relieve the condition existing in Petitiner's shoulder and awards same pursuant to the medical fee schedule.

TTD

The Petitioner has testified that she has been unable to work since the January 30, 2015 accident. Dr. Cummins has confirmed that she has been unable to work and is in need of further surgery. Although Dr. Walsh opined that Ms. Schmidt can return to work, his opinion is given little weight for reasons cited

above. Petitioner did not receive an off work slip from her treating physician until February 11, 2015, therefore . The Respondent shall pay TTD from February 11 2015 through the date of trial, August 25, 2015, or 27-1/7 weeks at a TTD rate of $280.

PENALTIES

The treatment by Dr. Cummins of the Petitioner confirms that she was reinjured on January 30, 2015. His records (Pet. Ex. #2) along with the second MRI support the Petitioner's testimony of how she was reinjured. Respondent denies that Petitioner was injured the way she testified, but there is no evidence in the record which even implies that she was injured any other way. Respondent has attempted to use the opinion of Dr. Walsh in support of its position, but even he did not offer any further explanation for her recurrent tear other than it is known to happen to those who experience the first tear (Resp. Ex. #4). Dr. Cummins has had her off of work since the first visit after her injury and bills of his two visits along with the bill for the MRI, totaling $2180.00 still remain due. Respondent has refused to pay. Petitioner has been unable to work from January 31, 2015 until the trial date of August 25, 2015 and ongoing and again, the Respondent refuses to pay. Petitioner has filed its Petition for Penalties and Respondent has not filed any response or requested any time to do so. It is clear that its behavior is unreasonable and vexatious. As there is no defense to Petitioner's Petition, penalties are awarded. Pursuant to Section 19(k), the Respondent is determined to have acted in an unreasonable and vexatious manner in delay of payment of both medical bills and TTD. The amount of the medical due from this injury is $2180 and the amount of TTD due is $7160.00 (29 4/7 weeks) for a total of $9340.00. Section 19(k) allows for 50% of the amount due to be awarded as a penalty. Therefore, Petitioner is awarded an additional amount of $4670.00 pursuant to Section 19(k). Section 19(l) allows for penalty of $30 per day for each day Respondent fails to pay necessary medical under Section 8(a) and TTD under 8(b). From the last date of treatment on March 6, 2015 until the date of trial on August 25, 2015, 173 days have passed. At $30 per day, total 19(l) penalty comes to $5190. Pursuant to Section 16, the penalty awarded due to the unreasonable and vexatious delay of nonpayment of medical bills and TTD ($9340) shall be 20% of the unpaid amounts of medical bills and TTD for a total of $1868.

INJURIOUS PRACTICE

There was no testimony from either the Petitioner or either of the Respondent's witnesses that the Petitioner engaged in any form of activities that were injurious to her medical condition. A review of the evidence submitted by both parties fails to reveal any injurious activity either. Since there is not proof or suggestion that Petitioner injured herself in any manner other than how she testified, the Respondent's claim for such behavior this is denied.

PROSPECTIVE MEDICAL

The Petitioner's testimony is credible and supported by the medical. Her two visits to Dr. Cummins subsequent to her January 30, 2015 work accident indicates that she tore her rotator cuff again as a result of being pulled by a resident (Pet. Ex. #2, pp. 4, 2). Her MRI substantiates this condition (Id. p. 28). His recommendation is that she undergo surgery for the tear. Petitioner has not undergone the surgery because Respondent has not approved it. Respondent is ordered to authorize the surgery of Petitioner's shoulder as Dr. Cummins has prescribed and consistent with the overwhelming evidence in this case.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ALBERT, CARL Case# **14WC010220**
Employee/Petitioner

CITY OF PEORIA
Employer/Respondent

On 10/15/2015, 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 0.08% 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:

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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

Carl Albert
Employee/Petitioner
v.
City of Peoria
Employer/Respondent

Case # **14**WC **10220**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed out to each party. The matter was heard by the Honorable **GREGORY DOLLISON** Arbitrator of the Commission, in the city of **Peoria, Illinois on June 18 and 19, 2015**. 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. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other

FINDINGS

On **or about 02/12/14**, 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 not*** sustain an accident that arose out of and in the course of her 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 alleged injury, Petitioner earned $12,040.60; the average weekly wage was $926.20.

On the date of accident, Petitioner was **56** years of age, ***married*** with **zero** 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.

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

ORDER

Having found that Petitioner failed to prove he sustained an accidental injury that arose out of and in the course of his employment with Respondent on February 12, 2014, 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

10/14/15
Date

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OCT 15 2015

FINDINGS OF FACT:

Petitioner, Carl Albert worked as a temporary maintenance for the City of Peoria in the winter of 2013–14. The City hired him in November 2013 to work through approximately March 31, 2014. Mr. Albert testified that he believed the City may have hired him on full time if he showed that he was a hard worker—although on cross examination he acknowledged that no management employee of the City ever expressed this sentiment.

The City presented a letter dated November 13, 2013 from City Human Resources Director Mary Ann Stalcup to Mr. Albert—a letter that Mr. Albert acknowledged receiving—expressly stating that "temporary employment is expected to continue from November, 2013 through March, 2014, with a limit of 1,000 hours." (RX 1) At trial, Deputy Director Superintendent of Operations and Maintenance, Mr. Sie Maroon testified that the City never communicates any expectation that temporary employees will receive full time employment offers following their temporary terms.

As a temporary employee, Mr. Albert worked two regularly-scheduled days per week and was also expected to work during snow storms. Mr. Albert testified that his job responsibilities included driving snowplows, cleaning streets, and other jobs that the City assigned. Deputy Director Sie Maroon testified that his main responsibility as a temporary maintenance was to drive snowplows, although he was also required to complete other tasks, such as shoveling snow.

Petitioner alleges that he sustained injuries to his bilateral lower extremities on or about February 12, 2014. Mr. Albert first filed an Application for Adjustment alleging that he injured his right foot by exposure to frostbite on February 12, 2014. He later amended his application on April 15, 2014, alleging injuries to his bilateral lower extremities by exposure to frostbite on February 12, 2014. On the trial date, Mr. Albert amended his Application once more alleging injuries to his bilateral lower extremities by repeated exposure to frostbite on or about February 12, 2014.

It is undisputed that Mr. Albert underwent a right great toe amputation on March 11, 2014, although the City disputes that his amputation was causally related to his employment. Respondent also disputes that Mr. Albert suffers bilateral lower extremity issues that are causally related to his employment with the City of Peoria. As a threshold issue the Parties disagree whether Mr. Albert suffered an accident as alleged, and presented competing evidence on this issue.

A. Evidence Regarding Accident:

Mr. Albert testified that three accidents caused his need for amputation and his current lower extremity issues. The first occurred sometime in the beginning of February when he was driving Truck 159 plowing snow during a winter storm. Mr. Albert claimed that Truck 159's heater was not working properly and that ice developed on the pedals. In addition to his feet being exposed to the cold, the ice caused his right foot to repeatedly slip of the pedal. Mr. Albert claimed that this caused him to develop a blister on his right great toe.

Mr. Albert claimed that he called his supervisor, David Haste, several times and requested to switch to a functioning truck. Mr. Albert indicated that despite the repeated requests, the supervisor instructed him to continue plowing until his break. Mr. Albert testified that during his break period and before switching trucks, he warmed his feet.

The second claimed accident occurred several weeks later, in the middle of February. Mr. Albert claimed he was assigned to a 12-hour shift of shoveling snow. Mr. Albert testified that he was wearing steel toe boots while shoveling. He stated that after his shift, his sock was frozen to the blister on his right great toe. Mr. Albert indicated he used scissors to cut and remove his sock. Mr. Albert testified that after this second incident, he reported his blister to a supervisor, Sie Maroon. Mr. Albert testified that this was the only occasion he reported any work-related incident to the City or complained of injury.

The third accident occurred at the end of February. Mr. Albert testified that he was assigned to work at a water main break. He claimed that he had to stand in water for four hours while wearing leather boots.

Mr. Albert testified that his blister continued to bother him and that the pain gradually spread up his right leg. He visited the emergency room on March 9, 2014. He stated that he believed he had frost bite on his right great toe and that the frost bite became infected. As stated above, Mr. Albert had his right great toe amputated on March 11, 2014.

The City's rebuttal evidence began with its cross examination of Mr. Albert. Mr. Albert admitted that he could not provide any specific dates for his various accidents he claimed above. He acknowledged that the first alleged incident involving the truck heater was in early February and not on February 12 as alleged in his Application for Adjustment.

The City presented Mr. Albert's treating records and asked him to explain inconsistencies the records contained regarding the cause of his lower extremity problems.

A March 19, 2014 treating record with OSF Occupational Health showed that Mr. Albert claimed the initial incident occurred "toward the end of January" on a "cold day". He provided that the snow-shoveling incident occurred on February 16, 2014. (RX 15) An hours' report that the City submitted showed Mr. Albert working on three hours on February 16, 2014 (RX 2), instead of the 12 hours he claimed to have worked on the date of the snow shoveling incident. When confronted with this evidence, Mr. Albert stated that he did not know the exact date of his accident and that it must not have been on February 16, 2014.

A May 1, 2014 treating record with Dr. Ruff showed that Mr. Albert claimed that he developed frostbite in the end of January. (RX 13) When asked whether his position was that he had had frostbite from early January through his hospitalization on March 9, 2014, as stated in this treating record, Mr. Albert said that he was not a doctor and did not know if he had frostbite for this duration. He acknowledged that he did not seek any medical treatment during this timeframe for his alleged problems and that no doctor diagnosed him with frostbite.

A January 20, 2015 functional capacity exam showed that Mr. Albert claimed the snow-shoveling incident occurred on February 15, 2015 after working a twelve hour shift. (PX 12) The City's report showed that Mr. Albert did not work on February 15, 2014. (RX 2) When confronted with evidence, Mr. Albert again acknowledged that he couldn't state what day this alleged incident occurred.

Regarding the truck Mr. Albert was driving, Mr. Albert acknowledged that he was assigned a particular truck at the beginning of each shift, and that this information was reflected on a work assignment sheet. He confirmed that he believed he was driving Truck 159 when the heater-incident occurred. Mr. Albert was presented evidence that no records showed him driving Truck 159 in the beginning of February—the closest record showed him driving Truck 159 on January 18, 2104. (RX 4) Mr. Albert had no explanation for this, but stated he was positive that he was in Truck 159 when the heater malfunctioned.

Mr. Albert was also asked about a February 3, 2014 treating record with his primary care physician, Dr. Hoffman. Mr. Albert's February 3, 2014 visit would have occurred after the truck-heater incident, per his testimony. Yet the February 3, 2014 note does not describe any complaints of a blister or bilateral frostbite or pain. In response Mr. Albert stated he did not recall this doctor's visit and that he had no explanation for why he did not complain of the issues he was having. (RX 14)

The City also presented testimony of Mr. Sie Maroon and Mr. Bob Williams, the Fleets Division Manager. Mr. Maroon testified that he was one of several supervisors for Mr. Albert, although they worked different shifts during snow storms. Mr. Maroon recalled Mr. Albert complaining of issues with his toe on several occasions, each occurring during a shift change for the snow storms. On the first occasion, Mr. Albert complained generally about foot pain. Mr. Maroon asked whether Mr. Albert wanted to see the City doctor, but Mr. Albert declined treatment. Mr. Maroon stated that Mr. Albert provided no specific information about a work accident.

On the second occasion, Mr. Albert reported the blister issue he had with his right great toe. Again, Mr. Maroon asked whether he wanted to see a physician, but again Mr. Albert declined. He stated that he could treat the blister in the same manner as the doctor or the hospital.

On the third occasion, which was on March 6, 2014, Mr. Albert complained of continued issues with his right great toe. Again, Mr. Maroon asked if Mr. Albert wished to see a doctor and again Mr. Albert declined. Following Mr. Albert's third report, Mr. Maroon drafted a Supervisor's Accident Investigation Report that summarized Mr. Albert's complaint and documented that he had recommended on multiple occasions that Mr. Albert see a doctor, but that Mr. Albert declined believing he could treat it just as well. (RX 6) Mr. Maroon testified that Mr. Albert never complained about issues with his left foot.

In addition to his testimony about Mr. Albert's various reports, Mr. Maroon also testified on Mr. Albert's alleged incidents. First, Mr. Maroon testified that Mr. Albert never complained to him about a malfunctioning heater. Second, he rebutted Mr. Albert's claim that he was shoveling for the duration of a 12-hour shift. Mr. Maroon testified that it was not likely that an employee would be assigned to shoveling duty during a 12-hour shift. If an employee was required to shovel for an extended time, the employee would be free to return to his truck to warm up. Third, Mr. Maroon disputed Mr. Albert's claim that he was exposed to standing water for four hours while working at a water main break. Mr. Maroon explained that the water company is responsible for fixing water main breaks, not the City's Public Works. Thus it is unlikely that Mr. Albert was assigned to work in the standing water as claimed. Mr. Maroon stated that it was possible that Mr. Albert could have been assigned to ancillary tasks near the water main break. In this situation, Mr. Albert would not be asked to stand in water for four-straight hours. If Mr. Albert was required to work in water, the City provides rubber boots.

Regarding Mr. Albert repeatedly declining treatment, Mr. Maroon stated that it was the City's policy to offer medical treatment, but that the City could not force an individual to seek treatment. He stated that it is not the City's policy to have individuals treat their injuries by themselves, without professional medical attention. He stated that he was unaware of any public works employee suffering from frostbite.

Mr. Bob Williams testified regarding the truck maintenance. As Fleets Division Manager, Mr. Williams oversaw all repair work on the snow plows and City trucks. Mr. Williams described the procedure for repairing vehicles. He stated that anytime his mechanics work on a vehicle, there will be a work order prepared. The work orders allow the City to document repairs, account for mechanics' time, and maintain the proper parts inventory. Mr. Williams stated that virtually all issues generate work orders, no matter how small a problem.

Mr. Williams testified that it was not possible for there to be a complaint of a malfunctioning heater without a work order being issued.

Mr. Williams also described the usual process when employees call in from the field with complaints about their trucks. He stated that a majority of the time, if an employee complains about a truck malfunction, he will be instructed to bring the truck into the shop immediately or the City will send a mechanic in the field to address the issues. He said that if the complaint has potential safety implications, the employee will be instructed to bring the truck into the shop. Mr. Williams believed that a malfunctioning heater would constitute a safety issue, and it is not likely Mr. Albert would have been instructed to work through this problem.

Mr. Williams described Respondent's Exhibit #3, which was a summary of mechanic work orders and truck assignment sheets the City submitted as Exhibits 4 and 5. The City reviewed the maintenance records of each truck to which Mr. Albert was assigned from January 18, 2014 through February 17, 2014. This investigation revealed that none of the trucks Mr. Albert drove during this time period had work completed related to heat issues in the cab of the truck, or any issue even tangentially related to heat problems. Mr. Williams could find no evidence that any truck driven by Mr. Albert had a broken heater or other heater issues.

B. Medical-Related Evidence:

As there are several issues in dispute, the parties submitted evidence on many medical-related issues. To help with clarity, this Decision will first discuss Mr. Albert's course of treatment. It will then discuss evidence related to two causation issues: 1) what caused the need for Mr. Albert's right great toe amputation; and 2) whether Mr. Albert has neuropathic issues in his bilateral lower extremities, and if so, what caused these issues. Finally, it will discuss evidence regarding Mr. Albert's ability to return to work and restrictions.

1. Course of Treatment

Mr. Albert did not seek medical treatment until March 9, 2014, opting instead to treat his blister by himself. According to his testimony—and in a detailed description he gave to OSF Occupation Health as reflected by March 19, 2014 record—Mr. Albert treated his blister by cleaning and bandaging it and applying antibacterial ointment. (RX 15) Mr. Albert admitted that he had had many blisters in the past. Mr. Albert testified that around the middle of February, his blister popped, causing his sock to adhere to his right great toe. In the March 19, 2014 note, Mr. Albert stated that he used warm water to separate the toe from the sock. (RX 15) During testimony, he claimed that he used scissors to accomplish this.

The March 19th note goes on to say that Mr. Albert stated that he found black material where his blister was, that he took a razor like knife and, after sterilizing it, cut off the black material on the skin where the blister was. He then used antibiotic ointment and continued changing the bandage. (RX 15) During testimony Mr. Albert denied ever using a knife to debride the blister in this fashion and he denied ever telling OSF Occupational Health that he did. When asked why he thought medical professionals would fabricate his statements, Mr. Albert had no response.

Mr. Albert acknowledged, during testimony and in the medical records, that during his course of self-treatment, his pet dog licked the open wound on his great toe. When asked why he toe wasn't bandaged at home, he stated that he was trying to air it out.

On March 9, 2014, Mr. Albert appeared at the St. Francis Emergency Department with a large draining wound to his right foot. The notes upon admission show that he had swelling in his right toe, his ankle, and his calf.

The notes state that Mr. Albert reported that he had gotten frost bite on his toe and a large blister had formed. Mr. Albert reported that he took a knife at home and shaved the blister off, and that since then the wound has increased in size, pain, and redness with increased drainage. Mr. Albert was diagnosed with cellulitis and osteomyelitis, or a bone infection, of the right great toe. (RX 15)

Orthopedic surgeon, Dr. Garst treated Mr. Albert while at OSF St. Francis, preforming an amputation of his right great toe. The pre- and post-operative diagnoses were osteomyelitis. Dr. Garst's surgical report described Mr. Albert's history of self-treatment and the objective appearance of his right great toe, stating:

> By way of Albert's history, he apparently tried to treat himself, and things went bad with this toe. He ended up in the hospital and had an obvious infection going up the foot. He was treated with IV antibiotics. His x-rays were negative, but a bone scan showed obvious osteomyelitis at the right great toe. In addition, clinically, the toe has expanded. It had a couple different areas which were draining gross pus. There was a cellulitic area around the entire great toe. It has a sausage-like appearance. It was draining pus from a couple of areas. It was decided to go ahead and do an amputation of this toe.

Following the amputation, Mr. Albert was discharged on March 15, 2014 with a PICC line in his arm to administer antibiotics. (RX 11)

While hospitalized, Mr. Albert treated with Dr. Sharjeel Ahmad for an infectious disease consult. Dr. Ahmad completed a post-operative culture of Mr. Albert's infected tissues—obtained during the amputation—which showed operative cultures of Pasteurella pneumotropica. (RX 10) At hearing, Mr. Albert testified that he was aware that his infection contained Pasteurella pneumotropica, which is caused by dog salvia.

After his discharge, Mr. Albert treated with his primary care physician, Dr. Daniel Hoffman and with his orthopedic surgeon, Dr. Garst. Medical records show that Mr. Albert did not initially complain of pain in both his lower extremities. However, in an April 7, 2014 note, Dr. Hoffman recommended a nerve and muscle conduction study for both legs to rule out peripheral damage due to "repeated frostbite." Further, in an April 21, 2014 note, Dr. Garst stated that Mr. Albert complained of pain in both feet and that Dr. Hoffman recommended seeing a neurologist. Dr. Garst diagnosed Mr. Albert as being six weeks postop from a right great toe amputation and having chronic pain in both feet. (RX 11 & 14)

On April 22, 2014, Mr. Albert underwent neurological testing with Dr. Edward Trudeau. (PX 6) Dr. Trudeau's impression was as follows:

a) Sensory neuropathy, distal, diffuse, symmetrical, and axonal, moderately severe in electroneurophysiologic testing terms.

b) Posterior tibial neuropathy at/distal to the right medial malleolus (tarsal tunnel syndrome), severe in electroneurophysiologic testing quantification.

c) No current evidence of posterior tibial neuropathy at/distal to the left medial malleolus.

d) No current evidence of other entrapment neuropathy.

e) No current evidence of lumbar or sacral radiculopathy.

Following an April 28, 2014 visit, Dr. Hoffman referred Mr. Albert to Dr. John Ruff, a podiatrist. Mr. Albert visited Dr. Ruff on May 1, 2014. On exam, Mr. Albert was negative for Tinel and Tarsal tunnel. Dr. Ruff's assessment was a possible plantar fascial strain with associated plantar fibromatosis. Dr. Ruff stated that it was uncertain whether Mr. Albert actually had frostbite. Dr. Ruff constructed inserts for Mr. Albert's shoes and prescribed Neurontin for the neuropathic symptoms. (RX 13)

In a May 9, 2014 follow-up with Dr. Ruff, Mr. Albert complained of constant tingling pins and needles in his foot. Dr. Ruff increased his dosage of Neurontin. Dr. Ruff also prescribed P1 cream. Mr. Albert's last visit with Dr. Ruff was on June 3, 2014 and he has not returned to treat with Dr. Ruff. (RX 13)

Mr. Albert continued to treat with Dr. Garst and Dr. Hoffman. By his June 23, 2014 meeting with Dr. Garst, the amputation stump at the great toe was completely healed, there was no discoloration at this point, and he was walking full weight bearing with a little bit of a limp. (RX 11)

Mr. Albert continued to treat with Dr. Garst through December 15, 2014, for a total of four additional visits. During these visits, Mr. Albert continued to complain of pain to both feet. Dr. Garst did not offer any additional treatment, and tapered off the prescription to Neurontin until he was no longer taking the medication. (RX 11)

Dr. Garst and Dr. Hoffman referred Mr. Albert to Orland Park Orthopedics for a functional capacity examination on January 20, 2015, the results of which are discussed below in the Section regarding restrictions. Mr. Albert has not followed up with either doctor since.

2. Evidence Regarding Cause of Toe Amputation

The Parties presented conflicting evidence regarding the cause of Mr. Albert's toe amputation. Based on the evidence submitted, Mr. Albert argues that the three incidents at work caused his need for the toe amputation. Based on the evidence the City submitted, it argues that Mr. Albert's extended refusal to seek medical treatment, his poor wound treatment, and his dog licking his open wound caused the infection that caused his need for amputation.

Mr. Albert presented testimony of Dr. Garst, the treating orthopedic surgeon, to support his causation claim. Dr. Garst testified that he believed that Mr. Albert suffered from frostbite of his right great toe, and that, based on the history Mr. Albert provided, this was caused by his work. On redirect examination, Dr. Garst stated that he believed that Mr. Albert's frostbite was a causative factor in developing osteomyelitis, and that his osteomyelitis was the cause for his amputation. Dr. Garst's opinion was the only opinion that Mr. Albert submitted linking Mr. Albert's employment with the City to his need for a right great toe amputation. (RX 12)

A review of the Dr. Garst's testimony shows that his causation opinion was qualified. First, he acknowledged on direct that in addition to believing Mr. Albert had frostbite, there was also "the story about the dog licking his toe" and the "story of him taking a knife" to his toe. Dr. Garst called these confounding factors with "infection on top of frostbite maybe caused by other stuff he was doing." Dr. Garst was conflicted on whether it was the frost bite that caused the need for amputation or whether it was the infection. (RX 12)

On cross examination, Dr. Garst stated that Mr. Albert's post-operative culture grew Pasteurella, which he said was almost exclusively associated with cat and dog bites. He agreed that Mr. Albert's osteomyelitis was likely caused by his Pasteurella. Dr. Garst further agreed that Mr. Albert's Pasteurella was likely caused by his dog licking the wound. Speaking of causation Dr. Garst stated that:

> It was probably to his detriment that he delayed treatment. Do I think that his dog licking his toe as he described to me caused his infection? Probably based on his culture results. Do I think taking a knife to his blister contributed to his infection? Probably also.

A review of Dr. Garst's medical records shows that, although frostbite was listed in the patient's subjective history throughout his medical records, Dr. Garst did not diagnosis him with frostbite in the written records. When asked about the discrepancy between his oral opinion and his written records, Dr. Garst stated that his independent recollection was that he had frostbite, which he believed the totality of the records reflected. (RX 12)

To support its case, the City submitted two independent medical evaluations. The first was of neurologist Dr. Karen Levin, issued on July 22, 2014, and supported by her testimony via evidence deposition taken on October 14, 2014. The second was of orthopedic surgeon Dr. Nirain D'Souza and was issued on April 10, 2015, with an addendum issued on June 4, 2015.

Dr. Levin testified that based on her examination of him and on her review of the medical records, she did not believe Mr. Albert ever sustained frostbite. Dr. Levin stated that frostbite causes color changes in a limb, extensive pain, and necrosis—it doesn't cause an isolated blister. She testified that the pain onset is immediate and it would be very unusual for a person with frostbite to go without treatment as Mr. Albert claims to have done. She further testified that Mr. Albert treated with Dr. Hoffman on February 3, 2014 and did not mention any frostbite-type symptoms. She noted that the first of his alleged incidents would have occurred by February 3rd and that it would be highly unusual for a person seeing his doctor not to report significant problems like frostbite. (RX 8)

Dr. Levin believed that Mr. Albert's toe amputation was caused by his poor care of a blister that allowed an infection. She stated that her opinion was supported by the medical records showing that Mr. Albert allowed his dog to lick his wound, that he did not seek care for an extended period, and that he was cutting it with a knife. She stated that Mr. Albert's osteomyelitis came from a direct spread of infection from the untreated blister. (RX 8)

Dr. D'Souza also opined that he did not believe Mr. Albert suffered from frostbite. Dr. D'Souza's independent medical evaluation (IME) notes that he went through Mr. Albert's history with him during the examination and that he asked what his toe looked and felt like during the course of his symptoms leading to amputation. Dr. D'Souza states that the classic findings to support frostbite were absent. He stated that the medical records at Mr. Albert's hospital admission also lack indications of frostbite and instead appeared to demonstrate a blister chronically infected and a purulent toe. (RX 9)

Although Dr. D'Souza did not believe Mr. Albert suffered from frostbite, he believed his osteomyelitis was derived from his blister, which Mr. Albert attributed to his employment. Dr. D'Souza opined that had Mr. Albert's blister been evaluated and treated sooner, he could have avoided osteomyelitis and potentially could have avoided the amputation. Dr. D'Souza further stated that Mr. Albert's dog licking his wound caused Pasteurella, and that the Pasteurella caused his osteomyelitis. (RX 9)

3. Evidence Regarding Bilateral Lower Extremity Neuropathy

To establish that he suffers from bilateral lower extremity neuropathy that his employment caused, Mr. Albert appears to rely solely on Dr. Trudeau's EMG/NCV report. Mr. Albert's treating orthopedic physician, Dr. Garst, did not provide an opinion that Mr. Albert's exposure to the cold caused his neuropathic symptoms. Dr.

Garst's diagnosis of frostbite was limited to Mr. Albert's right great toe. Dr. Garst stated during testimony that he did not diagnose Mr. Albert with frostbite affecting his left foot. (RX 12)

Dr. Garst discussed Dr. Trudeau's findings, stating "you could speculate and say that it was a frostbite injury or cold injury that caused that" but that in his opinion "that's sort of [a] weak [argument]." He testified that his treatment of Mr. Albert did not change after reviewing Dr. Trudeau's findings. According to Dr. Garst, the only treatment he received for neuropathic symptoms was from Dr. Ruff in the form of a Neurontin prescription, which was discontinued. (RX 12)

On cross examination, Dr. Garst stated he was not aware that Mr. Albert suffered from preexisting back problems. Mr. Albert treated with Dr. Hoffman since at least 2005 for lower back problems, including degenerative disc disease. When asked, Dr. Garst agreed that it was very common for people with back problems to have corresponding neuropathic symptoms. Dr. Garst further stated that Neurontin was used to treat neurologic symptoms related to lower back problems. Finally, Dr. Garst agreed that Mr. Albert's neurologic symptoms in his lower extremities could have been caused by his documented lower-back problems. (RX 12)

Mr. Albert admitted during cross examination that he suffered from preexisting back pain, and that he has experienced radiating pain from his back.

Regarding Dr. Trudeau's opinion, he does not expressly state that he believes Mr. Albert had frostbite neuropathy caused by his employment with the City. His impression was of sensory neuropathy but does not mention the cause. While Dr. Trudeau mentions that Mr. Albert's history supports a diagnosis of frostbite neuropathy, he never makes this diagnosis. Aside from the history Mr. Albert provides, it does not appear that Dr. Trudeau reviewed any medical records that would support a finding of bilateral frostbite. Further, it does not appear that Dr. Trudeau was aware of or considered Mr. Albert's significant preexisting back problems. (PX 6)

Dr. Levin testified that she believed any neurologic conditions Mr. Albert had were derived from his preexisting back problems and were not caused by any work incident. Dr. Levin noted that he received treatment for his back since at least 2005 and had been taking prescription pain medication for his back since well before his alleged work injuries. (RX 8)

Dr. D'Souza's IME mirrored Dr. Levin's opinion. He stated that he believed Mr. Albert's had peripheral neuropathy, but that he did "not believe that Mr. Albert's current neurologic condition is in any way related" to his employment with the City of Peoria. Rather he believed it was a chronic issue as documented by the medical records. (RX 9)

4. Evidence regarding Mr. Albert's Ability to Work

The final factual issue on which the Parties presented evidence was Mr. Albert's ability to work. During examination, Mr. Albert testified that he has ongoing bilateral pain in his lower extremities and that this has limited his ability to be on his feet and be active. He stated that he is unable to garden as he used to enjoy, and that he cannot attend his grandson's hockey games because the cold is painful.

Mr. Albert acknowledged that he was a temporary employee with the City. Evidence shows that even if he didn't undergo a right great toe amputation, his employment with the City would have ended in March of 2014.

Mr. Albert admitted on cross examination that he has not applied for any jobs in the past year-and-a-half and has otherwise not investigated any potential employment opportunities.

Dr. D'Souza opined that Mr. Albert should have reached maximum medical improvement on May 11, 2014, or two months after his great toe amputation. (RX 9)

As of a June 23, 2014 follow up, Dr. Garst found that Mr. Albert's right toe amputation was completely healed and that he was walking full weight bearing with a little bit of a limp. At this visit, Mr. Albert informed Dr. Garst that no light duty was available and, based on this account, Dr. Garst kept him off work. (RX 11) It does not appear that Mr. Albert inform Dr. Garst that his temporary employment with the City had ended, and that by definition, the City had no available light duty for him.

A review of subsequent visits with Dr. Garst shows that he kept Mr. Albert off work due to a lack of available light duty. On cross examination, Dr. Garst testified that his decision to keep Mr. Albert off work was in part based on the fact that Mr. Albert claimed no light duty work was available. He stated that when someone tells him that there is no light duty available, he will keep them off work as "it's hard to do anything else." (RX 12)

Regarding specific work restrictions, Dr. Garst opined that Mr. Albert was not totally disabled and that he could do work where he wasn't on his feet all day. Dr. Garst stated that any work restrictions Mr. Albert had were based on his right great toe amputation and were not related to his neuropathic complaints. Dr. Garst did not believe Mr. Albert needed continued treatment for his neuropathic complaints. (RX 12)

Dr. Levin's opinion regarding restrictions mirrored Dr. Garst's opinion. She stated that she believed he was at maximum medical improvement as of at least her IME on July 7, 2014. She stated that any work restrictions would be based on his lack of a great toe, and would not relate to his neurologic issues. She further stated that he did not need any additional treatment for his neurologic conditions. (RX 8)

The functional capacity examination (FCE) of January 20, 2015 showed that Mr. Albert was capable of medium duty work per the US Department of Labor standards. Mr. Albert did not provide a formal job description, which the FCE stated limited its ability to provide a formal return to work assessment. (PX 12)

With regard to (C) Did an accident occur that arose out of and in the course of the Petitioner's employment by the Respondent, the Arbitrator finds and concludes as follows:

The Arbitrator finds that Mr. Albert has not shown by the weight of the evidence that he suffered an accident that arose out of and in the course of his temporary employment with Respondent. A review of the medical records submitted and the testimony of Mr. Albert show that Mr. Albert has given multiple explanations and conflicting timelines for his alleged accidents.

Of the three incidents Mr. Albert described, the incident while driving a snow plow is likely the most important because it was allegedly the source of his blister. However, the City Fleet Division Manager Bob Williams credibly testified that a search of truck inspection records showed that no truck Mr. Albert drove had heating issues. Mr. Williams credibly testified that if a driver made such a complaint, it would result in a work order. Yet none existed.

Mr. Albert was further "positive" that he was driving Truck 159 when the incident occurred in early February. Records show that he never drove Truck 159 in early February. Neither Truck 159 nor any of the trucks Mr. Albert drove from January 18th through February 17th underwent repairs for heating issues. The weight of the

evidence does not support Mr. Albert's claim that his truck did not have proper heating and that caused his feet to freeze and to develop a blister on his right great toe.

Mr. Albert relies exclusively on his testimony to support his claim that the accidents occurred. Mr. Albert has demonstrated that he is not a credible witness. In addition to his many, varying narratives for his injuries, as discussed above, Mr. Albert's testimony often conflicts with other evidence. First, Mr. Sie Maroon testified that Mr. Albert had mentioned some toe pain to him on three occasions. Mr. Albert testified that he only notified the City once. Second, despite numerous medical records reporting Mr. Albert's statements that he used a knife to remove skin from his toe, he unequivocally testified that he never cut his own skin with a knife. It is unlikely that multiple medical professionals would fabricate Mr. Albert's statements.

In addition to rebutting the alleged truck incident. Mr. Maroon testified that, contrary to Mr. Albert's claim that he shoveled snow for 12 hours, employees would not be expected to endure exposure for this length of time. Rather, in addition to their regular breaks, employees are allowed to periodically enter their trucks to warm up. Regarding the water main break, Mr. Maroon testified that public works workers are not responsible for this work. Contrary to Mr. Albert's testimony, he would not have been assigned to work in standing water for four to six hours.

Much was made at the hearing about Mr. Albert's complete inability to offer specific dates when the alleged accidents occurred. This fact by itself does not necessarily defeat his claim; however, this fact considered in conjunction with the rebuttal evidence the City submitted, along with Mr. Albert's credibility issues, leads me to the conclusion that Mr. Albert has failed to prove an accident occurred that arose out of and during the course of his employment with the City of Peoria.

With regard to (F) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

Having found that Mr. Albert has failed to prove an accident occurred that arose out of and during the course of his employment with the City of Peoria, all remaining issues are moot. Having said that, the Arbitrator would also find that Mr. Albert has failed to show that either his right great toe amputation or his alleged bilateral lower extremity neuropathy are causally related to his alleged work accidents. First, regarding his toe amputation, it is unclear whether his position is the alleged frostbite of his right great toe or the right toe blister caused his need for amputation. If it is that he suffered frostbite, this Arbitrator cannot find in his favor.

Based on the totality of evidence, the Arbitrator is persuaded that Mr. Albert did not suffer from frostbite. Both Drs. Levin and D'Souza opined that they did not believe he had frostbite based on their interviews with him and their review of the medical records. Dr. Garst's own records did not list frostbite as an impression or a diagnosis. The only recitation of frostbite was in the patient's subjective history of what he believed was wrong with his toe. Although Dr. Garst testified that he believed Mr. Albert had frostbite, even he acknowledged that his medical records were incomplete as to this diagnosis.

If Mr. Albert's position is that the blister warrants a finding that his toe amputation was causally related to his employment, the Arbitrator can still not find in his favor. The evidence does show that he had a blister on his right great toe. Assuming that his blister arose out of his job duties as he alleged, the blister still was not cause his need for amputation.

Based on the evidence submitted, the Arbitrator concludes that Mr. Albert willfully declined to seek professional treatment for over one month. During this period, Mr. Albert took it upon himself to excise his

blister with a knife at home. During this time, Mr. Albert allowed his pet animal to lick his open wound. When he underwent surgery on March 11, 2014, Mr. Albert had allowed his infection to progress to where his toe had multiple areas draining pus and it took on a "sausage-like" appearance. He had allowed his infection to progress to where he required a PICC line of antibiotics implanted in his arm for weeks after his surgery. Whatever the source of the original blister, one cannot say that there is causal relationship between his above mentioned condition and his work activity with Respondent.

All three doctors that gave causation opinions agreed to the following: 1) that Mr. Albert self-treatment and delay in seeking professional care caused his infection; 2) that Mr. Albert's dog licking his open wound caused his infection; and 3) that his infection necessitated the amputation. Dr. Garst believed that frostbite was also a causative factor, but as discussed above, the Arbitrator has found Mr. Albert did not have frostbite. Thus, based on the expert opinions, the cause of Mr. Albert's amputation was the above and was wholly unrelated to Mr. Albert's employment with the City.

When determining whether an injury caused a condition of ill-being, a Petitioner must show a chain of causation. No intervening events can break this chain if a Petitioner is to prevail. While a typical infection may not raise to the standard of an intervening event, here the facts support a finding of intervening event. Even if Mr. Albert's blister occurred during work, his action (including but not limited to the dog licking incident) over the next month broke the chain of causation. Therefore, Mr. Albert has failed to show that his need for amputation was causally related to his employment.

Regarding Mr. Albert's bilateral lower extremity neuropathy, Mr. Albert has failed to show that he suffered from bilateral frostbite to support this claim. As discussed above, Dr. Garst, Dr. Levin, and Dr. D'Souza all agree that his employment did not cause his neuropathic symptoms. Dr. Levin and Dr. D'Souza expressly relate his neuropathic symptoms to his significant preexisting back problems, and Dr. Garst agreed that this was a possible explanation. Based on the lack of evidence showing bilateral exposure to frostbite and based on the medical opinions submitted, Mr. Albert has failed to show that his bilateral lower extremity neuropathy is causally related to his employment.

Based on all of the above findings, all remaining issues are moot.

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

NIMRICK, DANIEL
Employee/Petitioner

Case# **13WC014973**

13WC014974
13WC023897
13WC024370

YARGERS DELIVERY INC
Employer/Respondent

On 10/20/2015, 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:

1097 SCHWEICKERT & GANASSIN
MARK M WILSON ESQ
2101 MARQUETTE RD
PERU, IL 61354

2506 BETTY NEUMAN & McMAHON PLC
AMANDA M RICHARDS
1900 E 5TH ST
DAVENPORT, IA 52807

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 Nimrick
Employee/Petitioner

v.

Yargers Delivery, Inc
Employer/Respondent

Case # **13** WC **14973**

Consolidated cases: **13 WC 14974**
13 WC 23897
13 WC 24370

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 17, 2015**. 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] 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 _____

FINDINGS

On the date of accident, **July 10, 2012 and August 10, 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 $**35,921.60**; the average weekly wage was $**690.80**.

On the date of accident, Petitioner was **39** years of age, ***married*** 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 $**41,447.70** for TTD, $**0** for TPD, $**0** for maintenance, and $**10,850.50** for other benefits, for a total credit of $**52,298.20**.

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 $460.53/week for 155 3/7 weeks, commencing August 24, 2012 through August 17, 2015, the date of the hearing, as provided in Section 8 of the Act. The Respondent is entitled to credit for the $52,298.20 in benefits it has paid to date.

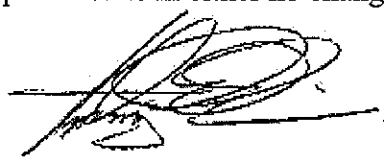
Respondent shall pay all reasonable and necessary medical services, pursuant to the medical fee schedule, of 38,211.20, as provided in Sections 8(a) and 8.2 of the Act.

Respondent is ordered to authorize an EMG and a subsequent follow up appointment with Dr. VonGillern for the left upper extremity.

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 14, 2015
Date

OCT 2 0 2015

FACTS:

The Petitioner has filed four claims for compensation which were consolidated for hearing. Case number 13 WC 14973 alleges an injury to the Petitioner's left elbow and left upper extremity on August 10, 2012. Case number 13 WC 14974 alleges a repetitive trauma injury to the Petitioner's left elbow and left upper extremity on August 10, 2012. Case number 13 WC 23897 alleges a repetitive trauma injury to the Petitioner's left elbow and left upper extremity on July 10, 2012. Case number 13 WC 24370 alleges an injury to the Petitioner's left elbow and left upper extremity on July 10, 2012. As the claims all involve the same body part, they are all addressed in this Arbitration Decision.

On July 10, 2012 and August 10, 2012 the Petitioner was employed by the Respondent as a delivery driver. The Petitioner had been so employed since October of 2008 and his job duties included scanning packages ranging in weight from 1 pound to 150 pounds, loading the packages into a truck, and delivering the packages to their destinations. The Petitioner testified that he normally started work at 6:00 a.m. and finished at about 4:30 p.m.

The Petitioner testified that on July 10, 2012 he felt pain and discomfort in his left elbow when attempting to open the rear cargo door on his delivery truck. He explained that the latch and handle mechanism on the rear cargo door had been defective since February 2012 requiring extra effort to open and close the door. Specifically, he testified that opening the cargo door required him to pull the handle of the door several times with both hands requiring a lot of force. He stated that he would usually have to yank on the door 2 to 3 times to get it open. To shut the door, he would have to use his weight to slam the door shut usually requiring him to slam it twice. Petitioner testified that on a typical day he made approximately 100 deliveries and that each delivery required him to open and close the rear cargo door in the manner he described. It was during an attempt to open the rear cargo door on one of his deliveries on July 10, 2012 that he first felt left elbow pain and discomfort.

The Petitioner testified that when he experienced these symptoms on July 10, 2012, he immediately contacted Greg Yarger, the Respondent's owner, who indicated he could go for medical treatment. The Petitioner testified that the first day he could get into see his doctor was July 16, 2012.

On July 16, 2012, the Petitioner was seen by Dr. Ranilo Rabacal who noted that the Petitioner was hurt at work on July 10, 2012 and that his chief complaint was left elbow pain. The Petitioner reported that he was currently working full duty and that there had been some resolution of his symptoms, but that he continued to have swelling and pain accompanied by some numbness and tingling over the fingers. On examination, the doctor noted inflammation with palpable effusion and an ill-defined area of erythema. The assessment was synovitis and the Petitioner was prescribed Prednisone and Keflex. Dr. Rabacal provided a letter requesting Petitioner be allowed 3 to 5 days off work for treatment.

The Petitioner testified that he continued to work because his employer indicated there was no one to cover his delivery route due to co-workers being on vacation.

The Petitioner returned to Dr. Rabacal on July 24, 2012 and was noted to have moderate left elbow swelling. He was prescribed Levaquin and Nebumetone and was instructed to follow up as needed.

The Petitioner testified that he continued to work full duty and that, on August 10, 2012, he

experienced severe left elbow pain when opening the rear cargo door of his delivery truck. He testified that the rear cargo door handle and latch mechanism had not been repaired during that time and he continued to have to exert great effort to open and close the rear cargo door. The Petitioner described his left elbow pain as being much worse than the pain he felt following the July 10, 2012 work injury and he testified that he also noticed symptoms in his left shoulder. The Petitioner testified that he had never had any left shoulder symptoms or problems prior to August 10, 2012.

On August 13, 2012, the Petitioner saw Dr. Rabacal who noted a history of popping in the elbow last Friday and worsening pain since then. Examination was noted to be positive for tenderness in the lateral elbow with overlying erythema and difficulty with range of motion secondary to pain. A left elbow x-ray was noted to demonstrate what appeared to be mild soft tissue swelling over the olecranon compatible with olecranon bursitis. Dr. Rabacal prescribed Prednisone and Indomethacin and referred the Petitioner to ORA Orthopedics.

On August 24, 2012, Petitioner was seen by Dr. Jason Clark at ORA Orthopedics. A work history form completed on that day indicated left elbow baseball size swelling, tingling into the wrist, and increased stiffness into the shoulder. Dr. Clark's record notes a chief complaint of left elbow and forearm discomfort and a history of pulling on some doors at work and feeling a pop in his left elbow. The Petitioner was diagnosed with a left elbow strain and he was prescribed a Medrol Dosepak. The Petitioner was also taken off work and referred for physical therapy.

The Petitioner was seen at Rock Valley Physical Therapy for an initial evaluation on August 31, 2012. The history of injury indicates a date of injury of August 10, 2012 from pulling door open on truck repeatedly during the day and the chief complaint is noted to be constant lateral elbow pain accompanied by numbness and tingling. The Petitioner was noted to have severe limitation in range of motion due to pain. On September 12, 2012, the physical therapy records note that the Petitioner had restricted active shoulder forward flexion due to "shoulder blade" pain. The September 14, 2012 record indicates increased pain in the left shoulder blade area has affected his sleep.

On September 17, 2012, Physical Therapist Greg Monsoon provided a report to Dr. Clark stating that the Petitioner had attended 6 sessions of physical therapy and continues to complain of pain primarily at the common extensor tendon. The Petitioner was also noted to have complaints of tingling in the fingers and left shoulder pain. The Petitioner was noted to have tenderness to palpation at the common extensor tendon and left grip force of only 25#s compared to 135#s on the right.

The Petitioner followed up with Dr. Clark on September 17, 2012 and reported complaints of numbness throughout the entire left upper extremity. The Petitioner was noted to have some weakness of grip and decreased sensation throughout the dorsoradial aspect of the left hand and tenderness in the left elbow. Physical therapy was discontinued and an EMG/NCV and left elbow MRI were ordered. The left elbow MRI was performed on September 27, 2012 and was reported to demonstrate a small joint effusion, but no evidence of internal derangement and no pathology. The EMG/NCV was performed on October 11, 2012 and was reported to be normal. Dr. Clark then referred the Petitioner to Dr. VonGillern.

The Petitioner saw Dr. VonGillern on October 30, 2012 and reported constant throbbing, aching, and burning pain in the left elbow which radiates to the forearm and is accompanied by tingling and stiffness. Dr. VonGillern's impression was left elbow synovitis, left elbow osteoarthritis and left elbow lateral epicondylitis. The Petitioner was kept off work and fitted with a cock-up wrist

brace and a tennis elbow strap.

On December 11, 2012, a left elbow injection was performed and the Petitioner was released to return to work with one handed left upper extremity weight restriction of 5 lbs. and no repetitive tight gripping. The Petitioner testified that the Respondent was not able to accommodate these restrictions and he remained off work. On January 10, 2013, the Petitioner reported that the left elbow injection only lasted approximately 2 days and did not provide much relief of his symptoms. On January 24, 2013, Dr. VonGillern recommended physical therapy and indicated that the Petitioner was unable to return to work.

On February 1, 2013, the Petitioner began a course of physical therapy evaluation at Hammond Henry Hospital. A physical therapy note of March 1, 2013, indicated that the Petitioner was experiencing impingement in left shoulder and a note of March 4, 2013 indicated that the Petitioner was showing signs of rotator cuff pathology due to left upper extremity progressing weakness. On March 19, 2013, P.A. Jennifer Scardino noted that the Petitioner began having increased swelling in the left elbow during therapy, which then was beginning to cause shoulder pain and popping. On April 25, 2013, it was noted that there was no improvement in the left elbow and surgery for the left elbow was discussed.

Dr. VonGillern's August 6, 2013 evidence deposition testimony was admitted into the record as Petitioner's Exhibit 6. Dr. VonGillern testified that P.A. Jennifer Scardino and he both saw the Petitioner on April 25, 2013 and that he made the recommendation for left elbow surgery for the Petitioner. Dr. VonGillernHe testified that he reviewed the left elbow MRI that was read as negative by the radiologist but he indicated that an intra substance tear is not necessarily seen on an MRI and that he believed the Petitioner had micro tears. He further stated that he reviewed the negative EMG/NCV test, but that test is not definitive for radial tunnel or lateral elbow pain. Dr. VonGillern testified that he recommended surgery because conservative treatment consisting of anti-inflammatory medications, injections, and physical therapy had failed.

Dr. VonGillern testified that he recommended a left elbow extensor origin release and repair with partial lateral epicondylectomy and radiocapitellar synovectomy for the Petitioner. Dr. VonGillern testified that it was his understanding that the Petitioner's delivery work required opening and closing a truck door repetitively throughout the day and that the locking system on the door was bent requiring additional force to open and close the door. Dr. VonGillern opined that the need for the surgery was caused or at least aggravated by a combination of a single and repetitive injury consistent with the Petitioner's on the job work activities. In response to a hypothetical question posed by the Petitioner's counsel, Dr. VonGillern opined that the Petitioner's then current condition of ill-being was, more likely than not, directly related to the repetitive trauma and also aggravated by the single event. Dr. VonGillern further indicated that the Petitioner's time off and the need for the recommended surgery was, likewise, causally related to the Petitioner's work activities. Dr. VonGillern also testified that while the focus of the treatment he provided was to the Petitioner's left elbow, there were also complaints of left shoulder pain noted on the initial intake sheet.

On September 20, 2013, Dr. VonGillern performed the recommended left elbow procedure and also performed a left shoulder Depo-Medrol injection. Following the surgery, physical therapy was recommended and the Petitioner commenced a course of physical therapy at Hammond Henry Hospital. The November 11, 2013 physical therapy record notes increased crepitus and painful arc of motions in scapular and frontal planes of the shoulder. On November 12, 2013 Dr. VonGillern noted

that the Petitioner reported increased pain with going to physical therapy. A left elbow MR arthrogram was ordered to rule out a left biceps tear. On December 9, 2013, the physical therapy records again document crepitus, painful range of motion, and weakness in the left shoulder. The left elbow MR arthrogram was performed on December 12, 2013 and was reported to demonstrte findings consistent with disruption of the radial collateral ligament. Upon reviewing the MR arthrogram results, Dr. VonGillern kept Petitioner off work, prescribed Voltaren topical gel and Nabumetone, and recommended occupational therapy.

On February 20, 2014, Dr. VonGillern noted that the Petitioner reported that his condition was unchanged and that, while going to physical therapy for his left elbow, he began having left shoulder pain. The Petitioner was noted to have subacromial crepitus, tenderness, and left shoulder impingement. Dr. Vongillern diagnosed the Petitioner with left shoulder subacromial bursitis and possible left shoulder rotator cuff tear and he recommended a left shoulder MR arthrogram to rule out rotator cuff tear.

At the request of the Respondent, the Petitioner was examined by Dr. Kathleen Weber on May 19, 2004. In her report of that date, Dr. Weber opined that the Petitioner's left shoulder complaints were not related to the alleged work injury and that the Petitioner was at maximum medical improvement with no further treatment to the left elbow, other than home exercises, being necessary. Dr. Weber opined that the Petitioner could return to regular work without restrictions.

The August 11, 2014 evidence deposition testimony of Dr. VonGillern's was admitted into the record as Petitioner's Exhibit 7. Dr. VonGillern testified that he performed the left shoulder injection on September 20, 2013 because Petitioner was having pain and symptoms in the shoulder. He indicated that the Petitioner's primary symptoms were in the left elbow but that he would complain from time to time about the left shoulder as well. He recommended an MR arthrogram be performed to assess for a rotator cuff tear. As to the left elbow, Dr. VonGillern indicated that the additional treatment he would recommend depended on the Petitioner's ongoing symptoms. Dr. VonGillern was asked to assume the same hypothetical set of facts that were presented to him during his first deposition with regard to the causal connection of the Petitioner's current left shoulder symptoms and he responded that, more likely than not, it represented at least an aggravation of a pre-existing condition, if not an aggravation and an injury which occurred with a single event. Dr. VonGillern opined that it was probably more likely related to an aggravation from repetitive trauma, but it also could have been a single injury that would occur with a single event. He further testified that physical therapy could have also caused an aggravation of the Petitioner's pain. Dr. VonGillern opined that the need for the left shoulder MR arthrogram being recommended was causally related to the Petitioner's work activities.

Following the deposition, the left shoulder MR arthrogram was authorized and performed on August 27, 2014. It was reported to demonstrate mild undersurface partial tearing of the anterior distal fibers of the supraspinatus. On September 15, 2014, Dr. VonGillern indicated that the Petitioner's condition was unchanged and he was experiencing left elbow edema and pain as well as left shoulder pain and crepitus. Dr. VonGillern noted left shoulder impingement, subacromial crepitus and tenderness, and a left shoulder and left elbow injection was performed. On October 16, 2014, the Petitioner reported constant throbbing and aching and pain radiating to his shoulder as well as catching, instability, tingling and weakness. Upon examination, the left wrist had positive tinel's over the median nerve and the left shoulder had subacromial crepitus and tenderness. The added assessment was possible left carpal tunnel and left cubital tunnel syndrome. An EMG was

recommended and the Petitioner was continued off work.

The April 15, 2015 evidence deposition testimony of Dr. Weber was admitted into the record as Respondent's Exhibit D. Dr. Weber testified consistent with her report of May 19, 2014. Dr. Weber testified as to her examination of the Petitioner and her diagnosis of a tight posterior capsule in the left shoulder without impingement. Dr. Weber also testified that she reviewed additional medical records of Dr. VonGillern and the MRI of the Petitioner's shoulder performed on August 27. 2014. Dr. Weber opined that the Petitioner's left shoulder condition was not related to his work activities and that she did not recommend any surgery. Dr. Weber further opined that the Petitioner was at maximum medical improvement from his work injuries and that he was capable of returning to regular full-duty work.

On August 16, 2015, Dr. VonGillern's evidence deposition was taken for a third time. Dr. VonGillern testified that the reason he recommended an EMG on October 16, 2014 was to assess for any compressive neuropathy like carpal tunnel or cubital tunnel. He testified that the work activities in question probably caused an aggravation of the Petitioner's symptoms and necessitated the EMG being recommended. As to the left shoulder, Dr. VonGillern indicated that more likely than not the Petitioner will have ongoing issues and will likely require at least a decompression or possibly a decompression and rotator cuff repair. Dr. VonGillern testified that he reviewed the records of the surveillance performed on the Petitioner from October and November of 2014 and that it did not affect any of the opinions he has given.

The Petitioner testified that the left shoulder stiffness that he felt initially after the August 10, 2012 work accident was aggravated during physical therapy as many of the exercises he was doing for the left elbow caused pain to his left shoulder. He stated that he told Dr. VonGillern of his continued left shoulder symptoms, but Dr. VonGillern continued to primarily focus on the left elbow.

At hearing, the Petitioner acknowledged that he has a web page for Midwest Kustomz, which is a hobby that he started back in 1999 and consists of airbrushing t-shirts, hot wheels, and remote control cars. He showed an airbrush during the hearing, which was described as similar to the size of a pen and slightly heavier. He also showed a remote control car body and indicated that it weighed less than 1 pound. He testified that he makes approximately $500.00 a year with this hobby. He also testified that when he airbrushes he performs the airbrushing with his right hand because he is right hand dominant.

The Petitioner testified that he currently continues to experience constant pain in his left shoulder and left elbow. He testified that he takes Ibuprofen for pain and wears a brace on his left wrist and compression sleeves for his left elbow and left shoulder. He indicates that he only sleeps about 3 to 4 hours a night due to pain.

The Respondent called Investigator Brian Morris to testify regarding surveillance footage filmed from October 16, 2014 to November 3, 2014. Mr. Morris conceded that the only surveillance footage that he personally recorded was on October 16, 2014. All other surveillance footage was recorded by his co-worker, Ryan Lemmon. He also conceded that he was not sure as to whether the footage recorded by Mr. Lemmon was edited in any way.

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 (E.), Was timely notice of the accident given to Respondent, the Arbitrator finds and concludes as follows:

It is not disputed that the Petitioner sustained accidental injuries arising out of and in the course of his employment with the Petitioner on August 10, 2012 or that timely notice of those injuries was given to the Respondent. (13 WC 14973 and 13 WC 14974).

The Petitioner testified that on July 10, 2012 he felt pain and discomfort in his left elbow when attempting to open the defective rear cargo door on his delivery truck. He explained that the latch and handle mechanism on the rear cargo door had been defective since February 2012 requiring extra effort to open and close the door. Specifically, he testified that opening the cargo door required him to pull the handle of the door several times with both hands requiring a lot of force. He stated that he would usually have to yank on the door 2 to 3 times to get it open. To shut the door, he would have to use his weight to slam the door shut usually requiring him to slam it twice. Petitioner testified that on a typical day he made approximately 100 deliveries and that each delivery required him to open and close the rear cargo door in the manner he described. The Petitioner testified that during an attempt to open the rear cargo door on one of his deliveries on July 10, 2012 he felt left elbow pain and discomfort. The Petitioner testified that when he experienced these symptoms on July 10, 2012, he immediately contacted Greg Yarger, the Respondent's owner, who indicated he could go for medical treatment. The Petitioner testified that the first day he could get into see his doctor was July 16, 2012. On July 16, 2012, the Petitioner was seen by Dr. Ranilo Rabacal who noted that the Petitioner was hurt at work on July 10, 2012.

The Arbitrator notes that the Petitioner's testimony regarding the defective cargo door or the nature of his job activities was not contradicted or rebutted. The Arbitrator also notes that the Petitioner's undisputed accidental injuries of August 10, 2012 were the result of the same defective cargo door testified to by the Petitioner.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner sustained accidental injuries that arose out of and in the course of his employment by Respondent on July 10, 2012 and August 10, 2012. The Arbitrator further finds that timely notice of those accidents was given to Respondent.

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The findings and conclusions of the Arbitrator relating to the issues Accident and Notice are adopted and incorporated herein.

The Arbitrator notes that there was no evidence presented which indicated that the Petitioner had any prior history of left upper extremity problems or treatment. The Arbitrator also notes that it is not disputed that the Petitioner sustained an injury to his left elbow as a result of his work activities for the Respondent. The Petitioner credibly testified that he began to feel pain and discomfort in his left elbow when attempting to open the defective rear cargo door of his delivery truck on July 10,

2012, and that, while lifting the same defective cargo door on August 10, 2012, he experienced increased pain and discomfort in his left elbow. The Petitioner began a course of medical treatment for his left upper extremity with Dr. Rabacal on July 16, 2012 and that course of treatment has continued through the date of hearing.

The medical records demonstrate that from his initial visit with Dr. Rabacal on July 16, 2012 through the August 17, 2015 arbitration hearing, the Petitioner has consistently complained of left elbow pain. The Petitioner testified that despite his complaints of continued left shoulder symptoms since the August 10, 2012 work accident, the focus of the medical attention he received was to the left elbow. Dr. VonGillern testified that the Petitioner's primary symptoms were in the left elbow but that he would complain from time to time about the shoulder. The medical records demonstrate that the Petitioner did complain of shoulder symptoms including stiffness, pain, and restricted motion, periodically throughout the course of his treatment.

On September 20, 2013, the Petitioner underwent surgery for his left elbow condition and Dr. VonGillern also performed a left shoulder Depo-Medrol injection. Following the surgery, the Petitioner commenced a course of physical therapy at Hammond Henry Hospital. The records of that physical therapy indicate that the Petitioner complained of continuing left elbow pain as well as shoulder symptoms during the course of the therapy, and a left elbow MR arthrogram was ordered to rule out a left biceps tear. The left elbow MR arthrogram performed on December 12, 2013 showed findings consistent with disruption of the radial collateral ligament. Upon reviewing the MR arthrogram results, Dr. VonGillern continued the Petitioner off work and recommended occupational therapy.

On February 20, 2014, the Petitioner reported to Dr. VonGillern that his condition was unchanged, and he reported that while going to physical therapy for his left elbow he began having left shoulder pain. Upon examination, the Petitioner was noted to have subacromial crepitus, tenderness, and left shoulder impingement. Dr. VonGillern additionally diagnosed the Petitioner with left shoulder subacromial bursitis and possible left shoulder rotator cuff tear and he recommended a left shoulder MR arthrogram to rule out rotator cuff tear.

In his second evidence deposition on August 11, 2014, Dr. VonGillern opined with regard to the causal connection between the Petitioner's work activities and his current left shoulder symptoms that, more likely than not, there was at least an aggravation of a pre-existing condition, if not an aggravation and an injury which occurred with a single event. Dr. VonGillern opined that the Petitioner's shoulder condition was probably more likely related to an aggravation from repetitive trauma, but it also could have been a single injury that would occur with a single event. Dr. VonGillern further testified that the Petitioner's physical therapy could have also caused an aggravation of his pain. Dr. VonGillern opined that the need for the left shoulder MR arthrogram he recommended was causally related to the Petitioner's work activities.

The recommended left shoulder MR arthrogram was performed on August 27, 2014 and was reported to demonstrate mild undersurface partial tearing of the anterior distal fibers of the supraspinatus. On September 15, 2014, Dr. VonGillern noted that the Petitioner's condition was unchanged and a left shoulder injection and a left elbow injection were performed. On October 16, 2014 Dr. VonGillern noted continued shoulder pain as well as catching, instability, tingling and weakness. Dr. VonGillern also noted that on examination of the left wrist there was a positive tinel's sign over the median nerve. Dr. VonGillern noted subacromial crepitus and tenderness in the left

shoulder and he indicated that there was a possible left carpal tunnel and left cubital tunnel syndrome. Dr. VonGillern recommended an EMG and he continued the Petitioner off work.

On August 16, 2015, Dr. VonGillern's evidence deposition was taken for a third time. Dr. VonGillern testified that the reason he recommended an EMG on October 16, 2014 was to assess for any compressive neuropathy like carpal tunnel or cubital tunnel. He testified that the Petitioner's work activities probably caused an aggravation of his symptoms to necessitate the EMG being recommended. As to the left shoulder, Dr. VonGillern indicated that more likely than not the Petitioner will have ongoing issues and will likely require at least a decompression; possibly a decompression and rotator cuff repair. Dr. VonGillern testified that he reviewed the surveillance conducted on the Petitioner from October and November of 2014 and it did not affect any of the opinions he has given.

The Petitioner testified that the left shoulder stiffness that he felt initially after the August 10, 2012 work accident was aggravated during physical therapy, as many of the exercises he was doing for the left elbow caused pain to his left shoulder. The Petitioner testified that he told Dr. VonGillern of his continued left shoulder symptoms, but Dr. VonGillern continued to primarily focus on the left elbow. The Petitioner testified that he currently continues to experience constant pain in his left shoulder and left elbow and that he takes Ibuprofen for pain. He testified that he wears a brace on his left wrist and compression sleeves for his left elbow and left shoulder and he indicated that he only sleeps about 3 to 4 hours a night due to pain.

Dr. Weber, the Respondent's examining physician, testified as to her examination of the Petitioner and her diagnosis of a tight posterior capsule in the left shoulder without impingement. Dr. Weber also testified that she reviewed additional medical records of Dr. VonGillern and the MRI of the Petitioner's shoulder performed on August 27. 2014. Dr. Weber opined that the Petitioner's left shoulder condition was not related to his work activities and that she did not recommend any surgery for the Petitioner. Dr. Weber further opined that the Petitioner was at maximum medical improvement from his work injuries and that he was capable of returning to regular full-duty work.

While the Arbitrator notes the opinions of Dr. Weber, the Arbitrator finds that Dr. VonGillern's opinions are sufficiently credible, reliable, and persuasive so as to satisfy the Petitioner's burden of proof. Therefore, based upon the causal connection opinions and testimony of Dr. VonGillern, the Arbitrator finds that that Petitioner's current condition of ill-being with regard to his left shoulder, left elbow, and possible left carpal tunnel syndrome are causally related to the work accidents of July 10, 2012 and August 10, 2012.

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:

The findings and conclusions of the Arbitrator relating to the issues Accident, Notice, and causation, are adopted and incorporated herein.

The Petitioner introduced evidence of that following medical expenses totaling $38,211.20 which he incurred during the course of his left upper extremity treatment: Dr. Rabacal - $324.00; Hammond Henry Hospital - $11,032.80; Advanced Imaging - $380.65; Rock Valley Physical Therapy - $1,043.00; ORA Orthopedics - $10,515.00; Premier MRI Center - $3,417.00; ORA Imaging - $1,633.00; Mississippi Valley Surgery Center - $8,445.75; Anesthesia & Pain Consultants - $585.00 and Quad City Neurology & Spine - $835.00). Of this amount, the Respondent has paid $19,065.04, discounts were given in the amount of $17,871.38, and Medicaid paid a total of $128.18. There remains $1,146.60 in unpaid bills (Dr. Rabacal - $110.00 and ORA Orthopedics - $1,036.60).

Having found the requisite causal relationship, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary. As such, Respondent is responsible for all the bills related to the treatment received by Petitioner totaling $38,211.20 subject to the limitations of the Medical Fee Schedule provided for in the Act.

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 findings and conclusions of the Arbitrator relating to the issues Accident, Notice, and causation, are adopted and incorporated herein.

When he was last seen by Dr. VonGillern on October 16, 2014, it was noted that the Petitioner had a positive tinel's sign over the left median nerve. Dr. VonGillern testified that he is recommending an EMG to assess for any compressive neuropathy like carpal tunnel or cubital tunnel. He testified that he needed to have an updated evaluation of the Petitioner to determine additional treatment for the left elbow and left shoulder. The Arbitrator notes that Dr. Weber, the Respondent's examining physician, testified that, putting aside the issue of causation, she would agree that an EMG would be reasonable to be performed with regard to a person who had a positive tinel finding.

Having found the requisite causal relationship, the Arbitrator finds that the EMG recommended for the Petitioner is reasonable, necessary and causally related to the work injuries of July10, 2012 and August 10, 2012 and orders the Respondent to authorize and pay the reasonable and necessary expenses associated with that EMG and a subsequent follow up appointment with Dr. VonGillern for the left upper extremity.

In Support of the Arbitrator's Decision relating to (L.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The findings and conclusions of the Arbitrator relating to the issues Accident, Notice, and causation, are adopted and incorporated herein.

Beginning on August 24, 2012, the Petitioner has either been completely off work or on light duty one arm restrictions per the recommendations of Dr. VonGillern. The Petitioner testified that the Respondent was not able to accommodate any work restrictions and that testimony was not contradicted or rebutted.

Having found the requisite causal relationship, the Arbitrator finds that the Petitioner was temporarily totally disabled from August 24, 2012 through the August 17, 2015 arbitration hearing, a period of 155 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 Arbitrator notes that the Petitioner was examined by Dr. Kathleen Weber at the request of the Respondent on May 19, 2004. In her report of that date, Dr. Weber opined that the Petitioner's left shoulder complaints were not related to the alleged work injury and that the Petitioner was at maximum medical improvement with no further treatment to the left elbow, other than home exercises, being necessary. Dr. Weber opined that the Petitioner could return to regular work without restrictions. The Arbitrator finds that the Respondent's reliance on the opinions of Dr. Weber was not objectively unreasonable and that the imposition of penalties is, therefore, not appropriate.

The Petitioner's request for penalties and fees is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CANTWELL, CYNTHIA Case# **12WC027153**

Employee/Petitioner

UNIVERSITY OF ILLINOIS-SPRINGFIELD

Employer/Respondent

On 10/20/2015, 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:

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CHAMPAIGN, IL 61825

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

OCT 20 2015

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

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cynthia Cantwell
Employee/Petitioner

v.

University of Illinois - Springfield
Employer/Respondent

Case # 12 WC 27153

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 Springfield, on August 21, 2015. 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. [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 February 17, 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 $31,767.84; the average weekly wage was $610.92.

On the date of accident, Petitioner was 48 years of age, single with 0 dependent child(ren).

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 $61,773.37 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $61,773.37.

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 $407.28 per week for 160 4/7 weeks commencing July 24, 2012, through August 21, 2015, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent total disability benefits of $483.36 commencing August 22, 2015, for life as provided in Section 8(f) of the Act. Commencing on the second July 15th after entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) 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

October 13, 2015
Date

OCT 20 2015

Evidentiary Rulings

At trial, Respondent's counsel objected to those portions of Petitioner's Exhibits 8 and 9 that contained statements made by third parties who did not testify at trial regarding Petitioner's inability to meet the physical demands of various jobs (TR; pp 9-10).

Petitioner's Exhibit 8 is her job search documentation and is rather voluminous. The exhibit consists primarily of a log of prospective employers contacted by Petitioner, the job sought by her, whether an application was tendered, etc. To the extent that Petitioner's Exhibit 8 contains inadmissible hearsay, the objection is sustained and those portions of Petitioner's Exhibit 8 are stricken.

Petitioner's Exhibit 9 is reports of James Ragains, the vocational expert retained by Petitioner's counsel. As is noted herein, Ragains testified when this case was tried. The Arbitrator has reviewed Petitioner's Exhibit 9 and the only portion of it that Respondent's counsel's objection seems to be directed to are statements made by Crystal Rutherford, the Manager of Romantix Boutique, where Petitioner had applied for a job (Ragains supplemental report dated August 11, 2015; p 3). Respondent's hearsay objection is sustained as to that portion of Petitioner's Exhibit 9 and it is stricken.

Petitioner's counsel objected to that portion of Respondent's Exhibit 1 which contained statements of a prospective employer who did not testify at trial (TR; p 10). The Arbitrator has reviewed Respondent's Exhibit 1 and notes that the objectionable statements were made by someone named "Ali." (Vocational progress report dated July 7, 2015; p 5). Petitioner's hearsay objection is sustained as to that portion of Respondent's Exhibit 1 and it is stricken.

Findings of Fact

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 February 17, 2012. According to the Application, Petitioner was hit by a utility cart and sustained an injury to her right lower extremity. An Amended Application was also filed, but the only difference between it and the original Application that was filed was the average weekly wage that was alleged (Petitioner's Exhibit 1).

At trial, the parties stipulated that Petitioner was temporarily totally disabled from July 24, 2012, through August 21, 2015 (the date of trial), a period of 160 4/7 weeks. The primary disputed issue in this case was the nature and extent of disability. Petitioner alleged that she was an odd-lot permanent and total disability. Respondent's position was that Petitioner was not permanently and totally disabled and further, that Petitioner was not cooperative with their vocational expert (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Building Service Worker I. This was a full-time position and Petitioner worked 37.5 hours per week. In addition to this job, Petitioner also worked part-time as a waitress/hostess at Fritz's Wagon Wheel.

Petitioner testified that on February 17, 2012, she was pushing a utility cart and one of its wheels turned striking her right foot/ankle. At that time, Petitioner experienced a sharp pain in her right foot/ankle but continued to work even though the symptoms gradually increased.

Petitioner initially sought medical treatment on February 28, 2012, at Koke Mill Medical Associates were she was seen by Melanie Reynolds, a Nurse Practitioner. Reynolds examined Petitioner and opined that Petitioner had sustained a foot/ankle injury. She recommended Petitioner wear an Ace wrap and stay off the foot as much as possible (Petitioner's Exhibit 14).

Petitioner continued to work but her right foot/ankle symptoms worsened. Petitioner was again seen by NP Reynolds on May 14, 2012. Reynolds opined that Petitioner had sustained a foot injury and referred her to Dr. Robert Parker, a podiatrist.

Dr. Parker evaluated Petitioner on May 15, 2012, and opined that she had possible tibial tendinitis. He ordered an MRI scan which was performed on June 20, 2012. The MRI revealed a partial tear of the posterior tibialis tendon and tenosynovitis of the flexor tendon group. On July 24, 2012, Dr. Parker saw Petitioner and reviewed the MRI results with her. He noted that Petitioner's condition had not improved with conservative treatment and authorized her to be off work. He also referred Petitioner to Dr. Osaretin Idusuyi, an orthopedic surgeon (Petitioner's Exhibit 3).

Dr. Idusuyi initially saw Petitioner on July 28, 2012. At that time, Petitioner informed Dr. Idusuyi of the accident and that she continued to have significant right foot/ankle pain. Dr. Idusuyi subsequently diagnosed Petitioner with tarsal tunnel syndrome and tenosynovitis of the flexor hallucis longus tendon. Dr. Idusuyi recommended that Petitioner undergo surgery consisting of a tarsal tunnel release and tenosynovectomy (Petitioner's Exhibit 4).

Dr. Idusuyi performed surgery on January 10, 2013, and the procedure consisted of a tarsal tunnel release, synovectomy of the flexor hallucis longus and tenosynovitis debridement of the tibial tendon (Petitioner's Exhibit 5). Following the surgery, Petitioner continued to be treated by Dr. Idusuyi. When seen by him on March 6, 2013, he noted that she had developed some protuberance from the deep stitches along the medial aspect of the foot. At that time, Dr. Idusuyi performed a debridement and removal of those internal stitches (Petitioner's Exhibit 4).

Dr. Idusuyi ordered physical therapy and work hardening which Petitioner received from January 31, through July 1, 2013 (Petitioner's Exhibit 10). When Dr. Idusuyi saw Petitioner on July 1, 2013, she informed him that her symptoms were worse after the work hardening. Dr. Idusuyi discontinued work hardening and ordered an EMG. The EMG was performed on July 26, 2013, and it revealed slight improvement but a clear ongoing neurological deficit related to right tibial neuropathy and tarsal tunnel syndrome (Petitioner's Exhibit 4). Subsequent to the EMG, Dr. Idusuyi saw Petitioner on July 29, 2013, and he recommended that she undergo a functional capacity evaluation (FCE) (Petitioner's Exhibit 4).

The FCE was performed on August 13 and 14, 2013. At that time, Petitioner advised the examiner that her job for Respondent required prolonged standing/walking, lifting over 50 pounds, pushing/pulling, bending, twisting, turning, moving furniture, climbing stairs/ladders

and operating various machines such as wet vacs and carpet extractors. The FCE report stated that Petitioner gave maximal efforts and that Petitioner could function in the "medium" demand level, meaning she could lift 21 pounds frequently and up to 50 pounds occasionally. Ambulation activities such as walking, ladder/stair climbing, etc. were limited to being performed on an "occasional" basis (Petitioner's Exhibit 6).

Dr. Idusuyi saw Petitioner subsequent to the FCE and, on October 16, 2013, he opined that Petitioner was at MMI and that the work restrictions stated in the FCE were permanent. Dr. Idusuyi again saw Petitioner on December 17, 2013, and opined again that Petitioner was at MMI. In regard to Petitioner's work restrictions, Dr. Idusuyi gave a specific list of the restrictions, specifically, no lifting/carrying greater than 40 pounds; able to push/pull up to 70 pounds; able to carry on a frequent basis; limited stair climbing; ladder climbing not recommended; limited crouching/squatting for any prolonged amount of time; walking limited to 50% or less of an eight hour shift; standing limited to 75% or less of an eight hour shift; capable of working on even or uneven surfaces; and, that Petitioner could work eight hours a day, five days a week (Petitioner's Exhibit 4).

At trial, Petitioner testified regarding her permanent work restrictions. Further, she stated that she wears a "foot boot" that was prescribed by Dr. Idusuyi virtually all of the time including when she sleeps. She confirmed that Respondent did not offer her a job that conformed to her work restrictions.

In October, 2013, Petitioner began a self-directed job search. The records of Petitioner's job search were received into evidence at trial and they were extensive (Petitioner's Exhibit 8). Further, Petitioner testified that she had several job interviews but received no job offers.

At the request of Petitioner's counsel, Petitioner was evaluated by James Ragains, a vocational consultant, on July 29, 2014, and he had further discussions with her by telephone on August 26, 2014. As part of his vocational evaluation of Petitioner, Ragains reviewed Petitioner's education and work history, medical records, FCE and Petitioner's permanent work restrictions. Ragains' initial report was dated September 12, 2014 (Petitioner's Exhibit 9).

In his report, Ragains noted that he performed a transferability of skills analysis using the Occupational Access System (OASYS). In considering Petitioner's past work experience, Ragains only considered the preceding 15 years because skills acquired before 15 years ago may no longer be viable and lose significance over time. Ragains noted Petitioner's work restrictions, the walking restrictions, in particular, neutralized her transferable skills for employment in food services such as serving/preparing food or hostessing. He further opined that Petitioner could not return to work to the job that she had at the time of the accident (Petitioner's Exhibit 9).

Ragains reviewed the documentation regarding Petitioner's self-directed job search. In his report, Ragains stated "I must say that Ms. Cantwell has been and continues to be engaged in perhaps the most diligent and well documented and comprehensive job searches I have ever witnessed dating to October 24, 2013. I have reviewed close to probably two reams of paper consisting of her well documented job search activity." (Petitioner's Exhibit 9).

Ragains concluded that Petitioner was not employable given her vocational profile, work restrictions and unsuccessful job search. However, Ragains also opined that Petitioner could be vocationally rehabilitated and gainfully employed if she were given the opportunity to undergo skills training at a local community college. Specifically, he recommended Petitioner be enrolled in a program for an Office Professional Assistant, a 61 hour program that would lead to an Associate degree. Given the fact that Petitioner was 54 years of age at the time of Ragains' evaluation, he recommended that any retraining program be short (Petitioner's Exhibit 9).

Respondent declined to authorize or pay for the rehabilitation program recommended by Ragains. Instead, Respondent had Petitioner evaluated by Amanda Ortman, a vocational expert, on November 19, 2014. In connection with her evaluation of Petitioner, Ortman reviewed medical records/reports, the FCE and Ragains' vocational report dated September 12, 2013. In addition to her employment history, Petitioner also advised Ortman that she volunteered as a radio announcer on Monday mornings.

In Ortman's initial report dated November 19, 2014, she stated that she performed a transferability skills analysis using the OASYS and listed eight jobs in the food service industry and two office positions for which she opined Petitioner was employable. She stated that she would initiate job placement services for Petitioner; however, in her supplemental reports dated January 6, and February 9, 2015, she noted that job placement services had not been authorized (Respondent's Exhibit 1).

At the request of Petitioner's counsel, Ragains reviewed Ortman's report of November 19, 2014. In a supplemental report dated November 28, 2014, Ragains disagreed with Ortman's conclusions and recommendations. Initially, he noted that Petitioner had conducted a comprehensive and diligent job search for work that was included in the list of jobs recommended by Ortman as well as other employment. He also noted that Ortman's statement that all 10 positions were listed in the "Dictionary of Occupational Titles" (DOT) was not accurate in that three of the 10 positions were not, in fact, listed in the DOT.

Ragains also noted that for Petitioner to work as a kitchen supervisor (one of the 10 jobs in Ortman's list) Petitioner would have to perform tasks contrary to the work restrictions imposed by Dr. Idusuyi (Petitioner's Exhibit 9). In regard to the receptionist position listed in Ortman's list, Ragains opined that for Petitioner to qualify for this position, she would require the additional training that he recommended. Ultimately, Ragains opined that Ortman did not accurately assess Petitioner's employability (Petitioner's Exhibit 9).

At trial, Petitioner testified that she met with Ortman several times and applied for all of the positions that Ortman recommended. The singular exception to this was a job as a bus driver. Petitioner stated that she did not apply for that job because it would have required extensive use of her feet when driving the bus. Further, Petitioner applied for other jobs in addition to those provided to her by Ortman.

When Petitioner met with Ortman on March 15, 2015, she advised that she had applied for the position of Food Service Administrator I with Respondent, and this was a position she had previously held for eight and one-half years. Petitioner was interviewed for this position.

Geoffrey Evans, Respondent's Director of Food and Dining Services testified at trial. Evans interviewed Petitioner for the Food Service Administrator I job in April, 2015. Evans knew Petitioner because he was her supervisor when she managed Respondent's coffee shop sometime ago. Evans stated he did not ask Petitioner any questions about her physical restrictions and that they would have been assessed at a later time. Evans said Petitioner informed him of her foot condition and her work restrictions even though he had not asked her any questions regarding same.

On cross-examination, Evans agreed that the Food Service Administrator I position required standing for long periods of time, carrying of food items, food preparation, lifting of heavy boxes of food, etc. Evans did not make a recommendation that Petitioner be hired and the job was not offered to her.

Petitioner also testified that she hosted a radio show on Monday mornings at a local station. Petitioner is on the air approximately three to four hours on Monday mornings and this is apparently some sort of talk show. This is a volunteer position and Petitioner receives no income from it.

Ragains testified at the trial. His testimony was consistent with his reports and he reaffirmed the opinions contained therein. In regard to Petitioner informing a potential employer of her work restrictions, he stated that this was appropriate for Petitioner do so once she determined that the job for which she had applied would require accommodations. He also opined that many of the jobs recommended by Ortman were not appropriate for Petitioner because of her restrictions, skills or a combination of both.

Regains testified that Petitioner could not work in the food service industry because these jobs required Petitioner to be on her feet for most of a workday and many of the positions required lifting in excess of Petitioner's restrictions. He also stated Petitioner had put forth a diligent and good faith effort to find suitable employment.

Ortman testified at trial and her testimony was consistent with her reports and she reaffirmed the opinions contained therein. Ortman opined that Petitioner was employable in a sedentary/light duty position in an office type environment; however, she could not identify any current positions which would be appropriate for Petitioner nor did she prepare a labor market survey which indicated that such positions were readily available.

Ortman also questioned the diligence of Petitioner's attempts to secure employment and opined that she was not going to interviews with the proper attitude. She specifically referenced Petitioner's interview with Respondent for the Food Service Administrator I position. She also stated that, as part of her job placement services, she had set up an e-mail address for Petitioner to use for communication with potential employers. She stated that when she checked on Petitioner's use of e-mails, there were approximately 100 e-mails that Petitioner did not open. This was for a period of approximately two weeks and was towards the end of her providing job placement services to Petitioner.

Conclusions of Law

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is permanently and totally disabled as result of the injury she sustained.

In support of this conclusion the Arbitrator notes the following:

It was undisputed that Petitioner sustained a serious injury to her right foot/ankle on February 17, 2012. Significant permanent work/activity restrictions were imposed by Petitioner's treating physician, Dr. Idusuyi.

The fact that Petitioner was unable to return to work to the job she had at the time of the accident because of her permanent work/activity restrictions was not disputed by Respondent.

Petitioner began her own self-directed job search in October, 2013, and the records of her job search were tendered into evidence at trial. The Arbitrator reviewed the records and noted that they were very extensive.

Counsel for both Petitioner and Respondent retained vocational experts, James Ragains and Amanda Ortman, respectively. Both of these vocational experts testified at trial.

Ragains opined that, because of Petitioner's work/activity restrictions, she could not return to work at the job that she had at the time of the accident nor could she return to work to jobs in the food service industry. He also opined that Petitioner lacked transferability of skills.

Ragains reviewed Petitioner's documentation regarding her job search and opined that it was the most diligent, well documented and comprehensive job search that he had ever seen. He opined that Petitioner could be vocationally rehabilitated and gainfully employed if she received skills training at a local community college. However, Respondent declined to offer this training to Petitioner and referred her to their expert, Amanda Ortman.

Ortman recommended Petitioner seek employment for a number of jobs which were not consistent with Petitioner's work/activity restrictions, including several food service positions and driving a bus. This was specifically noted by Ragains.

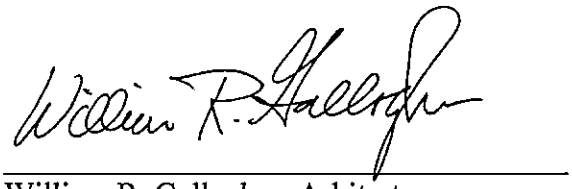
While Ortman opined that Petitioner could return to work in a sedentary/light duty office type position, she could not identify if any such positions were actually available nor did she prepare a labor market survey.

In regard to Petitioner's alleged noncompliance with vocational experts, the Arbitrator does not find Petitioner's advising Geoffrey Evans of her work/activity restrictions during the interview process to be a deliberate act on her part to not obtain employment. As was noted by Ragains, this disclosure was appropriate for Petitioner to make during the interview process because of the physical demands of that job in the food service industry.

Given Petitioner's diligent and comprehensive job search, the Arbitrator does not find Petitioner's not opening e-mails during the last two weeks of Ortman's job placement services to be of any particular significance.

Petitioner's unpaid volunteer position at a local radio station is not evidence of her ability to obtain employment in a reasonably stable labor market and is likewise of no particular significance.

The Arbitrator finds the opinions of Ragains to be more persuasive than those of Ortman.



William R. Gallagher, Arbitrator

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

SCHMIDT, MICHELENE
Employee/Petitioner

Case# **14WC024891**

15WC005243
15WC005244

SENIOR SILVERADO LIVING
Employer/Respondent

On 9/29/2015, 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 0.10% 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:

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

- [ ] 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)

MICHELENE SCHMIDT
Employee/Petitioner

v.

SENIOR SILVERADO LIVING
Employer/Respondent

Case # **14** WC **24891**

Consolidated cases: **15 WC 5244, 5245**

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 **Falcioni**, Arbitrator of the Commission, in the city of **Rockford**, on **August 25, 2015**. 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. [ ] 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. [x] Is Respondent due any credit?

O. [x] Other Injurious practice

FINDINGS

On the date of accident, **March 18, 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 $**21,840**; the average weekly wage was $**420.00**

On the date of accident, Petitioner was **58** 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 $**5600.00** for TTD, $ for TPD, $ for maintenance, and $**30,251.96** for other benefits, for a total credit of $**35,851.96**.

ORDER

Respondent shall be given a credit of $5600.00 for TTD.

Respondent shall be given a credit of $30,251.96 for medical benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of an additional $4985.00, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $280.00/week for 24 1/7 weeks, commencing 8-14-14 through 1-29-15, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 8-14-14 through 1-29-15, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of $5600.00 for temporary total disability benefits that have been paid.

Respondent shall pay to Petitioner penalties of $**1229.00**, as provided in Section 16 of the Act; $**3072.50**, as provided in Section 19(k) of the Act; and $**6690.00**, 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

September 22, 2015
Date

ICArbDec19(b)

SEP 29 2015

STATEMENT OF FACTS

The Petitioner, Michelene Schmidt, testified at trial that she was employed by Silverado as a Certified Nurse's Assistant on March 18, 2014. She had been employed there for about a month. Her duties consisted of helping with the residents, changing them, changing their beds, moving them around and getting them in and out of bed. The residents suffer from Alzheimers and dementia. Her normal shift was the afternoon shift, from about 3:30 PM to 11:30 PM. On that date Silverado was short staffed so she offered to work the night shift in addition to her normal afternoon shift, from 11:30 PM to 7:30 AM. During the night shift, she was helping another employee, Karen, turn a resident because he had soiled his sheets. The Petitioner was on the left side of the resident, and Karen was on the right side of the resident. As they began to try and roll him, he grabbed the finger and wrist of the Petitioner very hard. Then he fought her when she tried to roll him over in order to try to move his soiled sheets out of the way. As he fought her and pushed back, she felt immediate pain and heard a pop in her right shoulder. She was able to continue her shift, but notified the receptionist, Jackie, during her shift of her injury. At the end of her shift, she notified her supervisor, Cleme as well. The Petitioner testified that she has never had any issues with her right shoulder before this incident-- no injuries, no treatment and no problems.

Due to her continuing pain at the end of the night shift, she drove to the company clinic, Northwest Community Occupational Health. The records show that she was seen on March 18, 2014 and gave a history of injuring her right shoulder when "she was helping a combative patient at 3 AM today when she heard a pop on her shoulder followed by pain." (Pet. Ex #1). She was examined, given medications, x-rays and a ten pound lifting restriction. The Petitioner continued to work within her restrictions. Since her pain continued, she returned to the company clinic on March 25, 2014 and after another examination, was continued on medication, light duty and referred for an orthopedic evaluation.

The Petitioner continued treatment with the orthopedic surgeon, Dr. Craig Cummins at Lake Cook Orthopedics. She first saw him on April 28, 2014. She testified that she told him about the resident grabbing her finger and wrist as well as fighting her when she tried to turn him. His records indicate a history also of being grabbed by the finger and wrist (Pet. Ex. #2, p. 22). Dr. Cummins examined her, gave her an ultrasound and a steroid injection. He diagnosed her with a right shoulder strain and questionable rotator cuff tear, prescribed physical therapy and continued her on light duty and to return in four weeks. She underwent physical therapy at one of the branches of Advocate Good Shepherd Hospital. When she returned on May 30, 2014, she continued to complain of pain from 2-8/10 and

continuing popping in the shoulder (Id. at p. 20). At that time, he prescribed an MRI. That was performed on June 24, 2014 and showed a full thickness tear of the supraspinatus tendon with retraction as well as a tear of the glenoid labrum (Id. at p. 28-29). When the Petitioner followed up with Dr. Cummins on July 11, 2014, she still continued to complain of 5/10 pain, difficulty sleeping on her right side, difficulty washing her back and reaching. He then recommended arthroscopic acromioplasty and rotator cuff repair of the right shoulder (Id. at p. 18).

The Petitioner testified that the surgery was preapproved by the workers' compensation insurance. She underwent pre-op testing on August 8, 2014 (Pet. Ex. #3, p. 43) and then Dr. Cummins performed surgery on August 14, 2014 at Advocate Good Shepherd Hospital (Id. at p. 62). Dr. Cummins found a rotator cuff tear, biceps tear as well as a labral tear and performed a debridement, acromioplasty, biceps tenodesis and rotator cuff repair (Id.). Ms. Schmidt's first day off of work was the day of the surgery, August 14, 2014. Her first follow up was with Dr. Cummins' Physician's Assistant, Lauren Baruch on August 29, 2014, where it was indicated that Petitioner was doing well but should be wearing her sling more often (Pet. Ex. #2, p. 15). Upon examination, the incisions were healing nicely and she tolerated the gentle range of motion. Petitioner testified that she did wear her sling as instructed. The Physician's Assistant, Lauren Baruch, noted that upon Ms. Schmidt's next visit on September 12, 2014 (Id. p. 13). At that time, she indicated that Ms. Schmidt was still unable to work.

By September 30, 2014, Ms. Schmidt started physical therapy at Advocate Good Shepherd Hospital and continued to undergo her therapy until January 29, 2015 when she attempted to return to work. During that time, she followed up at Lake Cook Orthopedics showing progress from her surgery.

On November 4, 2014, Ms. Schmidt underwent a Section 12 examination with Dr. Kevin Walsh. After his examination, it was his opinion that the mechanism of her injury, the pulling of her finger and wrist, is not typical for a rotator cuff tear (Resp. Ex. #3, p.5). He further opined that the large rotator cuff tear pre-existed her injury and was not caused, aggravated or accelerated by the work injury. He concluded that she was at MMI and needed no further medical care.

By the time Ms. Schmidt had seen Dr. Cummins on December 12, 2014, he had an opportunity to review the report from Dr. Walsh. He commented that based on Ms. Schmidt's history, examination, no prior shoulder pain, the findings and the MRI, "the onset of the shoulder pain was related to the work-related

injury...and as such this does appear to be a worker's compensation injury." (Pet. Ex #2, p. 9). Dr. Cummins continued to keep Ms. Schmidt off of work.

The Respondent stopped paying TTD by December 5, 2014. By January 23, 2015, Ms. Schmidt returned to Dr. Cummins and he agreed that she should continue with her physical therapy and could return to light duty work with no lifting more than 10 pounds, keeping her arm at her side, no overhead use of the right arm, minimum repetitive use of the right arm and "avoid any situations where she would be in contact with a potentially combative patient" (Id. p. 7).

Ms. Schmidt further testified that she received a letter from Blenda Shulken, Assistant Director of Health Services at Silverado, dated January 6, 2015 requesting her to return to work based on the attached Agreement for Temporary Transitional Light Duty Classification form (Pet. Ex. #6). Ms. Schmidt made the appropriate changes pursuant to her treating doctor's instructions indicating that she was to avoid repetitive use and unsafe environments and returned the Agreement to Ms. Shulken on January 11, 2015 (Pet. Ex. #7). By her visit with Dr. Cummins on January 23, 2015, he indicated that Ms. Schmidt was progressing nicely, she should continue with her physical therapy and was capable of returning to light duty of less than ten pounds lifting with her arm at her side, no overhead use of the right arm, minimize any repetitive use and avoid any situations where she would be in contact with a potentially combative patient (Pet. Ex. #2, p. 7). Upon motion by Petitioner's attorney, there was a meeting with the attorneys for the parties and Petitioner on January 28, 2015, at the Waukegan trial call, where it was agreed that Respondent would pay an additional four weeks of TTD, paying her through January 2, 2015 and that the Petitioner would attempt to return to work. Ms. Schmidt testified that she had serious reservations about returning to the combative environment that she had been subjected to previously, but that she would try it.

When Ms. Schmidt returned to work on January 30, 2015 she had not been released from the care of Dr. Cummins. Her job duties were to help out as receptionist at the front desk, answering phones and to see visitors coming in and out of the entrances as well as seeing to it that the residents do not attempt to leave the building. The receptionist helping her on that date was Melody. The shift was the morning shift, from 8 AM to 4 PM. As Ms. Schmidt was sitting at the reception area, a resident, Maria approached her and grabbed her hands together and pled with her to contact her family and get her out of there, that she did not belong there. Ms. Schmidt then told her that she would contact her family. At trial, Ms. Schmidt testified that she felt a "tinge" of pain in her shoulder from that incident. Melody then went on her break

leaving Ms. Schmidt to handle the desk by herself. After she was required to let someone in the back door, she returned to see the same resident, Maria, sitting at her desk. As she approached her, Maria, then quickly reached out to Ms. Schmidt and grabbed both of her wrists and jerked her arms in an upward motion, causing Ms. Schmidt to feel immediate, searing pain to her right shoulder again. She continued to finish out her shift and when her pain increased, she called in that Sunday evening and left a message for the receptionist that she would not be able to come in to work on the following Monday because she got yanked by a resident on the previous Friday. On the next day, Monday, Ms. Schmidt testified that she spoke to Colleen the manager in Human Resources and told her what happened and that she was in increasing pain and unable to come back into work. Ms. Schmidt tried to reach Dr. Cummins over the weekend but his office was closed. When she finally did get through the following week, the first appointment she could schedule was on February 11, 2015. She gave a history to the Physician's Assistant of returning to work and "she had a patient grab her arms and pull on them" causing her right arm pain to return (Id. p. 4). Examination showed a positive impingement sign. She was assessed with a complete rupture of the rotator cuff the cause of which was tied into the Petitioner's work injury where it was stated "she sustained a reinjury at work when a dementia patient pulled on her arm several times." (Id. p. 5). She was taken off of work again.

Another MRI was recommended and performed on March 4, 2015. Ms. Schmidt followed up with Dr. Cummins on March 6, 2015, her last visit. A review of the latest MRI by Dr. Cummins showed a recurrent rotator cuff tear and has recommended another surgery and again, recommended that Ms. Schmidt remain off of work. The workers' compensation carrier has denied any further treatment, including the surgery as well as any further TTD.

Ms. Schmidt was examined again by Dr. Kevin Walsh, on May 26, 2015 pursuant to Section 12. It is his opinion that Ms. Schmidt does have a recurrent tear of the rotator cuff and given that she initially had a large tear, it is not uncommon to have a recurrent tear. However, he continued, the mechanism of her injury as she described to him where she was grabbed by a resident was not likely to result in a recurrent tear and she could return to full duty (Resp. Ex. #4).

On cross examination, regarding her first injury of March 18, 2014, Ms. Schmidt testified that her searing pain was actually caused by the resident fighting her back as she tried to turn him, not when he grabbed her finger and wrist. She also confirmed that she had a prior elbow injury for which she received chiropractic care about 20 years ago, but no treatment to her shoulder. After her injury on March 18,

2014, she had no intervening injuries until her return to work on January 30, 2015. She testified that she did not tell Dr. Cummins that she reinjured her shoulder trying to pick up a pen on her September 12, 2014 visit.

She also testified that she did some things around her trailer home. She moved some tubs that she was required to move. Those appear to be depicted in the photos presented by Respondent (Resp. Exs. #10, 11 and 12). There was no information elicited as to their weight or how high she lifted them. She was also required to move some pieces of timber. She testified that she used mainly her left arm and her legs. The timbers were identified in Resp. Ex. # 13. She also testified under cross examination that she was not working for anyone else but that she did help out doing her neighbor's laundry. Resp. Ex. #14 shows Petitioner hanging laundry on a line. She also walked her neighbors' dogs as indicated in Resp. Ex. # 15. It should be noted that they are small in nature and that she was using her left arm to hold the leash.

Continuing on cross examination, Ms. Schmidt testified that she did not notify Melody of her injuries on January 30, 2015, but she did try to contact Dr. Cummins' office. She also tried calling Dr. Cummins on the following day and the following Monday. On the following Monday, she also spoke to Colleen and discussed the last incident of January 30, 2015.

Colleen Sheahen was present during the proceedings and also testified. She is the business office manager at Silverado and has been there for four years. Her testimony was that there were very few attacks by residents at that location, about four per year. She admitted to having the paperwork for the Petitioner's first injury. She also testified that she called Ms. Schmidt on February 2, 2015 and was told by her that a resident pulled her arm and that she was scared to return, that it happened at lunch time when Melody was at lunch.

The Respondent then offered the testimony of David Maurer, the park manager and agent at South Shore Village, where Ms. Schmidt lives. He testified that he has known her for about two years. He testified that she helped another resident by taking him coffee, food, salting the driveway, did not see her bathe him, but did see her assist him off a kitchen chair. This was during the time period of October, 2014 through January, 2015. He also made reference to a letter from the Village requiring Ms. Schmidt to move some of her items which he said she did in July, 2014, prior to her surgery, while she was still working light duty. However, he did not know how heavy the tubs were that she moved. He did see her use her left arm and right arm when walking the dogs, although the activity as depicted in Resp. Ex. #13

shows Petitioner only using her left arm. He also testified that she performed the task of walking the dogs for cash. He saw her move the wooden planks but he saw her using only her left arm. He also testified that he was the one who took the photos as depicted in Resp. Exs. # 8-16. When asked about whether he saw the Petitioner wear her sling, he testified that he noticed her wearing it after August, 2014.

Petitioner has filed a Petition for Penalties (Pet. Ex. #5) on April 23, 2015. In the Petition, the Petitioner claims that she sustained injuries on March 18, 2014 and January 30, 2015, that she is treating with Dr. Cummins who has taken her off of work and indicated that she needs surgery, that she has incurred medical bills which remain unpaid and that the Respondent has refused to pay the balance of the medical bills, TTD or authorize the necessary surgery. The request is made pursuant to Sections 19(k), 19(l) and 16. There has been no response filed on behalf of the Respondent.

CONCLUSIONS OF LAW

ACCIDENT

The Petitioner testified that while trying to move a resident in his bed, he grabbed her and fought her causing her to feel immediate pain and hear a pop in her right shoulder. She sought medical attention on the same day as the accident at the company clinic and continued to follow up with the orthopedic surgeon once referred. She gave consistent histories to both regarding sustaining a shoulder injury at work while trying to move a resident. Petitioner testified that she had no prior shoulder problems or treatment and there was no evidence contradicting her testimony. The subsequent objective medical testing (MRI) showed a complete tear of the rotator cuff, that Dr. Cummins tied in to her accident. The Petitioner testified in a credible manner and notice was given to the business office manager, Colleen Sheahen, who was present and confirmed receiving notice of the accident. Based on the record as a whole and taking notice of the facts as set forth immediately above, the Arbitrator finds that Petitioner did sustain an accident arising out of and in the course of her employment with Respondent on March 18, 2014 as alleged herein.

CAUSAL CONNECTION

The Petitioner sought medical care on the same day of the accident after she gave notice to Cleme. She gave a history at Northwest Community Occupational Health Services of "helping roll a combative

patient at 3 AM today when she heard a pop on her shoulder followed by pain" (Pet. Ex. #1, p. 28). The record further indicates that "yes" it was a "work related injury" (Id.). On her next follow up a week later to the clinic, it indicated again that "yes" it is a "work related injury" (Id. p. 7). Upon her first visit to Dr. Cummins, the orthopedic surgeon on April 28, 2014, Petitioner gave a consistent history of sustaining an injury to her shoulder at work while caring for a dementia patient at Silverado (Pet. Ex. #2, p.22). He indicated upon the first visit that this was a work related injury (Id.). He suspected rotator cuff tear right away which was confirmed once he reviewed the MRI results (Id. p. 25) as well as when he performed the surgery (Id. pp. 37-43). Respondent approved the pre-op as well as the surgery. Petitioner did not undergo a Section 12 examination with Dr. Kevin Walsh until well after her initial diagnosis and surgery, on November 4, 2014. His opinion is that the Petitioner could not have suffered a torn rotator cuff based on the history of having her fingers pulled and he found no causal connection. It appears that Dr. Walsh either ignored the complete history given, misunderstood or miscommunicated what the mechanism was in forming his opinion. His opinion is not convincing and not credible. The Petitioner has met her burden of proof in proving that there is a causal connection between her work injury and the condition found in her right shoulder.

MEDICAL

The Respondent approved the treatment of the Petitioner from the first day of treatment until well after Petitioner's surgery. The Petitioner testified consistently and the medical records support the Petitioner's testimony. The Respondent has paid all of the Petitioner's medical bills except those listed on Pet. Ex. #4. Those charges incurred prior to the January 30, 2015 claims for injuries that are still due are those from Good Shepherd Hospital, all of which are for physical therapy from September 30, 2014 to January 15, 2015, prescribed by Dr. Cummins after the surgery on August 18, 2014. Those charges amount to $4985. It is the opinion of Dr. Cummins that the treatment of the Petitioner is a direct result of her work injury that it was necessary and it is certainly reasonable to undergo physical therapy to the shoulder for five months after surgery. The opinion of Dr. Kevin Walsh is not considered credible for the reasons given above.

TTD

The Petitioner was unable to work from the date of her surgery, August 14, 2014, until she attempted to return to work on January 30, 2015. That is 24 1/7 weeks. Dr. Cummins had Petitioner off of work after

her surgery in August, 2014 until the December 12, 2014 visit, at which time he returned her to light duty, no lifting over 10 pounds and avoiding repetitive tasks. In addition, he "recommend[ed] against her being placed in any situation where she would be at risk for confrontation in any type of physical manor[sic] that could potentially injure her shoulder." (Pet. Ex. 2, p.9). He gave her the same instructions upon the January 23, 2015 visit (Id. p. 7). By January 11, 2015, Petitioner had received the letter from Blenda Shulken at Silverado requesting her to sign the enclosed form and return it so she could return to light duty (Pet. Ex. #6). She amended the form as indicated by the circle (Pet. Ex. 7) and returned it to Ms. Shulken on January 11, 2015. The added statements which were at the direction of Dr. Cummins were no repetitive use and to avoid unsafe environments. TTD was cut off on December 2, 2014. At the meeting for trial on January 28, 2015, the parties discussed the possibility of Petitioner returning to work. Petitioner testified that she had reservations because the Alzheimer and dementia patients tend to be combative and she was scared of being injured again, especially with her shoulder still healing. However, it was agreed that Respondent would pay another four weeks of TTD ($1120), taking her up to December 31, 2014. It is stipulated that the Respondent has paid a total amount of $5600 in TTD which is for a period of 20 weeks.

At trial, the Respondent attempted to introduce evidence that the Petitioner was employed during the time she has claimed to be unable to work and is claiming a credit for the TTD already paid. The Petitioner denied doing any work for money around her trailer park. However, Respondent's witness, David Maurer testified that he saw Petitioner doing chores and getting paid. Examples he gave were that she would walk the neighbors' dogs, do their laundry and help feed them. Whether Petitioner actually did receive money for these temporary chores or not would still not entitle Respondent to any credit. If the Petitioner is temporarily and totally disabled, then the Respondent shall owe TTD payments. Section 8(b) provides that weekly compensation shall be paid by Respondent as long as the Petitioner's condition of temporary total incapacity lasts. There is no prohibition in the Workers' Compensation Act from earning extra money while on TTD. The fact that the Petitioner may have earned a few extra dollars on the side by helping neighbors does not alleviate the Respondent's responsibility from still paying TTD. There was no evidence that the Petitioner was earning any additional wages during the period of her TTD. Although the Petitioner must show that she is unable to work, "evidence that the employee has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability", E.R. Moore Co. v. Industrial Commission, 376 N.E. 2d 206, 71 Ill 2d 353 (1978). In the case of Firestone Tire and Rubber Company v. Industrial Commission, 390 N.E. 2d 2907, 76 Ill. 2d 197 (1979), the Petitioner sustained a left elbow injury which precluded him

from returning to full duty. During his time off of work, he spent a couple of days painting a house. The employer claimed credit for the TTD awarded because if he could paint a house, he should be able to return to light duty. The Supreme Court affirmed the award of TTD and referenced the E.R. Moore case in reaffirming that an employee can still earn occasional wages while on TTD and further stated: "For the purposes of 8(f) (section 19(b)), a person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists." (Firestone, 76 Ill. 2d at 203). TTD is payable even if an employee is unable to return to his previous job due to a work injury and he is still driving a school bus twice daily for an hour and a half each time. See J. M. Jones v. Industrial Commission, 375 N.E. 2d 1306, 71 Ill. 2d 368 (1978).

The Petitioner's activity, even if proven to be the case, does not rise to the extent seen in the case of Dolce v. Industrial Commission, 675 N.E.2d 175, 286 Ill.App.3d 117 (1996). The employee in Dolce continued to sell real estate and earned over $20,000 per year in sales. In Ms. Schmidt's case, any money obtained for performing any chores was meager at best—certainly not even enough to pay her rent. Additionally, there is no evidence of what if anything Petitioner did earn performing these tasks. Based on the record as a whole, and noting the above, the Arbitrator finds that Respondent owes the TTD paid and in addition, owes for the time until Petitioner returned to work on January 30, 2015, a period of 24 1/7 weeks. Respondent to be given credit for all TTD previously paid herein.

CREDIT

Respondent made payments for medical in the amount of $30,251.96. It also made TTD payments in the amount of $5600. It is entitled to credit for these payments. The amount still claimed to be owed by Petitioner in the amount of $4985 for unpaid medical is still due and the balance due in TTD for 4 1/7 weeks in the amount of $1160 is still due.

PENALTIES

Petitioner filed a Petition for Penalties and Attorney Fees on April 23, 2015 alleging treatment and medical bills that were not paid by Respondent (Pet. Ex. #5). Said Petition was again provided to Respondent in the Notice for Request For Hearing for this August, 2015 19(b) trial. In support of Petitioner's claim are the medical records of Dr. Cummins (Pet. Ex. #2), the physical therapy records from Advocate Good Shepherd (Pet. Ex. #3) as well as the bills showing the balance due (Pet. Ex. #4). Petitioner has testified as to her treatment at those facilities and as to their necessity. As of the date of

hearing, those bills and the additional TTD have not been paid. Petitioner has sustained her burden of proving all disputed issues in her case. The Respondent has not filed a response to Petitioner's Penalties Petition nor asked for time to present one. Pursuant to Section 19(k), the Arbitrator finds the Respondent to have acted in an unreasonable and vexatious manner in delay of payment of both medical bills and TTD. The amount of the medical due from this injury is $4985 and the amount of TTD due is $1160.00 for a total still outstanding of $6145. Section 19(k) allows for 50% of the amount due to be awarded as a penalty. Therefore, Petitioner is awarded an additional amount of $3072.50 pursuant to Section 19(k). Section 19(l) allows for penalty of $30 per day for each day Respondent fails to pay necessary medical under Section 8(a) and TTD under 8(b). From the last date of treatment on January 15, 2015 until the date of trial on August 25, 2015, 223 days have passed. At $30 per day, total 19(l) penalty comes to $6690. Pursuant to Section 16, the attorney fee awarded due to the unreasonable and vexatious delay of nonpayment of medical bills and TTD ($6145) shall be 20% of the unpaid amounts of medical bills and TTD for a total of $1229.

INJURIOUS PRACTICE

Respondent is claiming that the Petitioner was involved in activities which were injurious to her condition. Testimony was elicited by the Respondent's witness, David Maurer which indicated that she performed various activities around her trailer such as walking a couple of small dogs (Resp. Ex. # 15). He testified that she used both arms, yet the photo that he took indicates her using only her left arm. Other activities he mentioned he did not see her using her right arm, except to hang laundry (Resp. Ex. # 14). A review of that photograph indicates that her left arm was raised above shoulder level and her right arm was at shoulder level. None of the activities that were described to have been performed were contrary to any work restrictions given by her own doctor, Dr. Cummins. Petitioner testified that she wore her sling as instructed after her surgery. Mr. Maurer confirmed this in his testimony. There was a comment by the Physician's Assistant that she should wear her sling more often and upon the next visit, she showed progress. There is nothing in the medical records to indicate that Petitioner had performed any activities to injure herself, nor is there any considered medical opinion that the activities described by Respondent would have been injurious to the medical progression of Petitioner's shoulder condition.

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 up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TAMMIE HOFFARD,

Petitioner,

vs. NO: 11 WC 39217

15IWCC0769

STATE OF ILLINOIS,
DU QUOIN IMPACT
INCARCERATION PROGRAM,

Respondent.

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, causal connection, medical, prospective medical, notice, temporary total disability (TTD), 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 finds that Tammie Hoffard sustained 10 percent loss of use of the left hand as a result of her work-related injuries. The Commission further modifies the PPD rate from $698.39 to $695.78, the maximum PPD rate pursuant to Section 8(b)4 of the Act. All else is affirmed and adopted.

According to Section 8.1(b) of the Act, 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.

The Commission adopts the Arbitrator's well-reasoned analysis of Section 8.1(b). The Commission notes, however, that Petitioner underwent left carpal tunnel release. She did not undergo surgery for her right carpal tunnel syndrome. Because of this, the Commission finds that Petitioner sustained 10% loss of use of the left hand, and affirms the award of 5% loss of use of the right hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 13, 2015, 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 $775.99 per week for a period of 1-3/7 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 $695.78 per week for a period of 30.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 10% loss of use of the left hand and 5% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses under §8(a) of the Act and subject to the medical fee schedule. Respondent shall have a credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount

for which it is receiving this credit, pursuant to Section 8(j) 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: OCT 2 1 2015

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
O: 8/24/15
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOFFARD, TAMMIE
Employee/Petitioner

Case# **11WC039217**

15IWCC0769

SOI/DuQUOIN IMPACT INCARCERATION PROGRAM
Employer/Respondent

On 1/13/2015, 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 0.08% 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:

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

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST 6M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
KENTON OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

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

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

JAN 13 2015

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

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

- [ ] 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

Tammie Hoffard
Employee/Petitioner

Case # **11** WC 39217

v.

Consolidated cases: _____

State of Illinois/Du Quoin Impact Incarceration Program
Employer/Respondent

15IWCC0769

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 Herrin, on **November 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. [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 [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 **September 13, 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 $**60,527.00**; the average weekly wage was $**1,163.98**.

On the date of accident, Petitioner was **49** 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 the reasonable and necessary medical expenses as outlined in Petitioner's group exhibit. Respondent shall have credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount for which it is receiving this credit, pursuant to §8(j) of the Act.

Respondent is liable for the temporary total disability benefits of $775.99/week for 1 3/7 weeks as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $698.39/week for 20.5 weeks, because the injuries sustained caused the 5% loss of the left hand, as well as the 5% loss of the right hand, 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

1/8/14
Date

JAN 13 2015

FACTS

At the time her injuries manifested, Petitioner was a forty-nine (49) year old correctional counselor for the State of Illinois at its Du Quoin Impact Incarceration Program facility. (T.10-11). Petitioner testified that this facility is similar to a military boot camp, and that the facility houses approximately 230 inmates. (T. 11). Petitioner indicated that she had worked at Du Quoin since 2010, and prior to 2010, she was employed at a number of other correctional facilities for the State of Illinois. (T.11). Petitioner also testified that she prepared a job description detailing all of the job titles as well as the duties she was required to perform in those positions with the State of Illinois in her thirty (30) years of employment. (T.13-14). This was admitted into evidence as Petitioner's Exhibit 8.

When asked to describe her job duties on a daily basis at Du Quoin, Petitioner testified:

> I do a call line, which basically just includes having the inmates come to the office and address whatever issues that they may have. Depending on the day, if we've had a recent intake I'll do an orientation class. If we have need for a parole school, I will do a parole school with the inmates that are soon to be graduating. It just kind of depends on the day. I do a lot of computer entry and also a lot of computer inquiry depending on what the issue is that the inmates have at the time. (T. 12-13).

When asked to describe how she would characterize her work for the State of Illinois over the past thirty (30) years, Petitioner testified that she would typically spend eighty to ninety (80-90) percent of her time performing clerical work, which included computer work and data entry, and that the remaining ten to twenty (10-20) percent of her job would involve hand writing reports. (T.22; PX8).

For the first five (5) years of her employment with the State of Illinois, beginning in 1984, Petitioner testified that her job required the use of a manual typewriter, which she testified was more difficult and required more force on her upper extremities, and that until approximately 2009, she was required to use an electric typewriter, which she also indicated required more force than a modern day keyboard would (T.23-24; T. 47, PX8).

On cross-examination, Petitioner was asked how often she ran a parole school, which she testified involved explaining to soon-to-be-graduated inmates how to complete various documents before their graduation. (T.42). Petitioner testified that she did not run a parole school each week, and would only hold these courses two to three (2-3) times per month. (T.42). On the several days per month that she ran a parole school, Petitioner acknowledged that she would typically spend less than 5-6 hours per day typing. (T.42).

At the time of trial, Respondent also submitted Respondent's Exhibit 15, which were medical records from Petitioner's primary care physician obtained by subpoena, into evidence. (RX15). Respondent's Exhibit 15 contains the results of a nerve conduction study performed on Petitioner's upper extremities at Neurology of Southern Illinois, which was dated April 25, 2005. Notably, at that time, the nerve conduction studies revealed no electrographic evidence of carpal tunnel syndrome. (RX15). Petitioner testified that she did recall undergoing this test in 2005

when presented with the medical records confirming same. (T.46). She further indicated that after this test was performed, she would simply have kept working to the best of her ability. (T.51).

Petitioner testified that in the course of performing her job duties for the State, she began to notice symptoms in her upper extremities, and specifically began to experience numbness and tingling, as well as pain in her wrist, thumb, index and middle fingers. (T.14). She indicated that she ultimately sought medical care and treatment for these symptoms with her primary care physician, and saw Ann Browning, a physician's assistant, on September 13, 2011 for these complaints. (T.15). Petitioner testified that her physician suspected carpal tunnel syndrome, and a nerve conduction study was recommended as a result. (T.15).

Specifically, the records reveal that Petitioner presented to her primary care physician's office on September 13, 2011 with complaints of bilateral hand pain at a level of seven out of ten (7 out of 10), left greater than right. (PX3, Dr. Karen Strack, 9/13/11). It was noted that Petitioner had difficulty buttoning buttons, opening bottles, and with any activity that required thumb and index grasp. It was also noted that Petitioner was employed with the Department of Corrections as a counselor, and she was required to perform "lots of keyboarding" in the course of her employment. *Id.* Ms. Browning's assessment was left hand pain, and recommended a nerve conduction study of Petitioner's bilateral upper extremities, carpal tunnel splints, non-steroidal anti-inflammatory medication, and that Petitioner consider an orthopedic consultation. *Id.*

Petitioner testified that she was ultimately referred to an orthopedic specialist, Dr. George Paletta, who discussed her job duties with her. (T.16-17). Petitioner acknowledged that according to a phone message from Dr. Strack's office, she was referred to Dr. Paletta by her attorney's office. (T.26-27).

On October 12, 2011, Petitioner presented to Dr. George Paletta, a board certified orthopedic surgeon. Dr. Paletta took the following history of Petitioner's complaints:

> This is the first visit for the 49-year-old right-hand dominant white female. She works as a correctional counselor. She works at DuQuoin Impact Incarceration Program. She is a counselor for up to 200 inmates. She states that her job involves a lot of typing and writing. She states that 90% of her job duties are typing either data inquiry or entry. She states the remaining 10% of the day would be forms completion. When I asked her what kind of counseling she does for the inmates, she states that basically all she does is type and write. She states that two days per week she holds orientation or parole class. She states that on the days that she is doing orientation or parole class, 80% of her time spent on the computer, 5% of the time spent completing the forms, and 15% of class participation or presentation. (PX5, Dr. George Paletta, 10/12/11).

Dr. Paletta also noted that Petitioner presented with bilateral wrist pain, as well as numbness and tingling, left greater than right, and pain in the region of the thenar eminence, which Dr. Paletta explained is the fleshy prominence at the base of the thumb. (PX5, Dr. Paletta,

10/12/11; PX12, Deposition of Dr. Paletta, p. 49). He indicated that she had been employed in her current position for approximately one year, but that she had worked for the State of Illinois since 1984 and has been in similar jobs throughout that time. (PX5, Dr. Paletta, 10/12/11). At that point, Dr. Paletta's impression was possible carpal tunnel syndrome bilaterally, and no evidence of De Quervain's syndrome. *Id.* He recommended that EMG/nerve conduction studies be performed on Petitioner's bilateral upper extremities, as well as cock-up splints and anti-inflammatory medication. Dr. Paletta also opined that based on his understanding of Petitioner's job description and job requirements, that her data entry and computer activity would be an aggravating factor in her potential carpal tunnel syndrome. *Id.* He also acknowledged that while her age and gender would serve as risk factors for peripheral compression neuropathies such as carpal tunnel syndrome, that she had no other identifiable systemic conditions that would increase her risk for carpal tunnel syndrome. *Id.* Dr. Paletta opined that Petitioner could continue to work full duty. *Id.*

On October 19, 2011, Dr. Paletta reviewed the results of Petitioner's nerve conduction studies, which were performed by Dr. Daniel Phillips, and demonstrated a moderate sensory and motor medial neuropathy at the level of the right carpal tunnel syndrome, with a more severe carpal tunnel noted on the left side. (PX4, Neurological and Electrodiagnostic Institute, 10/12/11; PX5, Dr. Paletta, 10/19/11). He also noted that the nerve conduction study showed no evidence of neuropathy at the level of the cubital tunnel. *Id.*

At that point, Dr. Paletta recommended continued conservative treatment, but that if Petitioner did not experience improvement in the next six to eight weeks, he would recommend carpal tunnel release, with the left side performed first. *Id.*

Petitioner returned to Dr. Paletta on January 9, 2012 with continued complaints of numbness and tingling in her hands, with the left worse than the right. As a result, Dr. Paletta recommended the following: "I had a discussion with the patient regarding treatment options. Option #1 is to continue symptomatic treatment. Option #2 is to consider surgical treatment with carpal tunnel release. The left is much more symptomatic than the right. As such, she wants to consider surgical treatment. I would recommend the left be done first." *Id.*

On January 19, 2012, Petitioner underwent a carpal tunnel release on the left side. Following surgery, Dr. Paletta noted improvement in her left-sided symptoms, but with some continued pain at the base of her left thumb. (PX5, Dr. Paletta, 2/3/12). At that point, Dr. Paletta indicated that he would not recommend right-sided surgery, as she continued to have minimal symptoms. *Id.* He advised her to follow up in six weeks' time. *Id.* Dr. Paletta returned Petitioner to work full duty as of February 3, 2012. *Id.*

Petitioner was last seen by Dr. Paletta on March 16, 2012. At that time, Dr. Paletta noted continued improvement in her left-sided symptoms, and reported that Petitioner had essentially complete relief of her carpal tunnel symptoms on that side. (PX5, Dr. Paletta 3/16/12). It was indicated that Petitioner did have some basal joint symptoms. *Id.* Dr. Paletta recommended that since Petitioner did have some symptoms related to de Quervain's and basal joint arthritis, he recommended use of a Cool Comfort splint as needed, and placed her at maximum medical improvement with regard to her bilateral carpal tunnel syndrome. *Id.* Specifically, Dr. Paletta

indicated that Petitioner's symptoms were relatively mild on the right, and he would recommend holding off on any right-sided surgery at that point. *Id.*

Dr. Paletta also testified by way of deposition on November 6, 2014, and his deposition transcript was admitted into evidence as Petitioner's Exhibit 12. Dr. Paletta testified that he is a board certified orthopedic surgeon with fellowship training in sports medicine whose practice is primarily confined to problems of the upper extremity, shoulder, elbow, hand and the knee. (PX12, p. 4). Dr. Paletta further testified that approximately thirty-five (35) of his practice involves caring for injured workers, and the remaining percentage of his practice involves treating commercially insured patients. (PX12, p. 5-6). A small percentage of Dr. Paletta's practice also involves performing independent medical evaluations for insurance companies, employers, attorneys' offices. *Id.* He indicated that he performs approximately 3-4 IMEs per week, and 50% of those were performed at the request of employers, and 50% at the request of an employee in workers' compensation cases. *Id.* at 6. Dr. Paletta also testified that he has performed IMEs at the request of the Respondent in this case, the State of Illinois. *Id.* at 6-7.

Dr. Paletta testified consistently with his records that Petitioner presented to him with complaints of bilateral hand pain, as well as numbness and tingling, and indicated that he discussed her employment with the State of Illinois with her at her first visit on October 12, 2011. *Id.* at 13-14. Dr. Paletta confirmed that at the time he first saw Petitioner, she provided him with a written job description, which was admitted into evidence at trial as Petitioner's Exhibit 8. *Id.* at 13-14. He reaffirmed his opinion that there was a causal connection between Petitioner's job duties and her bilateral carpal tunnel syndrome, and specifically testified:

> Well, she reported to me, again, this long history of spending 90 percent of her time typing and doing data entry, and I felt that that was over a long enough duration of time and hand-intensive enough that it would be a contributing factor. *Id.* at 17.

Additionally, Dr. Paletta also testified that in his opinion, Petitioner's left basal joint arthritis was aggravated by her work duties. *Id.* at 25.

Dr. Paletta also testified that a concept known as a latency period can be applicable to conditions like carpal tunnel syndrome. He specifically indicated that a latency period is defined as "a period of time that basically expires or occurs from exposure to something and the development of symptoms related to that exposure. So, in medicine, a good example is asbestos exposure. An individual may have exposure to asbestos, but it takes a long time to develop an asbestos-released lung condition, and that period of time from exposure to development of a related condition is considered a latency period. Smoking is another example. It takes a long time for people to develop lung cancer related to their smoking. It doesn't happen immediately at the time of exposure." *Id.* at 20-21. Dr. Paletta testified that a latency period is applicable "in syndromes or conditions that are considered cumulative repetitive trauma conditions, yes." There is a period of time that one has to experience those exposures before they will develop symptoms, so yes, it does as a concept apply." *Id.* at 21.

Dr. Paletta was also asked about Petitioner's use of a manual and electric typewriter, and was asked the following question: "In looking at the job description that Ms. Hoffard provided

you with, it looks like her work may have transitioned out of use of a typewriter. By her accounts, it appears in 2009. Even if she was performing less strenuous or less hand-intensive job duties beginning in 2009, would you have expected her carpal tunnel syndrome to not deelop or not become symptomatic necessarily?"

Dr. Paletta provided the following response:

> Well, it's certainly possible that it would not have been symptomatic at that point and that it became symptomatic after the transition from typewriter to non-typewriter, and as you said, it looks like that occurred in November of 2009, so two years before I saw her." *Id.* at 21-22.

He was then asked, "Any why would it be that, even if somebody was removed from some of the stressors, that they may still develop those conditions?"

Dr. Paletta then replied:

> Well, the nerve is—runs through a space called the carpal tunnel. It's a confined space, and increased pressure on that can affect the nerve and cause the symptoms. But this is something that occurs gradually over time, and there may have been enough damage up to that point that it was—I'll use the word irreversible—in the sense that even a transition from that more demanding work to the less demanding work wasn't going to reverse the process of the development of that condition. Simple as that. *Id.* at 22.

Dr. Paletta was also provided with the forms contained in Respondent's Exhibit 7, and asked if viewing these documents would change his opinion on causal connection in this case. Dr. Paletta testified:

> Well, I'm not exactly sure what these represent in terms of the volume of work that she has to do. These are forms that appear to require some data entry, and she's signed all of those forms, but I'm not sure if this represents an hour of work, a day of work, a week of work. It's unclear what—exactly how much this represents. So it did not result in a change in my opinion at this point. *Id.* at 26-27.

Petitioner testified that she agreed with Dr. Paletta's treatment notes and the job description he testified to during his deposition. (T.17). Petitioner indicated that Dr. Paletta recommended a nerve conduction study, and following the completion of the study, he had advised her those studies demonstrated the presence of carpal tunnel syndrome in both of her upper extremities, but that the findings were worse on her left side. (T.17-18). She indicated that she ultimately underwent surgery on her left side, but that her right hand was never operated on. (T.18-19).

Following her consultation with her primary care physician's office, Petitioner reported her injury to Respondent by completing an employee's first notice of injury form on September 18, 2011. (PX9). Petitioner also confirmed that she provided notice of her injuries on September

18, 2011, to her supervisor, Mr. Campanella. (T.21). When asked why she reported her injuries on September 18, 2011, Petitioner testified: "Because of her suspect [sic] that it was carpal tunnel, and I thought just to be protected I probably should." (T.21).

Petitioner also testified that she attended an independent medical examination with Dr. James Williams at the request of Respondent. She testified that she spoke with Dr. Williams about her job duties with the State of Illinois, and described to him the same job duties that she did to Dr. Paletta. (T.24-25). Petitioner credibly testified that she was honest with Dr. Williams about her job and the frequency with which she performed certain activities. (T.24-25).

Respondent also had Petitioner examined pursuant to Section 12 of the Act by Dr. James Williams, who produced two reports, which were admitted into evidence as Respondent's Exhibits 5 and 6. Dr. Williams initially examined Petitioner on January 18, 2012, at which time he obtained an in-person history from Petitioner with regard to her job duties. The history taken from Petitioner on pages 2-3 of his January 18, 2012 report appears to be identical to Petitioner's Exhibit 8, which Petitioner testified she authored. (RX5, p. 2-3). Dr. Williams also reviewed many other documents describing Petitioner's job duties, as evidenced in his report. (RX5). After review of all of the information provided to him by both Petitioner and Respondent, Dr. Williams opined:

> At this point, my current diagnosis is that Tammie has left thumb CMC joint arthritis as well as left and right carpal tunnel syndrome. From the job histories that Tammie has given me over the course of time it looks like she has done a lot of manual typewriter type work as well as completion of paperwork by hand. I note she is right hand dominant and Tammie states to me that her typing duties are now 90% of her day and other days it is 80% of her day. <u>I do feel, in light of that, that her bilateral carpal tunnel syndrome could have been aggravated by her job duties of typing as it is greater than 6 hours per day as well as would her CMC joint arthritis</u>. (RX5, p. 5-6). [Emphasis added].

Dr. Williams also noted: "I did find the patient to be honest and forthcoming. I did not find her to present any evidence of symptom magnification or malingering. She gave a good effort throughout the examination and all my opinions have been based upon a reasonable degree of medical and surgical certainty. I did review all the records with her and when there were discrepancies, I have noted those in my report." *Id.* at 6.

Subsequently, Respondent provided Dr. Williams with additional materials, and asked for a supplemental report, which was authored on November 1, 2012. In that report, which was admitted into evidence as Respondent's Exhibit 6, Dr. Williams opined, "in light of the information you have provided me, which are the forms filled out at DuQuoin by a Correctional Counselor II at the Du Quoin Impact Incarceration Program, it clearly illustrates the forms that are filled out." (RX6, p. 1). He continued:

> If indeed this is found to be correct that these are the forms which she fills out and indeed these are the signatures of which she has done, of which she is required to do, I obviously change my opinion; that does not appear

> to be very repetitive. It does not appear to be very time intensive and, obviously, it appears as through her typing is done intermittently. The only reason, obviously, I felt typing was an issue was due to the time as well as the fact she stated she used a manual typewriter, which obviously requires more force than does a regular typrwriter. Obviously, if this was the very infrequent typing of which she did though and the very infrequent writing of which she did, I do not feel her work duties would have been either aggravating or contributory to her problem. I feel more so that the CMC joint arthritis of which she had both on the left and right sides, as well as her hypertension, would have more likely been contributory than would her work duties.

Dr. Williams also testified by way of deposition, and his testimony was admitted into evidence as Respondent's Exhibit 14. Dr. Williams testified that he performs approximately 200 independent medical examinations on a yearly basis, and approximately 90% of those exams are at the request of employers in workers' compensation cases. (RX14, p. 35-36). Dr. Williams also estimated that he performs approximately half of his IMEs for the State of Illinois, which would equate to 100 IMEs. *Id.* at 36. Dr. Williams also confirmed that the concept of a latency period can occur in conditions like carpal tunnel syndrome and CMC joint arthritis, and that every individual's physiology is different and conditions may manifest themselves at different points in time. *Id.* at 40. He also testified that he believes Dr. Paletta is a very good physician. *Id.* at 42. Dr. Williams also acknowledged that the job description that Petitioner provided to him was identical to the one she provided to Dr. Paletta, and that in his January 18, 2012 report, he agreed with Dr. Paletta that her job duties for Respondent constituted an aggravating factor in the development of her carpal tunnel syndrome. *Id.* at 44.

With regard to the supplemental materials he was sent in anticipation of his supplemental report, Dr. Williams testified that he could not verify where or from whom these forms were obtained. *Id.* at 45-46. Dr. Williams also confirmed that he did not have any of Dr. Paletta's medical records with regard to Petitioner at the time of his deposition, and the only medical record of Dr. Paletta's that he was provided with were his October 12, 2011 and October 19, 2011 reports. *Id.* at 47-48. He further confirmed that he found Petitioner to be an honest and forthcoming individual when he saw her, and when asked:

Q: So if everything that Ms. Hoffard told you about her job duties is true isn't it correct that your opinion would be consistent with your first report which found that her carpal tunnel and CMC joint arthritis was aggravated by her job duties?

A: If indeed all that stuff is correct, yes.

Q: And just in your opinion, Doctor, who would know Ms. Hoffard's job the best?

A: I would hope Ms. Hoffard. *Id.* at 49-50.

Dr. Williams further acknowledged that Petitioner would be in the best position to describe the various forms he was provided with if in fact she was responsible for preparing them. *Id.* at 50-51.

At the time of trial, Respondent submitted several documents and forms into evidence as Respondent's Exhibit 7. (RX7). On direct examination, when Petitioner was asked to identify these forms, she testified that these "are some of the forms that I would do on a regular basis, depending on the circumstances. It's part of our forms procedure that we have at the boot camp." (T.26-27). When asked if the activity of simply filling out these forms was an accurate representation of what she is required to do throughout the day, she testified, "I don't believe they're inclusive. There are some other forms that I do that I don't believe were included in those." (T.27). Petitioner also testified that in addition to filling out these forms, she is also required to perform computer work and call lines with inmates. (T.27).

Following surgery, Petitioner testified that she has no further complaints with regard to her left hand. (T.28-29). With regard to her right hand, which was never treated surgically, Petitioner testified that her level of symptoms have remained the same, and she still experiences loss of range of motion, and occasional tingling. (T.29).

Respondent also called Clement Campanella, Petitioner's former supervisor, to testify at the time of trial. Mr. Campanella testified that he has known Petitioner for approximately four (4) years, and that they worked together during those years. (T.65). During cross-examination, the following dialogue took place:

Q: And is she [Petitioner] a good employee, in your opinion?

A: Yes, she was or is.

Q: Is she a hard worker?

A: Yes, she is.

Q: Is there anything—you were in the room when she testified in this case, correct?

A: That's correct.

Q: Was there anything that she described that was inaccurate, in your opinion?

A: Nothing came to mind, no.

Q: And I wrote this down, you testified earlier when you were talking about the job of a correctional counselor as Ms. Hoffard explained, would that indicate to you that she got the description of her job right?

A: I believe so. (T.65-66).

Mr. Campanella testified that when he worked as a correctional counselor supervisor at DuQuoin, in approximately 1997, he performed some of the same job duties that Petitioner would perform as a correctional counselor II, but acknowledged that correctional counselors had additional job duties that were previously Mr. Campanella also confirmed that he has never worked in any of the same positions as Petitioner throughout her tenure with the State of Illinois and was unable to testify about the details of those jobs. (T.66-68).

CONCLUSIONS OF LAW

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?

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961. "The word 'accident' is not a technical legal term, and has been held to mean anything that happens without design, or an event which is unforeseen by the person to whom it happens...Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor." *Laclede Steel. Co. v. Industrial Comm.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (1955) citing *Baggot Co. v. Industrial Comm.*, 290 Ill. 530, 125 N.E. 254 (1919). Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is **a** causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205, 797 N.E.2d 665 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037, 723 N.E.2d 846 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). 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). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

In the repetitive trauma case of *Fierke*, the Appellate Court specifically applied the foregoing legal standard of causation specifically to a repetitive trauma case and noted that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Id.* at N.E.2d at 849. The Court specifically stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id.*

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All*

Steel, Inc. v. Indus. Comm'n, 582 N.E.2d 240 (1991) and *Edward Hines supra.* The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988).

In 2009, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, "while [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.*

Additionally, as the *Fierke* Court noted, employment need only be *a* factor in the total condition of ill-being. *Fierke supra.* If a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 37 Ill.2d 123, 227 N.E.2d 65, 67-68 (Ill. 1967); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill.2d 234, 362 N.E.2d 339 (Ill. 1977). The same theory applies to cases in which the employee's pre-existing condition is aggravated by the repetitive nature of the employment. *Cassens Transport Co. Inc. v. Indus. Comm'n*, 262 Ill.App.3d 324, 633 N.E.2d 1344 (2nd Dist.1994).

Furthermore, in support of a finding of causal connection, the Arbitrator notes that the job duties performed by Petitioner, including computer keyboarding and data entry have been held to be compensable by the Commission in the very recent past. *See Lewis Bebout v. State of Illinois/Pinckneyville Correctional Center*, 14 IWCC 0167 (2014); *Toma Osman v. State of Illinois/Tamms Correctional Center*, 11 IWCC 0601 (2011); *Cynthia Jenkins v. State of Illinois/Southern Illinois University, Carbondale*, 14 IWCC 0335 (2014); *Nancy Rambo v. State of Illinois/Department of Transportation,* 12 IWCC 1020 (2012).

In this case, Dr. Paletta and Dr. Williams both opined that Petitioner suffered from bilateral carpal tunnel syndrome, as well as left CMC joint arthritis in her thumb. The Arbitrator finds it significant that both Dr. Paletta and Dr. Williams were provided with an identical job description from Petitioner, which indicated that 80-90% of her day involved keyboarding and typing, which would contribute to and aggravate her conditions. (PX10; RX14). Additionally, both physicians testified that Petitioner's prolonged use of a manual and electric typewriter over the course of many years caused her condition to become aggravated and worsen. The Arbitrator notes that both Dr. Paletta and Dr. Williams testified to the presence of a latency period and its applicability to cases involving peripheral compressive neuropathies such as carpal tunnel syndrome and basal joint arthritis, which explains why Petitioner's symptoms may not have manifested until after she had been exposed to more extreme repetitive forces from using a manual and electric typewriter.

The Arbitrator also finds Petitioner to be a credible witness who testified credibly on her own behalf regarding the details of her job duties, and also notes that her testimony was consistent with the job descriptions she prepared, as well as the testimony of Respondent's witness, Mr. Campanella. The Arbitrator also notes that despite Respondent's contention, the genesis of a referral to a physician is irrelevant, as attorneys are frequently and routinely involved in the referral process. *See Timothy Knop v. State of Illinois/Menard Correctional Center*, 14 IWCC 0303 (2014).

The Arbitrator also gives great weight to the fact that the Respondent's own expert, Dr. Williams, initially opined that Petitioner's cumulative job duties would be an aggravating factor in the development of her condition, and testified that if in fact Petitioner's job description to him was accurate, he would still find her work to be a contributing and aggravating factor in her conditions. The Arbitrator also assigns great weight to the testimony of Mr. Campanella, who testified credibly and without rebuttal that Petitioner was a hard worker, good employee, and that he agreed entirely with her description of her job duties for Respondent.

Issue (D): What was the date of the accident?

The manifestation date can be set as: **(a)** the date the employee actually became aware of the physical condition and its relation to work through medical consultation; **(b)** the date the employee requires medical treatment; **(c)** the date on which the employee can no longer perform work activities; or **(d)** when a reasonable person would have plainly recognized the injury and its relation to work. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2007), *see also Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987); *Oscar Mayer & Co. v. Industrial Commission*, 176 Ill.App.3d 607, 531 N.E.2d 174 (3rd Dist. 1988); *Three "D" Discount Store v. Industrial Commission*, 198 Ill.App.3d 43, 556 N.E.2d 261 (4th Dist. 1989).

As the Appellate Court in *A.C. & S.* noted, the Supreme Court **deliberately** modified the standards for determining the date of injury for repetitive trauma cases in order provide protection for injured workers. *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 840-841 (Ill. App. 1st Dist., 1999). It has even been permissible to change the date of accident during litigation as long as doing so would not prejudice the employer. *See Steven Beal v. Town of Normal,* 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010). "The purpose behind the Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work." *Durand*, 862 N.E.2d at 925.

The law also allows Petitioner to select a manifestation date that coincides with discovery of injury and its relation to work after medical consultation. See *Steven Beal v. Town of Normal,* 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010); *see also White v Worker's Compensation Commission*, 374 Ill.App.3d 907, 873 N.E.2d 388, 392-393 (4th Dist. 2007) (holding Petitioner could select accident date); *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 841-842 (1st Dist. 1999).

In this case, Petitioner alleged a manifestation date of September 13, 2011, when her condition first required treatment, and as this was the date that she plainly recognized the injury

and its relation to work. The Supreme Court in *Durand* noted that it is common practice to set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *Durand* citing *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 487 N.E.2d 356 (1985). Based upon said precedent, Petitioner has selected an appropriate manifestation date under the Act. The Arbitrator finds that Petitioner's injuries manifested on September 13, 2011.

Issue (E): Was timely notice of the accident given to Respondent?

The Act provides that notice may be given orally or in writing, regardless of the administrative procedures of the employer. 820 ILCS 305/6(c). The purpose of the notice requirement of the Act is to enable an employer to investigate an alleged accident, and to protect an employer from unjust or fraudulent claims. *Gano Electrical Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724, 727 (Ill. App. 4th Dist., 2004); *Thrall Car Manufacturing Co. v. Indus. Comm'n*, 64 Ill.2d 459, 356 N.E.2d 516 (1976). A claim is only barred if no notice whatsoever has been given. *Gano supra*. Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that he has been unduly prejudiced. *Gano supra*; *Thrall supra*.

The evidence clearly shows that Petitioner provided notice of her injuries. Petitioner testified without rebuttal that she provided written notice following her September 13, 2011 appointment with her primary care physician's office, and Petitioner's Exhibit 9 confirms that Petitioner provided notice to her supervisor on September 18, 2011, only five (5) days subsequent to this appointment. Respondent's ability to investigate was in no way impacted, and Respondent has not alleged or proved prejudice. The Arbitrator therefore finds that Petitioner met the notice requirements of the Act.

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

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n,* 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001).

Causal connection has been resolved in Petitioner's favor, and Respondent's Section 12 examiner, Dr. Williams, agreed that the treatment rendered to Petitioner was reasonable for her condition.

Respondent is therefore ordered to pay the medical expenses outlined in Petitioner's group exhibit. Respondent shall have credit for the amounts paid through its group carrier but

shall indemnify and hold Petitioner harmless from any claims pertaining to the payment of medical expenses for which it is receiving this credit.

Respondent is liable for 1 3/7 weeks of temporary total disability to Petitioner under 8(b) of the Act as she credibly testified that she was taken off work for a period of time following her left carpal tunnel surgery. This is also reflected and documented in Dr. Paletta's medical records.

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

The Arbitrator notes that Pursuant to §8.1(b) of the Act, the nature and extent of Petitioner's injuries is to be reached by evaluating five 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. The Act provides that "no single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator will use the remaining factors to evaluate Petitioner's permanent partial disability.

(ii) **Occupation**: Petitioner has returned full duty to her prior employment, but testified that she experiences occasional numbness and tingling as well as pain in the right hand.

(iii) **Age**: Petitioner was 49 years old at the time of her injury. She has diminished healing capacity as a result thereof.

(iv) **Earning Capacity**: Petitioner testified to several physical limitations as a result of her injury. While there is no direct evidence of reduced earning capacity contained in the record; based on the amount of typing and use of her upper extremities that Petitioner's job requires of her, it is reasonable to conclude that such repercussions will manifest in the near future. Accordingly, the Arbitrator places great weight on this factor.

(v) **Disability**: As a result of her injuries, Petitioner underwent a left carpal tunnel release, and was never surgically treated on the right side, despite positive Electrodiagnostic studies confirming the presence of carpal tunnel syndrome on the right. Petitioner testified that while she is essentially symptom free on the left following surgery, she still suffers from some residual symptoms on the right side, including occasional pain, numbness and tingling. (T.28-29). She was also diagnosed with CMC basal joint arthritis in her right thumb, which was treated conservatively.

Based upon the foregoing, Petitioner sustained serious and permanent injuries that resulted in the 5% loss of her left hand, and 5% loss of her right hand.

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

WADE, RONNIE Case# **12WC015190**

Employee/Petitioner

TELEFLEX MEDICAL INC

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

1067 ANKIN LAW OFFICE LLC
SCOTT GOLDSTEIN
162 W GRAND AVE SUITE 1810
CHICAGO, IL 60654

0532 HOLECEK & ASSOCIATES
JEFF C GOLDBERG
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

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
19(b)

Ronnie Wade
Employee/Petitioner

v.

Teleflex Medical, Inc.
Employer/Respondent

Case # **12** WC **15190**

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 **Maria S. Bocanegra**, Arbitrator of the Commission, in the city of **Chicago**, on **July 15, 2015**. 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. [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. [x] Other **the parties stipulate that the sole issue at trial is prospective medical care pursuant to Section 8(a)**

FINDINGS

On the date of accident, **2/9/12**, 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 $**69,544.28**; the average weekly wage was $**1,337.39**.

On the date of accident, Petitioner was **39** years of age, ***married*** with **2** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services. The parties stipulate that this issue is reserved for a later time.

Respondent shall be given a credit of $**152,510.80** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**152,510.80**.

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

ORDER

The Arbitrator finds and concludes that Petitioner failed to prove he is entitled to prospective medical care in the form of a third right shoulder surgery. Such prospective medical care is hereby 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

10/8/15
Date

OCT 8 2015

BACKGROUND

Ronnie Wade ("Petitioner") and Teleflex Medical, Inc. ("Respondent") proceeded to arbitration on 7/15/15 on all disputed issues in case number 12 WC 15190 for which Petitioner alleged a 2/9/12 accident arising out of and in the course of his employment with Respondent. At issue were the following: causal connection and prospective medical under Section 8(a). Ax1.

FINDINGS OF FACT

The Petitioner is employed as a BFS machine technician for the Respondent. The Respondent is a company that makes inhaler equipment for asthma patients such as saline solution and water. On 2/9/12, Petitioner was putting out a fire on a machine behind him when he slipped and fell on leaking hydraulic fluid. His right shoulder struck the ground first when he fell. Petitioner treated with Advocate Condell Immediate Care in February 2012 through April 2012.[1] Rx2. He also sought a second opinion with Buffalo Grove Treatment Center in April 2012.[2] Rx2.

The Petitioner's first orthopedic physician was Dr. Hany Elrashidy with Greenleaf Orthopedics. Px1. On 4/10/12, MRI showed distal supraspinatus tendinopathy with small partial tear at the most distal anterior insertion, mild AC joint arthropathy with caudal spurring encroaching upon the myotendinous junction of the supraspinatus muscle. The doctor diagnosed pain in the joint and supraspinatus sprain/strain. Petitioner was given an injection and sent for an arthrogram to evaluate the labrum. Petitioner began physical therapy for the right shoulder/arm on 4/18/12. Petitioner reported only temporary improvement in symptoms. On 4/24/12, MRI arthrogram of the right shoulder showed mild impingement with moderate tendinopathy and a small intrasubstance rotator cuff tear without sign of complete full thickness rotator cuff tear and no sign of labral injury along with intact bicep labral complex.

On 5/14/12, Dr. Elrashidy recommended right shoulder arthroscopy, subacromial decompression, distal clavicle excision, rotator cuff debridement versus repair and possible biceps tenodesis. On 5/21/12, utilization review determined surgery to be medically necessary. Px1. On 6/1/12, Petitioner underwent and Dr. Elrashidy performed a right shoulder arthroscopy with subacromial decompression, distal clavicle co-planing and debridement of fraying around the biceps pulley and bicep anchor. Px1. The glenoid was normal and the cuff and labrum were intact. The subacromial space revealed a large anterolateral bone spur consistent with a hooked acromion. The doctor also noted a low hanging distal clavicle with a fairly large osteophyte about the joint. Rx2. Petitioner testified to only temporary symptomatic relief in the shoulder following his first surgery. In July 2012, Petitioner was reporting to therapists that that he was still having 4 to 7.5 out of 10 pains, locking up, pains in the AC joint area, feeling as if his shoulder was separating from its socket and that he could not reach across his body to the opposite shoulder because of lack of range of motion.

Petitioner went for a second opinion with Dr. Christ Pavlatos. Px2. The doctor administered a cortisone injection and in October 2012, recommended a repeat arthroscopy and distal clavicle excision. Rx2. On 10/1/12, Dr. Elrashidy noted that he felt Petitioner had improved somewhat functionally and objectively with regard to range of motion and strength but warned Petitioner that sometimes scar tissue in and around the subacromial space and around the AC joint make take a full 6 months to resolved and even up to one year. On 11/26/12, Dr. Elrashidy thought Petitioner's history and symptoms seemed somewhat discordant in that he did have AC joint pain directly tender to palpation but negative cross body adduction. In addition, the cortisone injection into the AC joint provided no relief. The doctor also noted that Petitioner's pain seemed to be coming

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[1] Those medical records were not introduced into evidence.
[2] Those medical records were not introduced into evidence.

from his anterior shoulder and that he did have direct bicipital tenderness although initial testing results showed normal biceps. The doctor ordered a repeat arthrogram.

On 12/6/12, Petitioner was evaluated by Dr. Mark Levin at the request of Respondent. Rx2. Dr. Levin took down Petitioner's work injury and treatment history. Exam showed tenderness directly to palpation over the right AC join with prominence over the AC joint. Right shoulder adduction created pain over the AC joint. The doctor conclude that based on Petitioner's history, physical exam and records, he did sustain a work injury to the right shoulder for which he continued to have pain over the right AC joint with shoulder pain. Dr. Levin believed that Petitioner required additional medical intervention by way of right shoulder arthroscopy to full y evaluate the glenohumeral joint and biceps area as well as a distal clavicle excision since most pain was over the AC joint consistent with his injury. He also opined that although any bone spurring would be preexisting, the injury would have directly contributed to making those symptomatic. Finally, he noted that if there were bicep problems during surgery, a bicep tenodesis may be required but would be determined during surgery.

Petitioner continued with therapies while awaiting approval for surgery. On 3/14/13, Petitioner underwent and Dr. Elrashidy performed a second right shoulder arthroscopy and a distal clavicle excision.[3] Rx1. The first post operative physical therapy record is on 6/20/13, where soreness over incision was noted. Px1. Through-out therapies, Petitioner reported pain and some numbness over the incision site; difficulty sleeping on the right side, Petitioner again testified that the second surgery only temporarily helped his symptoms in his right shoulder.

On 6/24/13, Petitioner followed up with Dr. Pavlatos rather than Dr. Elrashidy after surgery. Px2. In July 2013, Petitioner complained to therapists of continued pain and limited sleep due to positioning. He went to the emergency room for chest and back pain. The emergency room told Petitioner that his pain was due to motion in the right arm.[4] Px1. In August 2013, Petitioner reported to therapists 0 to 2-3 out of 10 pains, pain while sleeping, numbness, tingling and a deep burning sensation over the incision site, increased pain with reaching and stiffness in front of the shoulder into the bicep. Dr. Milejczyk recommended no weights in therapy and anti-inflammatories until follow up.[5] Px1. Petitioner continued therapy into September 2013 where he was re-evaluated and was noted to have active range of motion within normal limits with limitation to external rotation to 70 degrees, 5 out of 5 strength, 2 out of 10 constant pains and lifting of approximately 20 pounds.

On 9/16/13, Petitioner underwent a work readiness assessment through Greenleaf Industrial Rehabilitation. Px1. Exam showed active range of motion within normal limits with limitation to external rotation to 70 degrees. Strength was 5 out of 5 in each direction with a lot of shoulder blade substitution and some scapular instability. Pain was 2 out of 10 and reported as constant. It was concluded that Petitioner showed difficulties and performed at medium – light level of function for lifting and carrying as well as pushing and pulling. Limiting factors were noted to be shoulder instability and shoulder weakness. Px1. During work conditioning, Petitioner expressed various ranges of pain and soreness following exercises. Therapists noted that Petitioner required constant verbal instruction on proper form and technique. At the end of September, Petitioner reported to therapists marked increased in pains, along with a sensation of separating, raw pain.

In October, Petitioner was cleared by the NCM to continue work conditioning/hardening. Px1. He continued to complain of night pains, primarily in the petralis, pectoral tendons and bicep tendon. Therapists noted that pain level was increasing to 7 out of 10 with pain traveling down the arms to all fingers. Petitioner reported clicking, pain with lifting a drinking glass, raising the arm up and turning the arm to reach.

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[3] This operative report was not submitted into evidence.
[4] Records from an emergency room were not submitted into evidence.
[5] Records from Dr. Milejczyk were not submitted into evidence.

On 10/28/13, a right shoulder arthrogram showed 1) diffuse supraspinatus and infraspinatus tendinosis without evidence of full thickness or partial thickness rotator cuff tear, 2) contrast within interstitial portion of subscapularis tendon, 3) subacromial / subdeltoid bursitis, 4) post operative changes and 5) non visualization of superior labrum and intra-articular portion of the biceps consistent with labral debridement and biceps tenodesis but if not consistent with clinical history then they were torn. Px1. On 11/18/13, Dr. Saltzman did not recommend any additional surgery and instead recommended an FCE.[6] Rx1:4. On 11/22/13, Petitioner underwent an FCE showing he could occasional lift 60 pounds, frequently 40 pounds and 30 minutes of overhead work with rest. Rx1:4. The next and last medical record is dated 11/26/13 which is a physical therapy record noting pain in the upper shoulder from the front toward the back and 5 out 10 pains. Px1. On 12/2/13, Petitioner was released per his FCE by Dr. Saltzman.[7] Rx1. In March 2014, Dr. Pavlatos recommended the possibility of a third surgery without guarantee of relief of symptoms.[8] Rx1.

On 10/23/14, Petitioner was once again re-evaluated by Dr. Mark Levin at the request of Respondent. Rx1. According to the report, Petitioner switched care to Dr. Pavlatos as Dr. Elrashidy had stopped practicing. Petitioner completed an FCE and apparently light duty was not available.[9] Dr. Pavlatos discussed a third surgery or living with the pain. At the time of the exam, Petitioner reported being able to attend the gym on a daily basis and lift up to 15 pounds and 5 lifts of 25 pounds each on the right side. During exam, the doctor noted subjective complaints of burning and weakness in the right shudder with no night pain. Petitioner also reported numbness and tingling when his arm is at the right side. He rated his pain anywhere from 4 to 8.5 out of 10. Impingement sign was positive on the right. Pain was positive with abduction and external rotation. Petitioner had pain over the bicep tendon. The doctor interpreted the recent arthrogram as showing fluid in the cuff, post operative changes and noted that the superior labrum and bicep tendon was not seen well. The doctor concluded that Petitioner was at maximum medical improvement and that additional surgical intervention would not change his condition. Dr. Levin continued to believe that Petitioner's condition was work related.

Petitioner testified he remains symptomatic in his right shoulder and takes pain medications daily and ices his shoulder daily to treat his pain. He wants to have the surgery recommended by Dr. Pavlatos since 3/3/14 so that he can get back to work. He would pursue the surgery recommended by Dr. Pavlatos right away if it is authorized.

CONCLUSIONS OF LAW

ISSUE (F) ***Is Petitioner's current condition of ill-being causally related to the injury?***
ISSUE (K) ***Is Petitioner entitled to any prospective medical care?***

The Arbitrator has carefully reviewed and considered all medical evidence and Petitioner's unrebutted trial testimony. The Arbitrator concludes that Petitioner's right shoulder condition, namely his rotator cuff pathology and bicep tenodesis, subacromial impingement, all of which have been addressed surgically to be causally related to his work accident. Ax1. Petitioner had no prior history of right shoulder injury or symptoms and under a chain of events theory, as supported by the medical records, including Dr. Levin's opinions, Petitioner's current condition of ill-being is causally related.

The dispute between the parties primarily centers on whether Petitioner is entitled to additional prospective medical care in the form of a third surgery to his right shoulder. After careful consideration of the medical records and of Petitioner's credible testimony, based on a preponderance of the evidence, the Arbitrator

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[6] This date of service from Dr. Saltzman was not submitted into evidence.
[7] This date of service from Dr. Saltzman is not in evidence.
[8] This date of service from Dr. Pavlatos was not submitted into evidence.
[9] The FCE was not submitted into evidence.

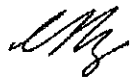
concludes that Petitioner has failed to prove he is entitled to additional medical intervention by way of a third right shoulder surgery under Section 8(a).

In reviewing Petitioner's medical records, the Arbitrator finds that Petitioner underwent two reasonable, necessary and otherwise uncomplicated right shoulder arthroscopies. There is nothing in the record to suggest these surgeries were done incorrectly or that the surgeries otherwise failed to address any pathologies or conditions identified in the medical record. In addition, the Arbitrator finds that Petitioner's post-operative care following the second surgery largely reported minimal complaints of pain, minimal if no use of medications and increased use, strength and functionality of the right shoulder. Petitioner's shoulder pain appeared to increase after implementation of work conditioning/hardening.

However, Petitioner's then treating physician, who was apparently Dr. Saltzman, ordered an arthrogram, which was essentially negative per Dr. Levin. It is not clear from the record what Dr. Saltzman's exact reading of the arthrogram was, as his records were note submitted. The repeat arthrogram did suggest correlation regarding the non visualization of superior labrum and intra-articular portion of the biceps consistent with labral debridement and biceps tenodesis or perhaps they were torn. However, according to Dr. Levin's report, Dr. Saltzman ultimately did not feel surgery was appropriate. This opinion was echoed by Dr. Levin's second report, who did not find anything significant on that same arthrogram and stated Petitioner's condition would not improve following a third surgery.

The Arbitrator also relies on the post-operative therapy notes in support of this conclusion as the last medical note from any treating physician submitted into evidence at trial is dated 6/24/13. Most of Petitioner's therapy notes following the second surgery note decreasing pain, decreasing use of medications and pain over the incision site. Dr. Levin also noted increased pain with daily gym activity. Thus, while some of the therapy notes do mention pain with various increased activity, the Arbitrator finds this, in light of Petitioner's repeat arthrogram and FCE, as evidence going toward Petitioner's permanent disability or impairment but not as evidence in support of further surgery. In so finding, the Arbitrator concludes that Petitioner's condition reached a state of permanency and that he is otherwise at maximum medical improvement as of 10/24/14, the date in which Dr. Levin opined surgery was not necessary and that Petitioner was at maximum medical improvement and could work within his permanent restrictions outlined in his FCE.

In support of Petitioner's request for surgery, Petitioner relies on the medical opinion of Dr. Pavlatos recommending a third surgery. The Arbitrator is unable to adopt this opinion for several reasons. First, this medical note does not appear anywhere in the records submitted at trial and therefore the Arbitrator is unable to determine exactly the type of surgery recommended. This date of service mentioning the possibility of surgery is referenced only in Dr. Levin's second report. Rx1. In Dr. Levin's report, he states that Dr. Pavlatos mentioned the possibility of a third surgery without any guaranteed outcome. Second, as read, the statement only mentions the *possibility* of a surgery, not that surgery was in fact recommended. Further, that Dr. Pavlatos may have indicated that there was no guarantee suggests to the Arbitrator that Dr. Pavlatos was not fully endorsing a third surgery, which if true, would further support the opinions of Drs. Levin and Saltzman. Third and finally, there is no indication that Dr. Pavlatos, in mentioning a third surgery, reviewed the results of the recent repeat arthrogram. Dr. Pavlatos does not appear to base any surgical recommendation on an arthrogram but rather it appears based on Petitioner's ongoing complaints of pain. Without any such evidence, the Arbitrator must adopt and rely on the opinions of Drs. Saltzman and Levin over those of Dr. Pavlatos. Petitioner's request for prospective medical care in the form of a third right shoulder surgery is hereby denied.



_____ **_10/8/15_____**

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

Elizabeth Green,
Petitioner,

vs. NO: 13WC 2306

15IWCC0770

Eaton Corporation,
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, medical, prospective medical, 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 February 24, 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.

Bond for 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: OCT 21 2015
o101515
DLG/jrc
045

David L. Gore

Mario Basurto

Stephen Mathis

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

GREEN, ELIZABETH
Employee/Petitioner

Case# **13WC002306**

EATON CORPORATION
Employer/Respondent

15IWCC0770

On 2/24/2015, 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 0.06% 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:

0252 HARVEY & STUCKEL CHTD
J KEVIN WOLFE
101 S W ADAMS T SUITE 600
PEORIA, IL 61602

0771 FEATHERSTUN GAUMER POSTLEWAIT
DANIEL L GAUMER
225 N WATER ST SUITE 200
DECATUR, IL 62521

15IWCC0770

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
19(b)

Elizabeth Green
Employee/Petitioner
v.

Eaton Corporation
Employer/Respondent

Case # **13** WC **2306**

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 **Bloomington**, on **January 23, 2015**. 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. [ ] 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 alleged accident, **October 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 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 injury, Petitioner earned $**37,564.80**; the average weekly wage was $**722.40**.

On the date of alleged accident, Petitioner was **55** years of age, ***single*** with **0** dependent children.

ORDER

The Petitioner's claim for compensation is denied.

No benefits are awarded herein.

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

February 17, 2015
Date

13 WC 2306
ICArbDec19(b)

FEB 2 4 2015

FACTS:

On October 11, 2012 the Petitioner was employed by the Respondent as a fabrication operator, having been so employed for 19 years. The Petitioner testified in detail as to her job duties for the Respondent which included welding end plates and meter rings onto meter boxes and screwing together meter boxes. The Petitioner testified that the welding and screwing process required her to constantly grasp parts with her left hand and to pull and twist with her left hand to place and hold the parts that were being welded. The Petitioner testified that she would grab the parts with her hands and hold them in place while they were welded together by a welding machine that was activated with a foot pedal. The Petitioner testified that she worked eight or more hours each day and that she would weld approximately 1200 to 1400 pieces per day and screw together 120 to 150 boxes per day.

The Petitioner testified that in October of 2012 she began to notice aching in her left hand and pain in the fingers of her left hand as well as swelling of her left hand in the mornings. The Petitioner testified that she saw the Respondent's plant nurse and reported the swelling in her left hand and she then sought treatment with her primary care physician, Dr. Amir Wahab. The records of Dr. Wahab demonstrate that on October 15, 2012 he saw the Petitioner for complaints of left hand swelling and pain which reportedly began the previous week while the Petitioner was holding and gripping meter rings. Dr. Wahab recomended an EMG and he prescribed medications and work restrictions.

On November 2, 2012 the Petitioner was seen at the Respondent's on-site clinic where it was noted that there was a moderate amount of swelling in the left forearm, wrist and hand, as well as positive Tinel's and Phalen's signs. The assessment was "Left wrist pain – possible carpal tunnel syndrome" and the Petitioner's restrictions and medications were continued pending the EMG.

An EMG/NCV study was completed on the Petitioner's left upper extremity on November 20, 2012 and it was reported to demonstrate moderately severe ledft carpal tunnel syndrome.

The Petitioner was then referred to Dr. Christopher Wottowa whom she saw on September 19, 2013. Dr. Wottowa diagnosed the Petitioner as having left carpal tunnel syndrome and he indicated that she could either live with her symptoms or undergo a carpal tunnel release. Dr. Wottowa opined that, based upon the Petitioner's description of her job activities, and the "forceful" gripping that she did, her work activities "met the threshold for aggravation of carpal tunnel to a certain degree."

Dr. Wottowa's deposition testimony of June 6, 2014 was admitted into the record as Petitioner's Exhibit 1. Dr. Wottowa opined that, based upon the history and description provided to him by the Petitioner, the Petitioner's left carpal tunnel syndrome could have been aggravated by her work activities. Dr. Wottowa indicated that, in forming his opinion, it was his understanding that the Petitioner had to grasp metal parts and "squeeze these hard for periods of time." On cross examination, Dr. Wottowa acknowledged that he had never seen

or observed the actual performance of the Petitioner's job and that he had no specific information about the actual forces involved with performing the Petitioner's job.

The November 5, 2014 deposition testimony of Dr. Jeffrey Brower was admitted into the record as Respondent's Exhibit 1. Dr. Brower testified that he actually observed the performance of the Petitioner's job on approximately 6-8 occasions. Dr. Brower described the process of placing metal parts between the welding leads and then performing the actual welds by pushing a foot pedal that activated the welder. Dr. Brower testified that he observed no forceful gripping and no significant wrist deviation in terms of flexion or extension while the job was being performed. Based upon his observation of the performance of the Petitioner's job, Dr. Brower opined that the Petitioner's work activities for the Respondent did not cause or aggravate her left carpal tunnel symptoms. Dr. Brower opined that the Petitioner's carpal tunnel syndrome was not causally related to her work activities for the Respondent.

Rick Rigg, a supervisor in the Respondent's fabrication department, testified on behalf of the Respondent. Mr. Rigg testified that he has been employed by the Respondent for 37 years and that he is familiar with the job that the Petitioner performed for the Respondent. Mr. Rigg testified that he actually performed the Petitioner's job in the past and he described the process of welding end plates and meter rings in great detail. Mr. Rigg testified that the Petitioner is a good operator and that operators average about 1,000 meter rings per shift. He testified that in performing the job of welding end plates and meter rings the Petitioner would not have to grasp any parts with more force than it would be necessary to keep the part from falling out of her hand. Mr. Rigg testified that all the worker has to do is hold the part in place, balancing it on the bottom electrode of the welder, until the top electrode comes down and welds the pieces together.

The Petitioner testified that she presently continues to perform her regular job for the Respondent but she wears a compression sleeve and she performs no overtime work. The Petitioner testified that her condition has worsened since she last saw Dr. Wottowa and that she currently continues to experience pain in her left wrist as well as numbness and tingling which awakens her at night.

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:

It is axiomatic that the Petitioner bears the burden of proving all the elements of her claim by a preponderance of the credible evidence. In the case of an alleged repetitive trauma injury, the injury and the the casual relation between the job activities and the condition of ill-being must be supported by competent, reliable, and persuasive medical evidence and

opinions. In the instant matter, Dr. Wottowa has opined that based upon the Petitioner's description of her job activities, and the "forceful" gripping that she did, her work activities "met the threshold for aggravation of carpal tunnel to a certain degree." Dr. Brower opined that the Petitioner's work activities for the Respondent did not cause or aggravate her left carpal tunnel symptoms and he opined that the Petitioner's carpal tunnel syndrome was not causally related to her work activities for the Respondent

The Arbitrator notes that Dr. Wottowa and Dr. Brower agreed that in order for repetitive activity to cause or aggravate carpal tunnel syndrome there must be evidence of forceful gripping with the hand held in a position of extreme flexion or extension. Dr. Brower actually observed the performance of the Petitioner's job and he testified that he observed no forceful gripping and no significant wrist deviation in terms of flexion or extension while the job was being performed. Dr. Wottowa admitted that he never observed the Petitioner's actual job activities and that he had no specific information about the actual forces involved with performing the Petitioner's job. Dr. Wottowa acknowledged that he was simply relying on the Petitioner's description of her job activities and her characterization that it required "forceful" gripping.

While the Arbitrator notes the opinions of Dr. Wottowa, the Arbitrator finds the opinions of Dr. Brower to be more reliable and persuasive in the instant matter. In so finding, the Arbitrator finds it significant that Dr. Brower actually observed the performance of the Petitioner's job while Dr. Wottowa merely relied on the Petitioner's description of her job activities and her characterization of the "forceful" gripping that was required.

Based upon the forgoing, and having considered the totality of the evidence presented at hearing, the Arbitrator finds that the Petitioner failed to prove accidental injuries arising out of and in the course of her employment on October 11, 2012 and failed to prove that her current condition of ill-being is causally related to her work activities for the Respondent. The Petitioner's claim for compensation is, therefore, denied. Determination of the remaining disputed issues is moot.

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

SCHMIDT, MICHELENE
Employee/Petitioner

Case# **15WC005244**

14WC024891
15WC005245

SENIOR SILVERADO LIVING
Employer/Respondent

On 9/29/2015, 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 0.10% 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:

1980 LAW OFFICES OF STEVEN J TENZER
20 S CLARK ST
SUITE 700
CHICAGO, IL 60603

0507 RUSIN & MACIOROWSKI LTD
KISA P STHANKIYA
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

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

- [ ] 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)

MICHELENE SCHMIDT
Employee/Petitioner

v.

SENIOR SILVERADO LIVING
Employer/Respondent

Case # **15** WC **5244**

Consolidated cases: **14WC24891,15-5245**

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 **Falcioni**, Arbitrator of the Commission, in the city of **Rockford**, on **August 25, 2015**. 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. [ ] 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. [x] Is Respondent due any credit?

O. [x] Other Injurious practice, prospective medical care

FINDINGS

On the date of accident, **January 30, 2015**, 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 $**21,840**; the average weekly wage was $**420.00**

On the date of accident, Petitioner was **59** 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

Petitioner failed to prove that she sustained an accident which arose out of and in the course of her employment.

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

9/22/15
Date

ICArbDec19(b)

SEP 29 2015

FACTS

Petitioner alleges the same set of facts for this case as stated in the case of 14 WC 24891. The specific injury that Petitioner is alleging for this accident is when she returned to work on January 30, 2015 and while working at the receptionist counter, a resident by the name of Maria approached her and held her hands together in hers pleading to contact her family. The Petitioner did not notify anyone at Respondent of this incident nor mention it to her treating doctor.

ISSUES AND CONCLUSIONS

Petitioner did not meet her burden of proof in establishing that she sustained an injury which arose out of and in the course of her employment as a result of the first incident on January 30, 2015 where she was grabbed by the hands by one of the residents. There is no need to rule on any further issues. Compensation is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HAKE, CASSANDRA Case# **14WC006699**

Employee/Petitioner

SPECIAL EDUCATION ASSOCIATION OF PEORIA COUNTY

Employer/Respondent

On 10/14/2015, 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 0.08% 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:

2208 CAPRON & AVGERINOS PC
DANIEL F CAPRON
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

1945 WHITT LAW
BRIAN WOJCICKI
70 CONSTITUTION DR
AURORA, IL 60506

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

Cassandra Hake
Employee/Petitioner

v.

Special Education Association of Peoria County
Employer/Respondent

Case # **14** WC **06699**

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 **09/22/15**. 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. [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 **02/14/14**, 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 $**wages from concurrent employers and**; the average weekly wage was $**869.28**.

On the date of accident, Petitioner was **34** 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.

Petitioner is entitled to temporary total disability benefits: **from 02/15/14 through 08/06/14**, representing **24-5/7** weeks.

Respondent shall be given a credit of $**11,866.84** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**0.00** for other benefits, for a total credit of $**11,866.84**.

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

ORDER

Appropriate charges remain unpaid for reasonable and necessary medical services on and after August 6, 2014 (Petitioner's Exhibit, "Px," 2c). Respondent shall pay reasonable and necessary medical services regarding treatment on or after August 6, 2014 (Px 2c), as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall hold petitioner harmless from any claims by any providers of the services regarding the $**6,073.03** in provided benefits (Respondent Exhibit, "Rx," 5).

Respondent shall pay Petitioner permanent partial disability benefits of $**521.57**/week for 41.75 weeks, because the injuries sustained caused the 25% loss of the **the right foot**, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **02/14/14** through **09/22/14**, 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

10/13/2015
Date

OCT 14 2015

Findings of Fact:

On February 14, 2014, Petitioner was walking into work for Respondent as a physical therapy assistant when she slipped on ice in the parking lot and fractured her right ankle. On that day, Petitioner presented to the Methodist Medical Center Emergency Department and underwent an x-ray of her right foot and ankle that revealed trimalleolar fractures of the right ankle. (Petitioner's Exhibit, "Px," 1).

On February 18, 2014, Petitioner presented to Dr. Nirain Dsouza at Midwest Orthopedic Center and was diagnosed with a trimalleolar ankle fracture with posterior subluxation. Petitioner was restricted from work. (Px 2a).

Petitioner underwent surgery on February 21, 2014 at Methodist Medical Center by Dr. Nirain Dsouza. The procedures performed were an open reduction internal fixation and ligament repair. The post-operative diagnosis was posterior pilon fracture, fibular fracture, syndesmosis diastasis, and lateral ligament avulsion. The listed orthopedic implants included a "Zimmer posterolateral plate and Arthrex suture anchor and a Zimmer cannulated 3.5 screw." Regarding placement of the plate, there were three screws proximally and two screws distally that were used. (Px 1 & 2a).

On April 10, 2014, Petitioner presented to Dr. Nirain Dsouza at Midwest Orthopedic Center, who noted that an ankle x-ray showed good healing of the fractures and no loosening of the surgical hardware. Dr. Dsouza recommended physical therapy and two more months of off work restrictions. (Px 2b)

On June 12, 2014, Petitioner presented to Dr. Nirain Dsouza at Midwest Orthopedic Center, who noted that an ankle x-ray showed that her fibula and posterior malleolar fracture healed but "some slight loosening of the syndesmotic screw," which was recommended for removal. (Px 2b).

On June 23, 2014, Petitioner underwent a second surgery by Dr. Nirain Dsouza for removal of a single 3.5 cortical screw and manipulation under anesthesia. (Px 2b).

On July 9, 2014, Petitioner presented to Dr. Nirain Dsouza at Midwest Orthopedic Center, who restricted Petitioner off work for one month and recommended continued physical therapy. Petitioner also transitioned to regular shoes at that time. (Px 2b).

On August 7, 2014, Petitioner presented to Dr. Nirain Dsouza at Midwest Orthopedic Center, who released Petitioner to work with no restrictions at maximum medical improvement (MMI) and recommendations for yearly follow up examinations. (Px 2b & 2c).

Petitioner continued physical therapy 1-2 times per week at Midwest Orthopedics Center through September 2014, and on September 25, 2014, Dr. Nirain Dsouza recommended that Petitioner "[c]ontinue current plan" regarding rehabilitation. (Px 2c).

On September 29, 2014, Petitioner presented to Dennis Dillard, C.Ped., CTO at Comprehensive Prosthetics and Orthotics upon referral from Dr. Nirain Dsouza. Dennis Dillard fit Petitioner for a custom right foot orthosis at that time. (Px 2c).

Petitioner continued physical therapy approximately once per week at Midwest Orthopedics Center through October 22, 2014, and on October 31, 2014, Dr. Nirain Dsouza certified approval of the custom right foot orthosis. (Px 2c).

On December 1, 2014, Petitioner presented to a physical therapist at Midwest Orthopedics Center after obtaining the custom right foot orthotic and reported that "with the orthosis, she is able to ambulate much better" and that "overall…her right ankle continues to improve." Petitioner also reported that "[s]he is still unable to run at this time," which affects her work "if she has a child that runs from her and needs to be apprehended." Petitioner was recommended to continue performing home exercises and wearing her orthosis "until she has normalized strength of her posterior tibia muscle." (Px 2c).

On December 15, 2014, Petitioner underwent an independent medical examination (IME) with Dr. Lawrence Li, who concluded that no further treatment is necessary and that Petitioner reached MMI on August 7, 2014. Dr. Li also recommended that Petitioner continue full duty work. Dr. Li provided an impairment rating of 10% loss of the right lower extremity pursuant to the sixth edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" (Respondent's Exhibit, "Rx," 6).

On August 6, 2015, Petitioner returned to Dr. Nirain Dsouza at Midwest Orthopedic Center for an annual follow up examination. Dr. Dsouza noted that "[h]er pain is much better, although she does get pretty extreme swings, particularly with weather changes and cooler weather." Petitioner also reported "some sensitivity over some prominent screw holes distally and is considering having that taken out, but right now…she would like to hold off until next summer." Dr. Dsouza otherwise noted no loosening of any surgical hardware with the x-ray taken that day also showing healed fractures. (Px 2c).

At trial, Petitioner testified that she returned to full duty work following her August 7, 2014 release from Dr. Nirain Dsouza with complaints of some pain after a long work day on her feet. Petitioner's job duties involve standing for long periods of time. Petitioner also testified to experiencing occasional stiffness and increased sensitivity around the surgical hardware, especially with colder temperatures or changes in the weather. Petitioner further testified that she no longer runs, which was an activity she did outside of work prior to her injury. Petitioner's right ankle was observed by the Arbitrator, which showed a vertical scar along the outside of her right ankle that was several inches long and two slight protrusions that appeared to be the location of two screws. Petitioner was able to rotate and bend the ankle during the observation.

Regarding Issue "J," whether Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

Petitioner's medical treatment on or after August 7, 2014 was reasonable and necessary as supported by the treatment records and signed affirmations by her treating physician Dr. Nirain Dsouza. (Px 2c).

Therefore, Respondent shall pay for reasonable and necessary medical services regarding treatment on or after August 7, 2014 (Px 2c), as provided in Sections 8(a) and 8.2 of the Act.

Petitioner testified that she did not have group health insurance through her employment with Respondent for purposes of Section 8(j) credits; however, $6,073.03 in benefits were provided by Blue Cross Blue Shield (Rx 5) for reasonable and necessary medical treatment.

Therefore, Respondent shall hold petitioner harmless from any claims by any providers of services regarding the $6,073.03 in provided benefits (Rx 5).

Regarding Issue "L," what is the nature and extent of the injury, the Arbitrator finds the following:

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 most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment"; (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. (820 ILCS 305/8.1b)

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)

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains an impairment rating of 10% of the right lower extremity as determined by Dr. Lawrence Li, pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. (Rx 6). The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. The Arbitrator therefore gives some 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 physical therapy assistant at the time of the accident and that she is able to return to work in her prior capacity as a result of said injury. Because of Petitioner's job duties, the Arbitrator gives some weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 34 years old at the time of the accident. Because of the length of time Petitioner will live with her permanent disabilities, the Arbitrator gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner returned to full duty work for Respondent with no loss in earning capacity. The Arbitrator therefore gives no 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 Petitioner's testimony of residual symptoms being consistent with the treating records. The Arbitrator therefore gives some weight to this factor.

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 25% loss of use of the right foot pursuant to §8(e)(11) 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

Marie Baumgartner,
Petitioner,
vs. NO: 12WC 20878

Hy-Vee Food Stores,
Respondent,

15IWCC0771

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, occupational disease, temporary total disability, causal connection, 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 March 24, 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.

Bond for 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: OCT 21 2015
o101515
DLG/jrc
045

David L. Gore

Mario Basurto

Stephen J. Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BAUMGARTNER, MARIE
Employee/Petitioner

Case# **12WC020878**

15IWCC0771

HY-VEE FOOD STORES
Employer/Respondent

On 3/24/2015, 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 0.10% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
JASON CARROLL
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0358 QUINN JOHNSTON HENDERSON ETAL
CHRISTOPHER CRAFORD
227 N E JEFFERSON ST
PEORIA, IL 61602

15IWCC0771

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

- [ ] 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

MARIE BAUMGARTNER,
Employee/Petitioner

v.

HY-VEE FOOD STORES,
Employer/Respondent

Case # **12** WC **20878**

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 **Quincy**, on **3/4/15**. 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 **5/5/12**, 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 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 $**18,164.12**; the average weekly wage was $**349.31**.

On the date of accident, Petitioner was **62** 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

The petitioner has failed to prove by a preponderance of the credible evidence that she sustained an acute reaction to the inhalation of floral spray paint that arose out of and in the course of her employment by respondent on 5/5/12. The 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

3/19/15
Date

ICArbDec p. 2

MAR 24 2015

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 62 year old floral shop assistant, alleges she sustained an accidental injury that arose out of and in the course of her employment by respondent on 5/5/12. Petitioner worked in the floral shop in respondent's Broadway shop as a floral shop assistant from 2000-2005, and then moved to the Harrison store, where she worked on the date of the alleged accident. Prior to working for respondent petitioner took floral enrichment classes at John Wood Community College.

Petitioner's duties in the floral department include taking orders, processing incoming flowers, and making arrangements. This included chopping the bottoms off the stems, arranging the flowers, and using floral spray paint and green glow on the flowers when necessary. She testified that she made sprays for caskets, easel flowers for funerals, and helped with weddings, proms and homecomings. Petitioner testified that she would use the floral spray paint outside, in the cooler, or at the counter. She stated that the first time she used the floral spray paint she got a headache but did not realize it was from the spray paint. She further testified that if she spray painted corsages while sitting at the tall table in the cooler she would experience respiratory problems. She stated that she would keep a trash can nearby in case she got nauseous. When she took a break she felt better. However, when she would come back she would feel bad again and she would have heart palpations.

On 5/5/12, the alleged date of injury, petitioner testified that she used the floral spray paint that day, and two days before, prepping for a wedding. She testified that when she used the floral spray paint she could not breath and panicked, and ran to her car to get her inhaler. When she got outside she felt better. Petitioner testified that she then reentered the cooler and told the floral manager, Lorie, that it smelled worse.

A week later, on 5/12/12 petitioner presented to Dr. Ernest Wallace. She gave a history of an onset of chest congestion on 5/8/12 when she was exposed to spray pain at work 5/5/12. She reported trouble with this in the past, but this time her inhaler did not work She complained of shortness of breath and using an inhaler. She also complained of weakness, and that her chest felt tight. Petitioner had been on an inhaler well before this date. She was given one when she was diagnosed with sleep apnea in 2008. Petitioner was examined. Her oxygen levels were okay, she had no wheezing in her lungs, she was moving air well, her heart sounds were regular, and she had no murmurs, rubs or gallops. Dr. Wallace could not rule out PE or an angina type issue. She was referred to Blessing Hospital emergency room. She reported chest tightness after inhaling fumes at work. Her chest discomfort was found to be of an unknown origin. She was discharged on 5/13/12.

On 5/18/12 petitioner was seen by Certified Nurse Practitioner (CNP), Stumpf complaining of a cough and shortness of breath. Petitioner reported that she believed the source of her problems was spray paint at work. She stated that respondent has been using the same spray paint for 11 years, and about 2 1/2 years ago she began

having difficulty with tightness in her chest and wheezes whenever the spray paint was used. She stated that she was given an inhaler to use and her problem was stable until the past weekend. Petitioner denied any symptoms outside of spray paint exposure. She denied any symptoms at home, outdoors, in the car, or in the grocery store. She was examined and assessed with a cough and shortness of breath. The labs and x-rays from the hospitalization were reviewed and they could not explain why she was able to tolerate the paint exposure for 9 years and now has sensitivity. They believed there may be an anxiety component. She was given a note for a mask at work when spray paint was being used. Petitioner testified that the store manager, Steve Labs, told her she could not use the mask in the flower shop.

On 5/21/12 she told CNP that she had shortness of breath with exertion, and uses a CPAP at home. Petitioner reported a lot of stress at home, that included a fire in her home, the fact that her son is waiting for a kidney transplant, her daughter's marriage, and some work issues. It was noted that petitioner has stage II colon carcinoma.

On 5/22/12 Lorie, respondent's floral manager, drafted a letter to petitioner. She wrote "Marie, you took these masks off of shelf, If you are going to use them you need to pay for them. Otherwise please put them back on shelf."

On 6/8/12 petitioner returned to CNP Stumpf. She was assessed with cough, anxiety and vitamin D deficiency. She was again told to work further away from the floral department and possible noxious fumes. On 6/25/12 she saw Dr. Flanagan. She reported episodes of dyspnea that she attributed to exposure to spray paint that is used on the flowers at work. She stated that her symptoms were primarily inspiratory, and involve the sensation of having trouble taking a deep breath in, and a cough. She stated that at work they moved her to cash registers at the other end of the store from the florist section, but she still senses the paint in the air. She also felt that she had been more prone to sinus infections and bronchitis and believed she had bronchitis at that time and was frustrated no one had given her antibiotic. She was assessed with dyspnea. Her symptoms were thought to be related to vocal cord dysfunction, but asthma could not be ruled out. She was told that post nasal drip, acid reflux, and anxiety or stress can contribute to the symptoms. She was told to reconsider using vitamin B12 for her anxiety and depression and to follow up with her mental health professional. She was also diagnosed with rhinosinusitis symptoms.

On 7/23/12 petitioner returned to Dr. Flanagan. She was most concerned about her hoarseness. Dr. Flanagan recommended an evaluation by otolaryngology. He was of the opinion that the possibility of pesticides rather than paint and dyes may be causing her symptoms. He told petitioner that pesticides can cause hoarseness. He believed this was a more plausible cause for some of her symptoms than the paint and dyes.

On 8/1/12 petitioner followed-up with Dr. Flanagan. At this visit petitioner gave a history that after her exposure to spray paint on or about 5/5/12 she noticed her voice had changed after her "reaction". Petitioner complained that she still feels irritated by the sprays at work and does not feel like her voice has recovered completely. Dr. Flanagan was of the opinion that petitioner's voice had a fairly normal sound to it. His impression was chronic irritation in the larnyx, mild laryngitis, possibly related to some recent fumes and intermittent gastroesophageal reflux. He also noted some aging changes in the larnyx. He was also of the opinion that no specific ear, nose, or throat treatment was required.

On 8/7/12 petitioner presented to Dr. Arndt, and reported that at work that evening she pulled a plastic sack and a piece of the plastic sack from the where the handle is punched out, became airborne and she aspirated it into her throat. She complained of a foreign body sensation, which is persistent in its location in the hypopharynx. She denied any airway difficulty. She was referred to the emergency room at Blessing Hospital. Petitioner's respiration was clear and non-labored. She denied any shortness of breath or trouble breathing. She said she could feel tickling in her throat. Dr. Smith examined petitioner and told her that there was no piece of plastic in her throat.

On 9/12/12 Labs moved petitioner from the floral shop to the express lanes. She stated that she was feeling better at this time. Petitioner testified that she was moved from the floral shop to the express lanes because Labs would not let her wear a mask.

On 9/12/12 petitioner presented to Dr. Ruth. She stated that she felt better, her voice was stronger, and she did not have any nasal or throat complaints. She stated that she had been moved from the area of fumes at work and this helped. Mild bowing of the vocal cords was noted. She was released from care and instructed to return as needed.

On 6/14/13 petitioner presented to Dr. Moore with complaints of nasal congestion, head congestion, postnasal drip and drainage, and coughing with a little bit of wheezing, and thick green secretions with a cough. On 6/27/13 she presented to Dr. Evans and reported that she could not take a deep breath, and felt like there was something in her chest. This was determined to be anxiety.

On 9/11/13 petitioner was examined by Dr. Jeffrey Coe, at the request of petitioner's attorney, Jason Carroll. In addition to his examination Dr. Coe reviewed a number of petitioner's medical records. However, what records Dr. Coe actually reviewed is unknown since he did not identify them in his report. Petitioner reported that after the alleged injury on 5/5/12 she continued to experience episodes of chest heaviness and shortness of breath, particularly with exposure to any type of inhaled irritant. She reported that she was

maintained on bronchodialating medication to be used on an as needed basis with occasional oxygen supplementation. She stated that she developed "panic attacks" in association with her chest symptoms. Petitioner reported that she continues to experience episodic shortness of breath in association with some generalized fatigue and weakness. She stated that her lungs are "sensitive" to strong smells (perfumes, cleaning agents, smoke or dust). She stated that she continues to experience occasional "panic attacks" when she becomes short of breath.

An examination revealed that petitioner was not in respiratory distress, her chest was clear to ausculation, and her cardiovacular examination was within normal limits without abnormal heart rate or rhythm. Dr. Coe was of the opinion that petitioner suffered an exposure to inhaled respiratory irritants (spray paint - a mixture of solvent, paint pigment and propellants) through uncontrolled exposures in her workplace at Hy-Vee Stores. He was of the opinion of the respiratory irritant exposure caused significant acute respiratory symptoms including irritation of eyes, nose and throat and airway irritation with shortness of breath and chest heaviness. He was further of the opinion that petitioner's symptoms generally improved with removal from exposure. Dr. Coe was of the opinion that petitioner's symptoms became worse over time, ultimately requiring emergency room evaluation, admission and diagnostic testing in May of 2012. He was of the opinion that the Blessing Hospital evaluation found no evidence of significant cardiovascular abnormalities leading to a diagnosis of bronchspasm due to occupational exposure to spray. Dr. Coe was of the opinion that away from spray paint or other inhaled irritant exposure, he found petitioner's chest to be clear, as would be anticipated in an individual with irritant-induced bronchospasm. Dr. Coe opined that there is a causal relationship between the repeated inhalation exposure suffered by petitioner at respondent's place of business of 5/5/12, and her current respiratory symptoms of hypersensitivity and bronchospasm. He further opined that petitioner's irritant exposures at work, with consistent respiratory tract reactions (shortness of breath, wheezing, coughing) require work restrictions with limitation of exposure to respiratory irritants such as spray paint.

On 10/1/13 petitioner presented to Dr. Djuric, a psychiatrist. She complained of panic attacks starting in May. She described them as shortness of breath, nausea, weakness, and low energy. She reported that she had previously been treated in psychiatry and had a good response. She reported some stressors at work, and the fact that her son needs a renal transplant for the third time. Dr. Djuric noted that she had a history of depression and anxiety and was hospitalized many times, with the most recent being in March of 2010. Dr. Djuric's impression was generalized anxiety disorder; major depressive disorder, recurrent, in remission; borderline personality disorder; diabetes, history of colon cancer, sleep apnea, and hypertension; and job, and a son needing a renal transplant. Petitioner continued with psychiatric follow-up as recently as 9/11/14.

On 4/30/14 petitioner underwent a Section 12 examination performed by Dr. Myron Jacobs, at the request of the respondent. Petitioner gave a history of spray painting flowers 2-3 days a week, and more frequently on specialty days. She reported that after 2005 or 2006 the frequency increased when she was moved to respondent's new location. She reported that she would become short of breath when painting, especially in the cooler, which was a small and enclosed space. She stated that she was seen by a pulmonary physician, Dr. Nassery, who had diagnosed her with sleep apnea and prescribed a CPAP, which she has used since then. Petitioner was also given an inhaler in 2008 by Dr. Nassery's nurse practitioner. Petitioner reported that after moving away from spray painting, she was becoming significantly better. However, she stated that she was short of breath walking less than one block or climbing one flight of stairs. She reported that she hears noise intermittently in her chest. Petitioner reported that she sleeps with a nasal CPAP for 8 hours a night. She reported that she quit spray painting in 2012 and has not had any more acute episodes. She reported that when she was exposed to spray paint she had acute symptoms that included shortness of breath, cough, headache, substernal chest tightness, a sensation of racing of the heart and sometimes experienced nausea.

Following an examination and other pulmonary and treadmill tests, Dr. Jacobs was of the opinion that petitioner was significantly deconditioned. He noted that there was no abnormal pulmonary or cardiac response to excercises. He noted that the spirometry showed no development of asthma. He noted that petitioner stopped the treadmill test because she was short of breath without cardiac limitation to exercise. Dr. Jacobs was of the opinion that petitioner was exposed to the smell of spray paint at work and that she developed irritant symptoms in response to that. He was also of the opinion that she developed irritant symptoms in response to that. His impression was that petitioner has no permanent impairment or disability as a result of her exposure. Dr. Jacobs was of the opinion that the majority of her respiratory symptoms are now related to her body habitus (121 pounds, 5'3") and deconditioning. He also noted that she has sleep apnea related to her body habitus which is unrelated to any spray paint. Dr. Jacobs opined that petitioner can return to full duty work, but not spray flowers with paint or use strong chemicals. Dr. Jacobs opined that petitioner has transient worsening of her respiratory status because of irritant particles and/or obnoxious smell from the spray paint. He opined that there is no permanent damage.

On 7/14/14 petitioner began working part-time.

On 8/20/14 the evidence deposition of Dr. Myron Jacobs, with a specialty in pulmonary medicine, was taken on behalf of respondent. Dr. Jacobs testified that his work with occupational medicine is exclusively limited to inhalation injuries. Dr. Jacobs testified that people with sleep apnea can experience symptoms that included breathlessness, a sensation of mucous and drippage into the throat, a little cough, a little phlegm,

shortness of breath, and lack of energy. He was of the opinion that obese people work harder to accomplish the same task as others who are not obese, and frequently these people will get breathless. Dr. Jacobs described petitioner as being obese. Dr. Jacobs opined that petitioner's main heart pump was not working normally due to her longstanding obesity and hypertension, and this can contribute to a sensation of breathlessness, and substernal chest discomfort and a feeling of not feeling right in the chest. Dr. Jacobs noted that petitioner showed no development of asthma. Dr. Jacobs testified that the work restriction of trying to avoid spray painting was based only on the petitioner's history that it bothered her. He testified that there was nothing objectively that supported this restriction. Dr. Jacobs was of the opinion that if petitioner would lose about 25 pounds she would breathe easier.

On cross examination, Dr. Jacobs testified that petitioner's symptoms when using the spray paint became worse over time ultimately requiring her emergency room evaluation in May 2012. He also agreed that the Blessing Hospital visit showed no evidence of significant cardiovascular abnormalities. Dr. Jacobs was of the opinion that in the absence of a reduction in the FEV1, and in an absence of wheezing, the use of the term bronchospasm would be a mischaracterization. Dr. Jacobs was of the opinion that each exposure to spray paint in each instance was a transient exposure.

On 8/21/14 petitioner gave her two weeks notice to respondent. Officially, petitioner's last day of work was 9/8/14, but petitioner stopped working on 8/21/14 when she gave respondent her resignation letter.

In 2008 petitioner was diagnosed with sleep apnea and got a CPAP machine. On 5/29/09 petitioner presented to Dr. Arndt with complaints of chest congestion and left inguinal hernia. On 10/19/09 petitioner presented to Dr. Wallace with chest pain. She was sent to the emergency room. On 10/22/09 petitioner presented to Dr. Evans following an emergency room visit. Dr. Evans noted that petitioner had a major component of pleurisy. On 1/29/10 petitioner was examined by Dr. Wallace. She was diagnosed with acute bronchitis and acute sinusitis.

On 2/1/10 petitioner reported to Dr. Biggs that she was concerned about recurring symptoms if she is over-worked with preparation for the upcoming Valentine's holiday. She noted that she was working 5 hours a day, 6 days a week, with restrictions on lifting over 15 pounds, pushing over 25 pounds or working in one position longer than 60 minutes. She reported that recently she had been dealing with URI for which she was seen and treated with Abx and an inhaler after being told of concerns for walking pneumonia and her diabetes.

Prior to the alleged accident date petitioner had been seen by Dr. Moore on 1/10/12 for chest discomfort that radiated into her back and bilateral shoulders since the day prior. She also complained of weakness in her

legs, some shortness of breath, and an irregular heartbeat that comes and goes. She was assessed with chest pain and sent to the emergency room. There she reported that she was chronically short of breath. She was admitted to rule out myocardial infarction. No evidence of this condition was found.

On 1/19/12 she returned to Dr. Moore. She reported that her house caught fire the night before and she twisted her ankle and right side. Petitioner testified that she stayed in her house after the fire was put out. She had no complaints related to any smoke inhalation. Her lungs were clear.

On 1/26/12 petitioner presented to Dr. Deriam. He noted a history of chest pain and premature ventricular contractions, as well as diabetes, sleep apnea, hypertension, hyperlipidemia, and anxiety. She also reported a lot of muscle and joint problems. She was assessed with diabetes mellitus type II, hyperlipidemia, hypertension, mitral valve regurgitation, sleep apnea, and ventricular premature beats. Dr. Derian met petitioner when she was in the hospital with chest pain and a chronic history of PVCs.

Currently, petitioner testified that she has no headaches or nausea. She testified that she has panic attacks when she sprays PAM or cologne, when she gets the Hy-Vee, and when she goes into big buildings. Petitioner is not alleging that her panic attacks are related to her alleged injury on 5/5/12. Petitioner testified that on 3/4/15, the date of this trial, she experienced 5 panic attacks. Petitioner is still treating for her panic attacks, but is not still treating for her headaches and nausea.

Petitioner testified that although she believed the spray paint was the cause of her respiratory problems, she did not show the ingredient label of the spray paint to anyone.

Steve, Labs, store manager of respondent's Harrison store in Quincy, was called as a witness on behalf of respondent. Labs testified that petitioner was a good employee but had a history of a lot of absences. Labs testified that the spraying of flowers can be done in front of customers, outside, or in the cooler. He stated that the ceiling in the store is 50 feet high, and there is ventilation in the cooler. He testified that there is no policy in place in place on where spray painting of flowers takes place. Labs testified that spray paint for flowers is not the same as regular spray paint.

Labs testified that following the alleged injury petitioner was offered a mask, and she refused to use it. He denied that he told her she could not wear a mask. Labs admitted that he told petitioner to purchase a mask herself on the day she returned, but when she did not purchase one, he put one in the floral department for her to wear. Labs never saw petitioner wear a mask. Labs agreed that he moved petitioner from the floral department to the express lane, which was about 50 feet from the floral department, after her alleged injury. Labs testified

that he never received any complaints from customers regarding the floral department, including the coloring of flowers with spray paint.

Labs testified that in addition to her complaints regarding spray paint in the floral department she also complained of the smell coming from the smoker grill bbq that was outside the store in July of 2012.

Labs testified that while petitioner was working at the Harrison store she filed 10 requests for leave of absence.

Lorie Minor, respondent's floral shop manager, testified on behalf of respondent. Minor worked with respondent in the floral department for 8-9 years. She testified that during this period they always spray painted flowers. Minor testified that petitioner was a good employee, but was absent a lot for different reasons.

Minor testified that on 5/5/12 she was spraying flowers at 7:15 am. When petitioner arrived at 8:00 am she told Minor that she could smell spray paint. Minor testified that her practice is to spray flowers outside when it is warm, and in the cooler when it is cold outside. She testified that they do not spray flowers in front of the customers. She testified that petitioner sprayed flowers outside around the time of the injury.

Minor testified that there is ventilation in the cooler. She stated that there are blowers in the cooler that are always operational. Minor never saw petitioner wear a mask while working in the floral department. She testified that she never told petitioner she could not wear a mask. Minor testified that the express lane where petitioner worked was 50 feet from the floral department. Minor testified that petitioner never complained of any cleaning products. Minor never saw petitioner vomit at work.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner alleges that on 5/5/12 she sustained an acute reaction to the inhalation of floral spray paint used in the respondent's floral department. Petitioner alleges this incident arose out of and in the course of her employment by respondent.

Petitioner testified that on 5/5/12, and two days prior, she used the floral spray paint prepping for a wedding. She testified that when she used the floral spray paint she could not breath and panicked, and ran to her car to get her inhaler. When she got outside she felt better. Minor testified that on 5/5/12 she was spraying flowers at 7:15 am, and when petitioner arrived at 8:00 am she told Minor that she could smell spray paint.

Petitioner did not seek any treatment for this alleged accident until one week later. When she presented for treatment on 5/12/12 she reported that she experienced chest congestion on 5/8/12 after she was exposed to spray paint at work on 5/5/12. She reported that her inhaler did not work. On examination petitioner's levels

were okay, and no wheezing was noted in her lungs. Petitioner was moving air well, her heart sounds were regular, and she had no murmurs, rubs or gallops. Petitioner was sent to Blessing Hospital at that time. She reported chest tightness after inhaling fumes at work. However, her chest discomfort was found to be of an unknown origin. The doctors could not explain why she was able to tolerate the paint exposure for 9 years and now had sensitivity. They believed there may be an anxiety component and she should consider treatment.

On 5/18/12 petitioner again presented for treatment to CNP Stumpf. She complained of a cough and shortness of breath. She reported that the source of her problem was spray paint at work. She stated that she had been using the spray paint for 11 years, and about 2.5 years ago began having difficulty with tightness in her chest and wheezing whenever the spray paint was used. She stated that her problem was stable until past weekend, which would have been May 12th and 13th of 2012, and not 5/5/12, as petitioner claimed.

Petitioner reported on 5/21/12 that she has had a CPAP machine at home that she has used 8 hours a day since 2008. She also reported a lot of stress at home, that included a fire in her home in January of 2012, the fact that her son was waiting for a kidney transplant, her daughter's marriage, and some work issues.

When petitioner presented to Dr. Flanagan he was of the opinion that the possibility of pesticide rather than paint and dyes could be causing her symptoms, and cause her hoarseness. He also told her that post nasal drip, acid reflux, and anxiety and stress can contribute to the symptoms. Dr. Flanagan noted aging changes in the larynx.

On 6/14/13 when petitioner presented to Dr. Moore and stated that she could not take a breath and felt that something was in her chest. Dr. Moore told her she was told that she was suffering from anxiety.

Petitioner's attorney, Jason Carroll, had petitioner examined by Dr. Coe. Dr. Coe did not identify what medical records of petitioner's he reviewed. Based on his report, it does not appear that Dr. Coe was aware that petitioner had been using a CPAP machine since 2008, and had a long history of anxiety. As a result, the arbitrator finds Dr. Coe's opinion, that petitioner suffered an exposure to inhaled respiratory irritants (spray paint - a mixture of solvent, paint pigment and propellants) through uncontrolled exposures in her workplace, and this caused significant acute respiratory symptoms including irritation of eyes, nose and throat and airway irritation with shortness of breath and chest heaviness, is not supported by the credible evidence since petitioner did not seek any treatment until one week after the alleged accident. Additionally, the credible medical records support a finding that petitioner had no evidence of any respiratory problems at that time. The arbitrator also finds petitioner's history that she inhaled spray paint through uncontrolled exposures in her workplace on 5/5/12 less than persuasive since Minor testified that flowers were only sprayed outside, or in the cooler which had a

ventilation system. The arbitrator also questions whether petitioner even spray painted any flowers on 5/5/12 given Minor's testimony that petitioner came in an hour after she had sprayed flowers outside and told her she smelled spray pain. The arbitrator finds it very significant that Dr. Coe was unaware that petitioner had sleep apnea and used a CPAP machine every night since 2008, and Dr. Jacobs was of the opinion that people with sleep apnea can experience symptoms that include breathlessness, a sensation of mucous and drippage into the throat, a little phlegm, shortness of breath and lack of energy. All of which petitioner had experienced.

Petitioner testified that after she quit spray painting in 2012 she has not had any more acute episodes. The arbitrator finds this claim is also not supported by the credible medical evidence. On 6/14/13 petitioner presented with complaints that included post nasal drip, drainage, coughing, and a little bit of wheezing. On 6/27/13 she could not take a deep breath, and felt like there was something in her chest. This was determined to be anxiety related.

On 10/1/13 she presented to Dr. Djuric, a psychiatrist, and complained of panic attacks associated with shortness of breath, nausea, weakness and low energy. She also reported that she had been treated by a psychiatrist in the past with good results. Petitioner is not claiming her panic attacks are related to her work injury. Petitioner was diagnosed with a generalized anxiety disorder, major depressive disorder, borderline personality disorder, diabetes, history of colon cancer, sleep apnea and hypertension.

The credible medical records show that when petitioner was diagnosed in 2008 with sleep apnea by Dr. Nassery and was given a CPAP machine, she was also prescribed an inhaler for this condition. There is no credible evidence that petitioner was given an inhaler in response to her complaints regarding the inhalation of spray paint fumes.

Despite petitioner's claim that she would become short of breath whenever she spray painted the flowers while working for respondent, at no time before 5/12/12 did petitioner ever seek any treatment for these alleged symptoms. The arbitrator also finds it significant that petitioner never provided any healthcare provider with a label regarding what ingredients were in the floral spray paint.

In addition to petitioner's sleep apnea, Dr. Jacobs attributed petitioner's pulmonary problems to her significant deconditioning. He noted that petitioner had no abnormal pulmonary or cardiac response to exercise, and that her spirometry showed no development of asthma. He was of the opinion that she stopped the treadmill test because she was short of breath without cardiac limitation to exercise. Dr. Jacobs was also of the opinion that the majority of petitioner's respiratory symptoms were related to her body habitus and deconditioning. Dr. Jacobs was of the opinion that petitioner's main heart pump was not working normally due to her longstanding

obesity and hypertension, and this can contribute to a sensation of breathlessness, substernal chest discomfort, and a feeling of not feeling right in the chest. He noted that his opinions that petitioner should avoid exposure to spray paint was based solely on her history that it bothered her, and that there was nothing objectively that supported the restrictions he recommended. Dr. Jacobs found it significant that when petitioner was admitted to Blessing Hospital on 5/12/12 there was no evidence of any significant cardiovascular abnormalities, reduction in the FEV1, and an absence of wheezing. Therefore a diagnosis of bronchspasm would be a mischaracterization.

Petitioner's credible medical records support a finding that petitioner had been diagnosed with anxiety prior to the alleged injury on 5/5/12. One example to support this is the medical records of Dr. Deriam on 1/26/12. Dr. Deriam noted that petitioner had a history of prior chest pain, premature ventricular contractions, diabetes, sleep apnea, hypertension, hyperlipidemia and anxiety.

The arbitrator finds it significant that following this alleged acute reaction to the inhalation of floral spray paint the petitioner did not seek any treatment until one week following the incident, and when she did present she gave a history of an onset of chest congestion on 5/8/12, three days after she was allegedly exposed to spray paint at work on 5/5/12. Although petitioner complained of shortness of breath, weakness and tightness in her chest when she presented for treatment on 5/12/12, these complaints were not supported by any findings on examination. Her oxygen levels were okay, she had no wheezing in her lungs, she was moving air well, her heart sounds were regular, and she had no murmurs, rubs or gallops. The arbitrator also finds it significant that prior to this date petitioner had a significant medical history including sleep apnea, premature ventricular contractions and anxiety that had been known to cause petitioner chest discomfort, wheezing, and irregular heartbeats, and other symptoms similar to those she was alleging she experienced on 5/5/12.

Given the fact that petitioner did not present for treatment on 5/5/12, the date of the alleged acute reaction to the inhalation of floral spray paint, or over the next 6 days; that no accident reports completed by petitioner for an alleged injury on 5/5/12 were offered into evidence; that differing histories exist with respect to whether or not petitioner even used floral spray paint on 5/5/12; that when petitioner presented for treatment on 5/12/12 she reported that she did not experience chest congestion until 5/8/12, after she was exposed to spray paint at work on 5/5/12; that her subjective symptoms on 5/12/12 were not corroborated by the objective examination performed on 5/12/12; that the symptoms petitioner presented with on 5/12/12 were similar to those petitioner had presented with in the past, and were found to be causally related to her preexisting sleep apnea and anxiety conditions; and that no healthcare provider even knew what ingredients were in the floral spray paint petitioner alleges caused her symptoms, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an acute reaction to the inhalation of floral spray paint that arose out of and

in the course of her employment by respondent on 5/5/12. The arbitrator finds petitioner's claim speculative at best.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE 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?
K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?
L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that she sustained an acute reaction to the inhalation of floral spray paint that arose out of and in the course of her employment by respondent on 5/5/12, the arbitrator finds these remaining issues moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

EWING, MICHELLE Case# **08WC054162**

Employee/Petitioner

ROADLINK

Employer/Respondent

On 9/29/2015, 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 0.10% 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:

0000 EWING, MICHELLE
9326 S CORNELL AVE
CHICAGO, IL 60617

1872 SPIEGEL & CAHILL PC
PHILLIP JOHNSON
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

MICHELLE EWING
Employee/Petitioner

v.

ROADLINK
Employer/Respondent

Case # **08** WC **54162**

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **9/25/14; 5/15/15; and 6/26/15**. 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 **7/9/08**, 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 $**52,640.41**; the average weekly wage was $**1,122.00**.

On the date of accident, Petitioner was **39** years of age, ***single*** with **1** child 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 $**18,969.94** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $0.00 for other benefits, for a total credit of $18,969.94.

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

ORDER

The Petitioner has not proven, by a preponderance of the evidence that her current condition of ill-being is causally related to the accident which arose out of and in the course of her employment by Respondent therefore, no benefits are awarded, pursuant to 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.

FINDINGS OF FACTS

The petitioner represented herself in this matter and the disputed issues are: 1) accident; 2) causal connection; 3) medical bills and 4) the nature and extent of her injuries. *See,* AX1.

Petitioner's Testimony

Ms. Ewing, (the "petitioner") testified at trial, that she was employed by Roadlink (the "respondent") on February 9, 2008. While so employed, she worked in an office setting, as a human resources ("HR") professional. The petitioner testified and alleges that, while so employed, she was exposed to mold from a leaking pipe and as a result of the exposure to mold, she developed certain breathing and respiratory difficulties, including but not limited to a chronic cough, shortness of breath, allergic rhinitis hoarseness, vocal cord dysfunction and asthma. She also alleges that as a result of the mold exposure, she developed a pancreatic tumor, heart problems and lung scarring. The petitioner testified that she was off work and was paid weekly compensation benefits from October 27, 2008 through April 7, 2009, when her employment was terminated.

At hearing, the petitioner testified that she was experiencing difficulty breathing; and was required to use a nebulizer twice a day. Also, petitioner testified that she continues to take Symbicort twice a day and carries a rescue inhaler, in cases of emergency. She has a burning sensation in her chest and testified that she has difficulty walking extended periods of time; and that winter weather and summer heat make it more difficult for her to breathe.

The petitioner testified that at the time she was separated from employment in April 2009, she spent the following year seeking employment. Petitioner worked through Office Team, which is a staffing agency. Petitioner further testified that she looked for work in and out of the Chicago metropolitan area and in most suburbs. Petitioner testified that she had excellent HR and clerical skills and had an administrative assistant's background. After seeking a position through the agency, the petitioner was able to find employment as an HR assistant and the job duties were similar to but not identical to the work done for the respondent.

Petitioner testified that in the early part of 2011, she would work in different functions at different sites. She would get long-term jobs which would run between six months to a year and one particular position lasted approximately two years. Petitioner performed her usual and customary work between 2011 until 2012. While working in this assignment, she was required to commute by public transportation. Petitioner testified that her hours would vary to approximately 7 1/2 hours per day. During the time she was working between 2010 and 2012, she alleged she was having breathing problems and therefore, would limit any other activities. Petitioner further testified that she lives in her home with her son and pet dog; and that her air system in her home is cleaned on a regular basis.

Petitioner testified that, while being seen for breathing difficulty at the University of Illinois Hospital from September 2009 through 2014; she also presented for other unrelated issues. Prior to going to the University of Illinois, she treated with various physicians whenever she experienced breathing difficulties, including emergency room physicians. She utilizes inhalers, on occasion and that since she left the respondent's employ in 2009, to the best of her knowledge she is no longer exposed to mold however, she still has shortness of breath and also experiences triggering mechanisms from dust in the environment.

Petitioner testified that the only medical management she is currently receiving is the use of inhalers, prescribed by Drs. Dudek and Dr. Turner. Petitioner testified that she is a full-time employee and that the medical bills she incurred, subsequent to leaving the respondent's employment, were submitted to Blue Cross Blue Shield.

Medical Treatment

The petitioner has placed into evidence a plethora of medical records, of which only some are relevant. On January 30, 2008, Petitioner presented to Dr. Arnold Turner, complaining of right frontal headaches, speech changes and vocal weaknesses, a cough and sore throat. Upon evaluation, petitioner presented with benign hypertension and headaches, with an acute respiratory infection of unspecified nature.

Exhibit 9 is the medical records from Trinity Advocate Medical Center. The petitioner was admitted to Trinity Hospital emergency room on July 9, 2008, for constant and reproducible chest pain, non-radiating, with shortness of breath. It was indicated that Petitioner had no known allergies. Due to the emergency nature of the visit, the petitioner was given a complete evaluation and examination of respiratory functions. The indications were "breath sounds normal, no respiratory distress, and some tenderness present anteriorly in the left chest moderate in intensity with palpation of the chest producing symptoms." Advocate Trinity Hospital completed an EKG with interpretations. Radiological evaluations were completed and interpreted on July 10, 2008 as: chest x-ray was negative, no infiltrates, no pneumothorax, no hemothorax, no masses, and no cardiomyopathy. Petitioner's final diagnosis was that of chest pain, non-specific and she was discharged.

The petitioner returned to Dr. Turner on July 20, 2008, with the chief complaint being hypertension. Petitioner gave a history of having been seen at Trinity Hospital emergency room for chest pains and elevated blood pressure. An examination was conducted by the Dr. Turner on July 28, 2008. Petitioner was to return in two months. She was diagnosed with essential hypertension with blood pressure having improved, esophageal reflux and with TCE's disease.

Petitioner returned to Dr. Turner on August 8, 2008, the visit was made secondary to an emergency room visit. Petitioner was indicating that the emergency room visit was secondary to chest pain due to costochondritis. PX7.

On or about August 18, 2008, the records of Dr. Turner indicate that a telephone call was received from the petitioner telling him that she had mold in her office. On August 20, 2008, petitioner called the doctor indicating that she had a cough and sore throat. Dr. Turner's records indicate that on August 21, 2008, he received a report of x-ray from Mercy Hospital indicating that Petitioner's heart was normal in size and shape; the lung fields were clear and pulmonary vascularity was normal. Further, on August 21, 2008, Dr. Turner's records indicate that the petitioner was complaining of a cough, which she alleged had developed when she returned to work; and that she subsequently had chest pains with hoarseness. Petitioner's diagnosis as of August 21, 2008 remained hypertension benign; and acute bronchitis, with an assessment of a possible allergy.

On August 21, 2008, Petitioner returned to Mercy Hospital, at the request of Dr. Turner. The chest x-rays were complete and the clinical indication was a "potential exposure to mold according to the petitioner" in her history. The chest examination indicated that the cart was in normal size, the lung fields were clear, the pulmonary vascularity was normal; no abnormalities were seen and the study was reported as normal.

On August 26, 2008, Dr. Turner's records indicate that the petitioner called, requesting a statement for work. The memo in Dr. Turner's records indicates "pt needs a doctor statement for work she has been off starting today August 26, 2008 and states that you told her that you were not releasing her to work until she got better and therefore she needs a note stating that she will be off work until she is better than that she is under your care. The patient does not want to see Dr. Gruber anymore he is trying to say that her condition is psychological she mentioned she wants to see an infectious control doctor". PX7.

Dr. Turner's records further indicate that he received a report from Chicago Otolaryngology Associates, dated August 26, 2008. The otolaryngologist report indicated "voice quality fluctuates throughout the visit; normal larynx no nodules no tumors." The diagnosis was a conversion reaction and a second opinion was recommended.

On August 29, 2008, Petitioner returned to Dr. Turner who, at the request of the petitioner, prepared a statement indicating that she was being treated for laryngitis and that she had hoarseness, which limited her speech. She was further being evaluated for a possible hypersensitivity reaction to an environmental allergen; and she was to seek a follow-up appointment on September 4, 2008.

Dr. Beard's physical examination showed the petitioner in no acute distress, that her airway examination was remarkable for nasal congestion and erythema of the posterior larynx. The petitioner was experiencing frequent throat clearing. Examinations were conducted of the chest, lung, skin, abdominal area and all extremities; along with a neurological evaluation. All were unremarkable. Dr. Beard reviewed the chest x-ray completed on October 26, 2008 and found the results to be normal.

On October 31, 2008, Dr. Turner prepared a letter indicating that the petitioner was under his care for allergic rhinitis with a reactive airway disease which "may have resulted from exposure to mold at work." She was released to work half days but her symptoms returned along with some wheezing and possible change in a chest x-ray. She was sent to Dr. Glenn Beard, a pulmonary medicine specialist at Mercy Hospital; and Dr. Beard suggested that she work half-day schedules, effective November 17, 2008. Petitioner returned to Dr. Turner on November 6, 2008, continuing to complain of shortness of breath; additional diagnostic studies were recommended.

The petitioner has placed into evidence Exhibit 8, which contains the medical records and reports from Dr. Glenn Beard, one of the petitioner's treating physicians. Dr. Beard's records also contain certain records from Advocate Trinity Hospital. Dr. Beard's records indicate that diagnostic studies of the petitioner's lungs were completed on October 26, 2008. The petitioner had been examined on that day complaining of chest pain and shortness of breath. On August 29, 2008, Dr. Beard's records contain a statement from a Dr. Alan F. Turner indicating that the petitioner, Ms. Ewing, was under his care for severe laryngitis and dysphonia. As of August 29, 2008, petitioner was experiencing hoarseness and Dr. Turner indicated that "the petitioner was also being evaluated for a possible hypersensitivity reaction to an environmental allergen." Dr. Turner's notes state that the petitioner was to be seen again September 4, 2008.

Petitioner returned to Dr. Turner on September 9, 2008, September 24, 2008 and October 8, 2008. On October 21, 2008, Dr. Turner's records indicate that the petitioner called stating that she had returned to work on October 13, 2008; and her symptoms had returned therefore, she was asking for a referral to a new physician.

On October 26, 2008, Petitioner was readmitted to Trinity Hospital, again complaining of non-radiating chest pain, worse on palpation. The emergency records indicate that Petitioner was under the care of an ENT for vocal hoarseness for several months. Due to the emergency nature of the admission, Petitioner was again given a complete examination, which included respiratory and cardiovascular evaluations. Examination of the petitioner indicated that she had complaints of pain in her chest and a nonproductive cough. After completion of the examination, the petitioner's final diagnosis was bronchitis or possible pneumonia; or a reactive airway disease. Additionally, petitioner was diagnosed as having chest pain and a cough. The discharge diagnosis on October 26, 2008 was that of acute bronchitis, nonspecific chest pain, chest wall pain with a cough; and petitioner was advised to see her family physician for follow-up.

On October 31, 2008, the petitioner returned to Mercy Hospital for a further respiratory evaluation known as a spirometry, which was read as normal. The examination indicated that gas transfer had decreased, reflecting a loss of pulmonary capillary surface areas, which is seen in emphysema, interstitial lung disease, pulmonary vascular disease including pulmonary emboli and pulmonary

hypertension. The interpretation suggested that if asthma was clinically suspected, additional tests would be needed. PX10.

On November 7, 2008, Dr. Turner received a letter from Dr. Beard which indicates that Petitioner had a cough, hoarseness, dyspnea and vocal cord dysfunction. Dr. Beard recommended to Dr. Turner that the petitioner should have pulmonary function tests and speech therapy. Dr. Turner's records indicate that on November 11, 2008, a copy of the CT angiogram of the chest with and without contrast was received by his office.

On November 7, 2008 Dr. Beard's records indicate "in summary, Ms. Ewing has a cough, hoarseness in dyspnea (nonpersistent) she is felt to have a vocal cord dysfunction by ENT examination." Dr. Beard recommended pulmonary function studies and suggested potential speech therapy. In a second letter to Dr. Turner, he stated that the petitioner had returned for management of cough, hoarseness and chest pains. The petitioner reported that the cough had improved but her hoarseness was only slightly better. She was also complaining of dyspnea after walking approximately a half a block and she had had indications of wheezing, over the previous weekend. Dr. suggested that the petitioner have a spiral CT angiogram; pulmonary function studies revealed normal spirometry. He further indicated the petitioner had evidence of nasal polyps.

On November 8, 2008, the petitioner completed the CT angiogram of the chest, which was negative for PE within the central or segmental branches; and showed no radiographic evidence of interstitial lung disease. There was a mild cardiomegaly and borderline evidence of possible pulmonary hypertension, which needed clinical correlation. On November 19, 2008, Dr. Beard interpreted the spirometry tests and opined that they suggested mild, obstructive airway disease. Dr. Beard goes on to state "this represents an equal vocal response to methacholi, it could represent some degree of a bronchial hypersensitive hyper activity but clinical correlation was advised."

The petitioner returned to Mercy Hospital on November 11, 2008 and an examination was conducted regarding complaints of shortness of breath. The petitioner completed a CT angiogram of the chest with and without contrast. The results of the test indicated that there was no evidence of interceptal wall thickening, no honeycombing or interstitial fibrosis. The chest was examined and demonstrated no filling defects within the central or segmental branches of the pulmonary artery, to suggest a presence of pulmonary artery disease. The CT angiogram was negative for PE, within the central or segmental branches of the pulmonary artery, there was no radiographic evidence of anti-interstitial lung disease, there was a mild cardiomegaly and there were borderline evidence of pulmonary artery disease, which indicated a possible pulmonary hypertension, which needed to be clinically correlated.

On December 4, 2008, the petitioner returned to Dr. Turner, who noted that the cough had decreased significantly, and her voice is better. Dr. Turner further noted the petitioner denied any wheezing but has an occasional nocturnal cough. Respiratory evaluation demonstrated that the lungs were clear.

Cardiovascular examination was normal and petitioner's assessment indicated that her hypertension with blood pressure had improved. Petitioner was diagnosed with an acute laryngitis and allergic rhinitis, which the cause was unspecified. Petitioner was further diagnosed with a chronic cough and abdominal pain in the right upper quadrant, with a suspicion of gallstones.

On December 15, 2008, the petitioner presented at Mercy Hospital at the request of Drs. Beard and Turner, for the purpose of a cardiac Echo Doppler study. The provisional diagnosis was hypertension, a cough, and pulmonary hypertension. The cardiac Echo Doppler test was completed and reported normal.
On December 26, 2008, the petitioner again presented to Dr. Beard, complaining of cough and hoarseness. Dr. Beard notes that the petitioner was diagnosed with "vocal cord dysfunction." In summary, Dr. Beard stated that the petitioner had a cough with bronchial hyperactivity and vocal cord dysfunction: she was directed to a speech therapist.

On January 12, 2009, the petitioner returned to Mercy Hospital for a vocal cord evaluation secondary to vocal cord dysfunction. The examination of the petitioner, secondary to the admission for vocal cord dysfunction, also included a respiratory evaluation wherein the lungs were reported clear and the examination of the HEENT indicated no nasal congestion or arrhythmia. Petitioner was advised to continue with her vocal hygiene strategies; she was to continue monitoring any vocal cord abuses, she was advised to avoid environmental irritants; and she was discharged from further care regarding her speech therapy and vocal cord dysfunctions. PX8.

On January 30, 2009, the petitioner returned to Dr. Beard for bronchial hyperactivity and vocal cord dysfunction. Dr. Beard indicates that the petitioner's hoarseness was relative to the vocal cord dysfunction and that, since she took speech therapy classes, the voice had returned to normal and that the cough had decreased. Dr. Beard suggested the petitioner's cough had much improved, her medication for the cough had been reduced, and if further problems developed, she was to return to the doctor in approximately four weeks.

On March 6, 2009, the petitioner returned to Dr. Beard for management of a bronchial hyperactivity, cough, and vocal cord dysfunction. The petitioner was reporting occasional coughing at night and that her problems with her voice had resolved and she stated that she had shortness of breath on exertion. Dr. Beard opined that the petitioner had no acute distress. The HEENT examination was remarkable only for nasal congestion, the lymph nodes were normal, skin examination was normal, cardiovascular system, respiratory system, abdominal, and musculoskeletal examinations along with neuropsychiatric examinations were reported as normal.

On March 30, 2009, Dr. Turner authored a report indicating that the petitioner had been seen on March 18, 2009 for a follow-up evaluation and she was found to be much improved. Her voice was normal was physical examination was remarkable for normal breath sounds without wheezing, during

the course of the examination. Dr. Turner also noted that petitioner did not cough during examination with a final diagnosis; he determined that the petitioner was able to return to work in a full duty capacity, effective April 8, 2009.

On April 29, 2009, Petitioner returned to Dr. Turner, indicating that she had been released from her job and that she had experienced wheezing in the morning and nocturnal coughing. Examination was conducted, respiratory system was described as clear and normal; there was no wheezing with forced expiration. Her cardiovascular examination was normal, lymphatic system was normal, final diagnosis was essential hypertension benign extrinsic asthma, unspecified.

Dr. Turner's records further contain a report of May 9, 2009 for Dr. Beard. Dr. Beard's opinion was that Ms. Ewing had bronchial hyperactivity with a history of exposure to mold and dust. Since being removed from the setting, the symptoms had improved with medication. It was recommended that the petitioner maintain her current medication. "For the allergic rhinitis she should continue with over-the-counter Claritin." The vocal cord dysfunction had improved and it was recommended that petitioner should follow-up with Dr. Beard in approximately two months.

On May 9, 2009, the petitioner returned to Dr. Beard, complaining of shortness of breath after walking approximately five blocks. Patient also recorded that she had experienced some cardiovascular difficulties. She completed a stress electrocardiogram on May 6, 2009. Examination by Dr. Beard on May 9, 2009 was unremarkable. Dr. Beard suggested the petitioner had bronchial hyperactivity, he stated that the petitioner had given him and a history of being exposed to mold and dust, in that after being removed from the environment, those symptoms had improved. Dr. Beard states "possibly the mold triggered and irritated of response without any antibody productions." Dr. Beard further states that the vocal cord dysfunction had improved and suggested the petitioner should return in approximately eight weeks.

On May 9, 2009, the petitioner returned to the emergency room of Mercy Hospital and was admitted complaining of chest pain. Petitioner was evaluated for potential myocardial ischemia and to evaluate and assess cardiac rhythm and arrhythmia and to assess cardiac rhythm in response to exercise. An examination of the cardio system indicated that the echocardiographic studies were normal and petitioner was discharged for the alleged cardiac issues and returned to her treating physician.

On June 3, 2009, petitioner returned to Dr. Beard, who evaluated her complaints of coughing, which had resumed approximately three weeks previously. She also complained of wheezing. Petitioner indicated she had nocturnal coughs with hoarseness. Petitioner's assessment by Dr. Turner was essentially unchanged. i.e., essential hypertension, benign extrinsic asthma, unspecified voice disturbance mildly exacerbated, with shortness of breath. Dr. Turner noted the stress test, which was conducted, was normal and cardiac ideology was therefore, ruled out.

On July 13, 2009, the petitioner again presented to Mercy Hospital indicating that she was having difficulty breathing. Petitioner was evaluated for all systems due to the emergency nature of the visit. Petitioner was again provided with written and oral instructions regarding conditions of bronchitis and asthma.

On July 22, 2009, the petitioner returned to Dr. Turner complaining of shortness of breath and coughing, which was producing white sputum. Petitioner indicated that she was using her medication. An examination was conducted which findings were essentially unchanged. Petitioner was diagnosed again with essential hypertension, benign extrinsic asthma, unspecified.

On August 5, 2009, Petitioner returned to Dr. Turner for an evaluation of hypertension and asthma. Petitioner stated that she had an increase in coughing, which was worse during the day but at night she had wheezing. An examination was completed with a diagnosis of essential hypertension, benign extrinsic asthma, unspecified; and a cough which was secondary to airway inflammation, for which petitioner received a prescription for medication.

The medical records from the University of Illinois Medical Center indicate that the petitioner's first visit to the facility was on September 9, 2009. Petitioner was complaining of a cough, with occasional wheezing and that the cough developed when she had gone into "some buildings." Evaluations were completed: the lungs were described as clear, there was no wheezing, or forced expiration. Cardiovascular examination was normal and the diagnosis was asthma.

On October 21, 2009, the petitioner returned with the same complaints and the diagnosis was possible reactive airway disease. PX11.

On November 2, 2009 petitioner returned to the clinic stating that "she was exposed to some mold at work which she feels caused her to feel some along pain and pressure." Petitioner was complaining of shortness of breath and chest tightness. The doctor's impression upon discharge, was that the petitioner was exhibiting moderate to severe asthma.

On November 10, 2009, the petitioner returned to Mercy Hospital with what was described as asthma, which was being controlled with medication. On page 2 of 10 of the admission of November 10, 2009, following an allergy sensitivity evaluation, it is noted as follows: "her mold IGES and IGS were all negative her HSP panel was negative with the exception of pigeon droppings which tend to be a false positive in a city population skin testing done with good controls were all negative -2 Al Turner a LTE."
On December 23, 2009, the petitioner returned to Mercy Hospital for additional radiological studies. Petitioner was admitted for right upper quadrant rib pain, which the petitioner thought was due to coughing and had recently been aggravated by certain allergies. X-ray evaluations were conducted;

the rib films were described as normal. There was no evidence of any rib fractures or deformity, but there was evidence of a surgical clip in the right upper quadrant of the lung.

On January 25 of 2010, the petitioner again returned to Trinity Hospital, stating that she was having difficulty breathing with a burning sensation in the left side of the chest. Petitioner alleged that her condition was caused by a mold exposure at work, approximately one year previous. Examination of the petitioner indicated that her respiratory rate was normal, she was comfortable and she was alert, all vital signs were reviewed and found to be normal. Respiratory evaluation was completed the chest was described as non-tender, breath sounds were normal, there was no respiratory distress, and the patient was described as "moving air well." Cardiovascular examinations were reported as normal; the discharge diagnosis was that the petitioner was suffering from an acute asthma exacerbation.

On February 2, 2010, the petitioner was admitted to Mercy Hospital for additional studies. On page 2 of 8 in the admission of February 2, 2010, again is indicated that the mold studies for sensitivity were normal, the HSP panel was negative with the exception of pigeon droppings which was considered previously to be a false positive.

Petitioner returned on February 3, 2010, with complaints of a cough. Petitioner indicated that she had seen an allergist who started her on prednisone and that she had gone to Trinity Hospital for emergency visit, due to shortness of breath.

On March 1, 2010, Petitioner returned complaining of a recurrent cough. Examination was conducted and medications were evaluated. Petitioner's health status was checked and allergic reactions were indicated as no known allergy. Petitioner's medications were continued and she returned on March 15, 2010 complaining of a cough of "sudden onset."

On April 16, 2010, Petitioner was diagnosed as having a cough, asthma, unspecified; benign essential hypertension; nonspecific abnormal findings on radiological examinations. Petitioner then returned to the clinic on June 16, 2010 and on July 19, 2010. On July 19, 2010, petitioner's history was that of a 41-year-old woman with history of cough and asthma, with a previous follow-up at a pulmonary clinic by Dr. Hong. Petitioner reports that since March 2010 the cough was much better. Her exercise tolerance had improved; she was able to walk approximately eight blocks before developing shortness of breath. Petitioner indicated that her symptoms became somewhat increased over the past few weeks, when the weather became hot and humid. Petitioner indicated that she had one nocturnal event of coughing in the past month and petitioner indicated that overall she felt well at the present time. Petitioner was given a thorough evaluation on July 19, 2010. The final impression was that of a chronic cough, asthma, and chronic rhinitis or sinusitis.

When Petitioner returned on October 25, 2010, she reported she had been doing well but had had certain symptoms after running out of her medication. Petitioner complained of burning in her chest

and a nonproductive cough. She indicated that she experienced shortness of breath after walking approximately one-half block. Provisional and final diagnosis was asthma. Petitioner returned on October 28, 2010, with essentially the same complaints and findings.

On November 23, 2010, Petitioner returned to the clinic, complaining of low back pain, radiating into the left lower extremity; and indicating she had been rear-ended in a motor vehicle accident. An examination was conducted and her lungs were described as clear, breath sounds were described as equal. Petitioner was described as having some tenderness in the lumbar spine and a cough. She indicated she saw an allergist who was performing tests to determine if she in fact, had asthma.

On January 31, 2011, petitioner returned with complaints of "coughing asthma." Petitioner indicated that she had an intermittent cough, shortness of breath and burning in her chest because of the cold weather. Petitioner indicated that her voice was occasionally hoarse and the symptoms were controlled with medications. Upon examination, the petitioner was described as in no apparent distress. HEENT examinations demonstrated no sinus tenderness or nasal congestion. The cardiovascular examination was normal, pulmonary examination showed no wheezing and no forced expiration. She was again diagnosis as having chronic cough, asthma; and a chronic rhinitis or sinusitis.

On February 17, 2011, petitioner called the clinic to report to Dr. Dudek that she was having breathing difficulties. On February 18, 2011, the petitioner returned complaining of coughing, tightness in her chest and wheezing and shortness of breath for seven days. Examination was essentially normal, except for Petitioner's subjective complaints; the diagnosis remained the same. Petitioner returned on March 14, 2011 with the history of a cough and asthma would be finally seen on January 31, 2011. On the March 14, 2011, Dr. Dudek states "of note she reportedly was not wheezing on examination at the time of the visit." Medications for the asthma were maintained as the laboratory studies for the office visit of March 14, 2011 confirmed that the petitioner tested positive for asthma. Petitioner was to continue her medication; and a secondary diagnosis was chronic rhinitis and sinusitis for which she was given an over-the-counter medication.

Dr. Dudek went on to perform a complete evaluation of the petitioner as he had done previously. The diagnosis was asthma, chronic cough, and chronic rhinitis and sinusitis. Under social history, Dr. Dudek said that the petitioner alleges that she was exposed to mold in 2008, while working and believes that all the problems began after the exposure. Examination was conducted and the pulmonary valuation showed no wheezing, clear lungs, and there was no coughing noted during the entire visit. Dr. Dudek performed a record review of the pulmonary valuation, which also suggested that the petitioner suffered from some sort of allergic rhinitis cough and hoarseness, bronchial hyperactivity; and vocal cord dysfunction.

On June 6, 2011, petitioner was seen for swelling in her ankles secondary to blood pressure issues. Petitioner was also seen for her coughing, which she alleged worsened with exertion.
On July 2, 2011, Dr. Dudek describes the petitioner as returning with relatively stable symptoms; she has coughing spells throughout the day without triggering the cough, which is now associated with a sharp, left-sided chest pain, accompanied by chest tightness and shortness of breath. The petitioner was complaining that the current therapy was insufficient to control her symptoms and that her cough had not been adequately determined or explained to her.

In his evaluation dated July 18, 2011 Dr. Dudek says that the petitioner's cough remains a primary clinical complaint. Dr. Dudek goes on to state:

> The etiology of the cough may be multi-factorial, with possibilities including airway hyperactivity/asthma abnormal vocal cord function, upper airway cough syndrome, or GERD. It is notable that she is not wheezing on examination today or on recent visit and that are past (methylcloreline) challenge test was equivocal for hyperactivity.

It was recommended that the petitioner complete a full PFT evaluation chest CT scan. Dr. Dudek noted that past imaging studies including the recent CX test, did not suggest any abnormalities.

Dr. Dudek suggested that the petitioner would then be referred to an allergist for further evaluation of possible triggers. Dr. Dudek goes on to state at page 7 of 8 on the July 2011 evaluation that "the symptoms could be consistent with asthma. However the review of her prior outside records demonstrates equivocal testing for obstruction and methylcloreline sensitivity."

Dr. Dudek goes on to state that:

> the patient has asked me in the past to make assessments about the cause of her symptoms, specifically whether or not they have been caused by her occupational exposure in 2008. It is well documented that brief, intense exposures to airway irritants can result in a prolonged sometimes lifelong airway hyperactivity in some patients known as reactive airway syndrome (RADS) or an irritant induced asthma. However, it is not possible, in this case, for me to determine if the patient's persistent symptoms (described above) are definitely related to her past occupational exposure. Since mold is suspected as a possible trigger she will be referred for an additional evaluation by an allergist to address the issue. For now we will continue her medications.

Dr. Dudek goes on to note, in the July 2011 appointment, that the petitioner has a chronic rhinitis and sinusitis, which are well-controlled.

On July 26, 2011 petitioner completed the CT study of the chest, which was read as negative except for findings regarding the pancreas.

On August 1, 2011 the petitioner completed additional diagnostic studies which were reported as normal. On August 4, 2011 the petitioner completed an MRI of the abdomen for issues regarding the pancreas. On August 9, 2011 petitioner returned to the clinic and was seen by two pulmonologists. She had with CT scans of the chest and PFT studies, without improvement. "She does not have any triggers for her cough. She wakes up twice nightly, to use her inhaler she has very little wheezing." The August 9, 2011 report goes on to state "not working in the same place and not exposed to mold anymore."
Petitioner returned to the clinic on September 7, and September 21, 2011. On September 21, 2011, she came in for follow-up for chronic cough and rhinitis which she alleges started when she was exposed to mold at work. It is noted that petitioner had a "chronic cough and possible cough variant asthma; possible rhinitis, GERD may be a factor as suggested VCD needs to be ruled out. As she is not exposed to mold any more, exposure to the mole in 2008 will not be a trigger at this time. I will do an arrow allergen intradermal skin test next week. She is already on anti-inflammatory medications and will continue with her present medications. She will not use the antihistamines for one week prior to the skin test and I will see her after the test is done."

On October 28, 2011, the petitioner presented to the emergency room at Advocate Hospital, giving a history of an onset of coughing approximately seven days previously. An examination of the petitioner was completed showing the neurological, cardiovascular and musculoskeletal evaluations as normal. The diagnosis was "bronchitis, upper respiratory infection, asthma, or pneumonia." Petitioner's medications were reviewed and she was directed to return to her family doctor for further follow-up care.

The medical records from the University of Illinois Hospital and Health System contain an entry of June 12, 2014, where petitioner had completed a CT of the chest without contrast. The CT was compared to a study of May 24, 2013. The impression was petitioner had a stable, right lobe scarring, unchanged and no evidence of new consolidation effusion or pulmonary mass. PX12.

On June 18, 2013, Dr. Dudek reviewed the petitioner's study and concluded that the petitioner was a 44-year-old female with a history of recalcitrant chronic cough, HTN and possible asthma, who came in for a bronchoscopy. Following review of the study, Dr. Dudek concludes that the petitioner's preliminary diagnosis was asthma, chronic cough, HTN, chronic rhinitis.

Examination and report from Dr. Orris

On page 228 of the 1233 pages of material, there is a report from the University of Illinois Hospital of a consultation by Dr. Peter Orris, who is a professor of occupational and environmental medicine. Dr.

He took a history from the petitioner as well as reviewed all medical records and data which were available. Dr. Orris' report is dated April 26, 2013 and he concludes that Petitioner was in no acute distress although her voice was found to be raspy and hoarse. Examination of her lungs was clear with bilateral vesicular breath sounds, no wheezing and good air movement. She was observed to have a severe dry cough when walking from the waiting room to the examining room, but after sitting down her cough resolved. Cardiovascular examination was normal. PX12.

Dr. Orris goes on to state that he had reviewed the reports from the studies conducted at the site of the petitioner's employment. Dr. Orris concluded that the petitioner was 44-year-old woman with no history of any allergies or asthma and develops shortness of breath, bronchial spasm symptoms after exposure in her office to air-conditioning condensation and mold. He states that the symptoms persisted since she was terminated from her job and have continued to worsen. Dr. Orris states the petitioner had been tested for mold allergy in skin tests and all were found to be negative. The report from the industrial hygienist to assess the building indicates that mold in the air in her office at significantly higher levels than other areas. In addition, significant overgrowth of mold, secondary to water damage was noted above the false ceiling in the office area.

Dr. Orris goes on to say that the petitioner's presentation was not fully consistent with any single diagnosis. Specifically, the hyper-expanded lung, with prominence of the pulmonary vascular and small bilateral pleural effusion; as well as mild scarring on the right lobe, is not fully explained solely by disease due to an allergic or irritant mechanism. There were a number of specific diagnoses perhaps in combination that could account for this picture and that the specific diagnosis may become obvious if a more invasive diagnostic test was performed.

As a separate issue, Dr. Orris opined that the contribution of Petitioner's workplace to her current condition could be answered to a reasonable degree of medical certainty based upon her history and clinical presentation. It is likely that her exposure to high levels of fungus in the workplace contributed to an obstructive bronchospasm disease. He further opined that more information was needed to say whether or not this effect is stable or progressive and specifically to understand the continuing cough that Petitioner suffers. He concluded that if the clinical picture justified it and the treating physician believed, it is needed, he would suggest a laryngoscope, a vocal cord study and a transfer bronchial biopsy, in addition to testing which would help further define the contribution of the workplace to her condition. There was no evidence admitted showing that these diagnostic tests were performed. PX12.

Petitioner introduced Exhibit 4(b), part of which was admitted into evidence, i.e. a search by the Chicago Department of Environment (CDOE), pursuant to the Freedom of Information Act, of the building in which she worked during her exposure to mold. The petitioner testified that she worked for Respondent from February 9, 2000 to approximately April 9, 2009. The Arbitrator finds that in the reports relevant to this time period, i.e., 11/7/2008, the inspector "did not notice anything unusual

during today (sic) inspection". The Arbitrator further notes that these records are for a company titled Superior Graphite Company and there was no testimony regarding how this company is related to the Respondent, Roadlink Transportation.

Petitioner also admitted into evidence reports from two different vendors that performed inspections at her work place regarding the mold issues, i.e., Hygieneering Inc. ("Hygieneering") and Mold Solutions. A report was generated dated September 12, 2008. Mold had been discovered in Petitioner's office, apparently resulting from a leaking air conditioner. The leak had been repaired, the office was cleaned with a HEPA vacuum, tiles had been cleaned with bleach however, had not been replaced. "According to the Mold Solution's report dated July 30, 2008, they conducted particle count measurements in Ms. Ewing's' office and surrounding areas. Particle counts of 0.3 um particles ranged between approximately 70K-100K in the office areas tested. Tests were also performed above the ceiling where particle count of 0.3 um particles ranged between approximately 140K-150K. They presume that the higher level in 0.3 um particles above the ceiling may be due to mold growth on the ceiling site. No specific tests for airborne mold spores were taken to verify their assumption. In their report they also state that Apex Research verified the presence of mold, however, no additional details about the sampling location including approximate area of mold growth, chain of custody, or lab data is included in their report. Hygieneering was engaged to assist in assessing the current conditions in Mrs. Ewing's office."

The results of the air sampling were read to show that "the airborne mold spores sampling data collected does not indicate an elevated level of airborne mold spores in Mrs. Ewing's office compared to the outside sample, based on the limited sampling conducted." "The total count indoors ranged between 39 to 750 spores per cubic meter of air....significantly lower than the outside levels of 13,000. Additionally, there was no significant difference in the biodiversity of the indoor samples compared to the outdoor sample." This company concluded that "there were no water/moisture affected building materials identified in Mrs. Ewing's office by visual inspection, thermal imagining camera and moisture meter measurements"; and that no further work needed to be performed in the petitioner office. PX8, pp. 1-4.

CONCLUSIONS OF LAW

B. Did an accident occur that arose out of or in the course of Petitioner's employment by Respondent?

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission*, 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require

that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission*, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).

It is not enough that the petitioner is working when an injury is realized. The petitioner must show that the injury was due to some cause connected with the employment. *Board of Trustees of the University of Illinois v. Industrial Commission*, 44 Ill.2d 207, 214, 254 N.E.2d 522 (1969); see also *Hansel & Gretel Day Care Center v Industrial Commission*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991).
The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. *Caterpillar Tractor vs. Industrial Commission*, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. *Neal vs. Industrial Commission*, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of all facts and circumstances support the decision. *See generally, Gallentine v. Industrial Commission*, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), *see* also *Seiber v Industrial Commission*, 82 Ill.2d 87, 411 N.E.2d 249 (1980), *Caterpillar v Industrial Commission*, 73 Ill.2d 311, 383 N.E.2d 220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence, and assign weight to the witness' testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v Workers' Compensation Commission*, 397 Ill.App. 3d 665, 674 (2009).

The petitioner brings this action pursuant to 820 ILCS 310, the Occupational Disease Section of the Illinois Workers' Compensation Act (the "Act"). The Arbitrator finds that this matter should be brought pursuant to 820 ILCS 305, under the Illinois Workers' Compensation Act. The Arbitrator notes that the petitioner's theory of recovery is that, while in her workplace environment, she was exposed to mold, resulting in the development of chronic, respiratory illness; including but not limited to asthma. It is her theory that the mold exposure was the single causative factor in the development of current respiratory conditions, as well as other medical difficulties. The Arbitrator notes that there was a physical finding of mold in her office, which she was obviously exposed to. The petitioner's testimony and reports from the two environmental companies prove that she was exposed to mold spores. Therefore the Arbitrator concludes that the petitioner has proven, by a preponderance of the evidence, that an accident occurred, which arose out of and in the course of her employment by Respondent.

F. Is Petitioner's current condition of ill-being causally related to the injury?
A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim.

Illinois Institute of Technology v. Industrial Commission, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. Id. The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The Arbitrator references the report of Dr. Orris in petitioner's exhibit 12 starting at page 228. Dr. Orris states that he had reviewed the environmental studies of the area in which the petitioner was working, and he felt that the level of mold may have been a causative factor in the petitioner's breathing difficulties, which she experienced at that time. In addition, further more invasive testing would have to be performed to determine if the mold exposure was the proximate cause of petitioner current respiratory conditions. This testing was not done. Dr. Orris also states that he has reviewed the petitioner's test results which were administered to determine whether or not the she had an allergy to mold. Dr. Orris states that the petitioner's test results were negative. Additionally, the petitioner has been diagnosed with sinusitis, coughing, rhinitis and asthma. No medical evidence has been produced to support that any of these conditions were related to the work environment.

The petitioner's medical records demonstrate a continuous complaint and diagnosis by all treating physicians that the petitioner does have a form of an allergic sinusitis and rhinitis, however, no doctor has expressed an opinion as to what the petitioner is allergic to and what the triggering mechanism is. As stated previously in this decision, the petitioner has tested negative for mold allergies. Additionally, and significantly, the petitioner has not worked in her original workplace since April 2009, and between April 2009 and the present, she has consistently and regularly reported to her doctors, coughing spells and breathing difficulties related to the rhinitis and sinusitis. The petitioner testified that cold and hot weather and dusty environments are irritants since she left the respondent's place of employment.

The petitioner has tested for asthma and positively diagnosed. However, there is no medical evidence to indicate that this condition was either caused or aggravated by the petitioner's employment environment. Again, the Arbitrator calls attention to the report of Dr. Orris, who suggested that the workplace environment might have been a causative factor in the initial onset of symptomatology, and yet, the petitioner subsequently tested negative for sensitivity to mold.

The Arbitrator, therefore, finds that the petitioner has failed to prove any causal relationship between the exposure to mold and the present condition of ill-being as the petitioner testified before the arbitrator. Between 2009 and 2014 the petitioner has repeatedly been seen by experts who have failed to produce a medical report which definitively states that petitioner's current condition of ill-being of having asthma, rhinitis, sinusitis, vocal cord dysfunction or shortness of breath, is the result of the initial exposure to mold spores, on July 9, 2008.

The Arbitrator turns to petitioner's Exhibit 11 and 12, which are the reports from Dr. Dudek and the University of Illinois Hospital. On July 2, 2012, Dr. Dudek, in petitioner's Exhibit 11, authors a very detailed report regarding the petitioner's diagnosis and then current condition of ill-being. In the conclusion, Dr. Dudek states that the petitioner's cough remains the primary clinical complaint and he goes on to state "the etiology of the cough may be ..... airway hyperactivity, asthma, abnormal vocal cord functions, upper airway cough syndrome or GERD. It is notable that she is not wheezing on examination today or on any recent visits and has passed the methylchloroline challenge test which was equally vocal for hyper activity." Dr. Dudek goes on to state the petitioner "has asked me in the past to make assessments about her cause of symptoms, specifically, whether or not they have been caused by her occupational exposure into 2008. It is well documented that brief intense exposures to airway irritants can result in a prolonged sometimes lifelong airway hyperactivity in some patients known as reactive airway syndrome (RADS) or an irritant induced asthma. However, it is not possible in this case for me to determine if the patient's persistent symptoms described above are definitely related to her past occupational exposure since mold is suspected as a possible trigger she will be referred to an additional evaluation by an allergist to address the issue for and for now we will continue her medications." Following this evaluation, Dr. Dudek performed test to determine if Petitioner's condition was related to the exposure to mold. She completed mold allergy evaluations; and they were negative for sensitivity to mold.

Accordingly, the petitioner has failed to prove, by a preponderance of the evidence, that her current condition of ill-being is causally related to the accident, therefore an award of benefits is denied, pursuant to the Act. As causal connection has not been proven, the remaining issues are moot and will not be addressed.

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
08WC54162
SIGNATURE PAGE

Signature of Arbitrator

September 29, 2015
Date of Decision

SEP 29 2015

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

MOLLET, ANTHONY F Case# **15WC009961**

Employee/Petitioner

SELECT REMEDY

Employer/Respondent

On 10/14/2015, 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 0.08% 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:

1590 SGRO HANRAHAN DURR & RABIN LLP
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SPRINGFIELD, IL 62703

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CHICAGO, IL 60603

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)

ANTHONY F. MOLLET
Employee/Petitioner

Case # **15** WC **9961**

v.

Consolidated cases: _____

SELECT REMEDY
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 **Urbana**, on **August 12, 2015**. 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. [ ] 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 _____

FINDINGS

On the date of accident, **March 2, 2015**, 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's average weekly wage was **$413.03**.

On the date of accident, Petitioner was **26** 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 **$1,800.00** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$1,800.00**.

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 all 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.

Temporary total disability benefits are denied.

Respondent shall pay Petitioner penalties equal to 50% of the amount payable by Respondent, pursuant to Sections 8(a), 8.2 and the medical fee schedule, for medical benefits ordered herein for the unreasonable and vexatious delay in the payment of those benefits, as provided in Section 19(k) of the Act. Respondent shall pay Petitioner attorney's fees equal to 20% of the amount payable by Respondent, pursuant to Sections 8(a), 8.2 and the medical fee schedule, for medical benefits ordered herein for the unreasonable and vexatious delay in the payment of those benefits, as provided in Section 16 of the Act. Section 19(l) penalties are 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.

Arbitrator Molly Dearing

October 8, 2015
Date

OCT 14 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ANTHONY F. MOLLET
Employee/Petitioner

v. Case No. 15 WC 9961

SELECT REMEDY
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

On his date of accident, Petitioner was twenty-six years of age (Arb. X 1). He was employed by Respondent and assigned to GSI, Inc. in Taylorville, Illinois, where he worked as a general utility assembler. He had been employed in that capacity for six months. Petitioner testified that his job duties included assembling parts on machines. Petitioner testified that on March 2, 2015 at approximately 9:00 a.m., he was assembling a vent cover and while pressing down on a bracket with his left shoulder to rivet the cover into place, his shoulder "gave a big pop". Petitioner testified that he had performed that movement with his left arm at least twenty times by the time he sustained his work accident at 9:00 a.m., and he stated that he had performed that mechanism approximately two hundred times that week. Petitioner notified the on-site manager for Respondent, Cathy Oller. He testified that Respondent offered him medical treatment, though he declined at that time (see RX 5) because he wanted to ascertain whether his shoulder pain and swelling would resolve on its own. Petitioner testified that his left shoulder pain worsened from his date of accident until he received medical treatment.

Petitioner testified that Respondent sent him to the company physician at Decatur Memorial Hospital for treatment on March 4, 2015. He testified that he was diagnosed with a shoulder strain, instructed to rest his arm, utilize ice and Ibuprofen, and he was released to return to work without restrictions. Thereafter, he presented to Dr. Richard DelValle with Springfield Clinic on March 5, 2015 and complained of left shoulder pain. Petitioner reported "pushing down on something that he was riveting and all of the sudden felt a pop in his left shoulder. He has continued to work every day, but when he moves his left arm in certain positions the shoulder does hurt." A physical examination revealed pops in the left shoulder with motion without significant tenderness upon palpation. Dr. DelValle assessed him with acute shoulder pain, ordered x-rays, and prescribed him Nabumetone. Dr. DelValle instructed him to rest his arm at all breaks and lunches. An x-ray of March 5, 2015 showed no acute findings. PX10.

On March 12, 2015, Petitioner presented to Dr. Mark Greatting and complained of a popping sensation while pressing down on a bracket at work on March 2, 2015 with worsening pain since that time. He described an ache in his left shoulder with burning along the outside of the shoulder. He rated his pain as a four on a ten-point scale while at rest and a six with exacerbating activities. A physical examination revealed no tenderness to palpation, full range of motion, 5/5 muscle strength, negative shoulder apprehension test, negative empty can, Speed's, cross-arm abduction, and Hawkin's

impingement test, and an O'Brien's test was positive for very mild pain. Dr. Greatting instructed him to continue utilizing Nabumetone and he ordered physical therapy. Dr. Greatting advised Petitioner to return in four weeks for reevaluation at which time "we would consider switching his medication and possibly obtaining an MRI arthrogram of the left shoulder per his request." Petitioner was allowed to continue working without restrictions. PX 4. On March 26, 2015, Dr. DelValle removed Petitioner from work from March 13, 2015 through April 13, 2015. PX 4.

Petitioner returned to Dr. DelValle on April 3, 2015 and he continued to complain of pain in his left shoulder. Upon physical examination, Petitioner exhibited popping under the clavicle where it articulates with the acromion, normal external and internal passive range of motion, normal forward flexion and extension, negative Neer's sign, and pain on abduction against resistance. Dr. DelValle noted that "I think there is evidence that he has some impingement predominantely [sic] here." Dr. DelValle assessed him with a rotator cuff sprain. Petitioner received a corticosteroid injection and Dr. DelValle opined that therapy and light duty work "would be reasonable…If after at least some more conservative time he is not improved, then certainly moving on to an MR or an MR arthrogram would be indicated." PX 4. On July 6, 2015, Dr. DelValle imposed work restrictions on Petitioner of no lifting, pushing or pulling over ten pounds with his left arm. PX 16.

On July 21, 2015, Dr. William Heller reviewed Petitioner's treating medical records pursuant to Section 12 of the Act. Dr. Heller reviewed dates of service of March 5, 2015, March 12, 2015, April 3, 2015, a work status report of March 4, 2015, a video job description, and "a piece of equipment…relevant to the work duties performed by the claimant." After reviewing the video job description, Dr. Heller opined that "these types of activities could cause a temporary shoulder strain, but would not be responsible for any type of significant internal derangement of the shoulder. I do think that subacromial impingement syndrome of the left shoulder could be temporarily aggravated by the activities described in the video, but I do not think those activities could cause injuries such as labral detachment or rotator cuff tearing. This is especially true given the claimant's young age." He stated that a "labral detachment in a 26-year old individual would typically be due to trauma involving relatively high energy." Dr. Heller opined that Petitioner's job duties would not be responsible for any type of surgical intervention that may be recommended in the future. He further opined that Petitioner's medical treatment was appropriate "up to this point" and he believed Petitioner could perform work without restrictions. RX 2.

Petitioner denied suffering any injuries prior to March 2, 2015 to his left shoulder and he testified that he did not inform Mr. Smith, Respondent's Human Resources manager, while presenting to Decatur Memorial Hospital on March 4, 2015 for treatment, that he was shoveling snow the Sunday prior. He testified that he previously tore his labrum in his right shoulder performing laundry, which was surgically repaired by Dr. Greatting.

Petitioner testified that Dr. DelValle released him to return to work without restrictions on March 5, 2015 and March 12, 2015. Petitioner testified that he called Dr. DelValle's office thereafter to ascertain whether Dr. DelValle felt comfortable with allowing him to work with restrictions, and that Dr. DelValle issued a retroactive off work slip from March 13, 2015 through April 13, 2015. Petitioner testified that he presented the off work slip from Dr. DelValle to Cathy Oller on March 13, 2015, at which time he was notified that Respondent had terminated him two days prior. He gained employment in June 2015 with CCMH in Taylorville, Illinois, where he worked for two and a half weeks until July 3, 2015 before his left shoulder condition prevented him from continuing to work. Petitioner testified that he continues to have pain in his left shoulder. He is presently unable

to swim, or lift heavy objects, reach, or apply pressure with his left arm. Petitioner testified that he does not drive, but instead walks, rides a bicycle, or is driven by his grandmother or sister. He presently lives with his grandmother and he stated that his stress levels have increased because he is concerned about helping to pay the bills. Petitioner testified that he has been forced to sell personal items to assist in paying bills.

A video depicting an individual assembling parts of a vent cover was admitted into evidence. RX 3. Petitioner testified that the video fairly accurately depicts an individual performing the work tasks of his former position, but he stated that he learned his job duties by observing other people performing the job, rather than from a video. Petitioner demonstrated at Arbitration how he utilized his left arm in the performance of his job duties, and he exhibited applying downward force with his left arm and shoulder to the vent cover to secure it in place with rivets.

OPINION AND ORDER

In regard to disputed issue (C), the Arbitrator finds that Petitioner suffered accidental injuries that arose out of and in the course of his employment on March 2, 2015. Petitioner testified that on his date of accident, at approximately 9:00 a.m., he was assembling a vent cover and while pressing down on the cover with his left shoulder, he felt a "pop" with pain that worsened thereafter. He notified Respondent's on-site manager, Cathy Oller. Petitioner's testimony regarding the history of the accident was unrebutted at Arbitration and is corroborated by his treating records. PX 4. Although Petitioner initially refused treatment on his date of accident, he convincingly explained at Arbitration that he did so because he wanted to ascertain whether his left shoulder pain and swelling would resolve on its own. The Arbitrator finds that, at the time of his injury, Petitioner was performing the duties of his employment as a general utility assembler for Respondent while assigned to GSI, Inc. and he suffered accidental injuries while pressing downward upon a vent cover with his left arm, a risk distinctly associated with his employment. Therefore, the Arbitrator concludes that he suffered an accident on March 2, 2015 that arose out of and in the course of his employment.

In regard to disputed issue (F), "[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, Petitioner denied suffering any left shoulder injuries prior to March 2, 2015 and no evidence was proffered to suggest otherwise. At the time of his accident, Petitioner was working without restrictions and he testified that he had performed the downward motion with his left shoulder to assemble vent covers at least twenty times prior to experiencing the "pop" and pain in his left shoulder on the morning of March 2, 2015. Following his work accident, Petitioner has persistently complained of left shoulder pain that began contemporaneously with his work accident, and his left shoulder condition has necessitated treatment and inhibited his functionality. Petitioner's complaints are corroborated by and well-documented in his medical records. PX 4.

Moreover, the Arbitrator notes that Dr. Heller's opinion is the only causation opinion in the record. Dr. Heller opined that Petitioner's job duties could be causative of a left shoulder strain and an aggravation of subacromial impingement syndrome. He further opined that Petitioner's care and treatment up to July 21, 2015, the date of his records review, was "appropriate". RX 2. While the Arbitrator concurs with Dr. Heller that Petitioner's current diagnosis in his left shoulder, which, based upon Dr. DelValle's most recent assessment of April 3, 2015 and in the absence of any

imaging studies, is a rotator cuff sprain with evidence of impingement (PX 10), is causally related to his employment and that his treatment has been reasonable and necessary, the Arbitrator is not persuaded by Dr. Heller's opinion that Petitioner's job duties could not "be responsible for any type of significant internal derangement of the shoulder" because Petitioner "does not perform these duties on a constant basis and they are performed briefly throughout the work day." RX 2. It is unclear how or from whom Dr. Heller obtained his information regarding the frequency of the job task of pressing downward on a vent cover while riveting it into place, as the video admitted into evidence as Respondent's Exhibit 3 does not contain any such information nor does Petitioner's treating records. Petitioner's testimony that he pressed downward on a vent cover with his left shoulder at least twenty times prior to 9:00 a.m. on his date of accident, and approximately two hundred times that week, calls the basis of Dr. Heller's opinion into question. The Arbitrator is also not convinced by Dr. Heller's opinion that Petitioner's work duties could not be causative of a labral detachment or rotator cuff tear because "a labral detachment in a 26-year old individual would typically be due to trauma involving relative high energy." RX 2. Although Dr. Heller was aware that Petitioner has a history of a right shoulder labral tear that was surgically repaired, it is unclear whether he was aware that Petitioner suffered that injury while performing laundry (RX 2), which suggests that irrespective of his age, Petitioner may be predisposed to developing shoulder pathology at lower energy levels that what Dr. Heller believes to be medically probable. Based upon the foregoing and the record in its entirety, the Arbitrator concludes that Petitioner's current condition of ill-being in his left shoulder is causally related to his work accident of March 2, 2015.

In regard to disputed issue (J), and in conjunction with the Arbitrator's conclusions as to accident and causal connection, the Arbitrator finds that the Arbitrator finds Petitioner's care and treatment to be reasonable, necessary, and casually related to his work accident. 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 all 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 (L), Petitioner seeks temporary total disability benefits for 21 5/7 weeks, representing March 13, 2015 through August 12, 2015. Arb. X 1. On March 26, 2015, Dr. DelValle removed Petitioner from work retroactively from March 13, 2015 through April 13, 2015. PX 4. The off work slip of March 26, 2015 did not arise from a treatment visit with Dr. DelValle. Petitioner testified that he called Dr. DelValle's office to ascertain whether Dr. DelValle felt comfortable with allowing him to work with restrictions and that Dr. DelValle issued the off work slip of March 26, 2015. Petitioner testified that he presented that off work slip from Dr. DelValle to Cathy Oller on March 13, 2015, at which time he was notified that Respondent had terminated him two days prior. The Arbitrator questions how Petitioner could have presented an off work slip to Cathy Oller on March 13, 2015, when he alleges he learned he had been terminated, when the slip was not written till approximately two weeks later. Further, the Arbitrator notes that Dr. Greatting opined on March 12, 2015 that Petitioner was physically capable of working without restrictions (PX 4), and given the absence of a subsequent treatment visit or physical examination suggestive of a change in that capability, Dr. DelValle's off work notation of March 26, 2015 appears baseless. The Arbitrator also notes that Dr. DelValle did not order Petitioner off of work or issue work restrictions during his final treatment visit on April 3, 2015, and no off work notations, work restrictions or treatment visits appear in the record for the time period from April 14, 2015 through July 5, 2015. A Health Status Form dated July 6, 2015 imposes restrictions upon Petitioner of no lifting, pushing or pulling over ten pounds with his left arm (PX 16), but that note does not

correspond with any physical examination or treatment visit, and it is unclear how the Form came into existence or the basis of the necessity for such restrictions. In light of the foregoing, the Arbitrator finds that the off work notation of March 26, 2015 and the work restrictions of July 6, 2015 are sufficiently suspect to not warrant evidentiary weight, and the Arbitrator accordingly denies temporary total disability benefits from March 13, 2015 through August 12, 2015.

In regard to disputed issue (M), pursuant to Section 19(k) of the Act, "[i]n case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay." 820 ILCS 305/19(k). Section 19(l) of the Act states that "[i]f the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of $30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed $10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(l). The Appellate Court has held that "payment" is defined as "'[T]he act of paying or giving compensation. The definition does not include the giving of authorization for a service." *Hollywood Casino-Aurora, Inc. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (2d) 110426WC, P17 (2012)(internal citations omitted). In that case, the Appellate Court held that Section 19(k) penalties and Section 16 fees are not appropriate for an employer's failure to authorize medical treatment. *Id.* at P20. "[I]t is the function of the legislature, not the judiciary, to provide a penalty for those employers that unreasonably or vexatiously delay or refuse to authorize necessary medical services required to cure or relieve an injured employee from the effects of an accidental work injury." *Id.* at P19.

Section 16 of the Act provides for an award of attorney fees where an employer, its agent, service company or insurance carrier "has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act; or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier." 820 ILCS 305/16. The employer has the burden to show that any delay in paying benefits is reasonable. *Electro-Motive Division v. Industrial Comm.*, 250 Ill. App. 3d 432, 436 (1993). "The test is whether the employer's reliance was objectively reasonable under the circumstances. Courts have refused to assess penalties under section 19(k) of the Act where the evidence indicates that the employer reasonably could have believed that the employee was not entitled to the withheld compensation. The standard an employer is held to is one of objective reasonableness in its belief. Thus, it is not good enough to merely assert honest belief that the employee's claim is invalid or that his award is not supported by the evidence; the

employer's belief is "honest" only if the facts which a reasonable person in the employer's position would have would justify it." *Id.* (internal citations omitted)

Petitioner seeks penalties and attorney's fees pursuant to Sections 19(k), 19(l), and 16 of the Act for Petitioner's failure to pay temporary total disability benefits and medical benefits. PX 19. On March 23, 2015, April 7, 2015 and April 15, 2015, Petitioner demanded Respondent approve physical therapy and institute temporary total disability benefits. PX 5, 8, 9. No response from Respondent to Petitioner's demand for benefits appears in the record. On June 3, 2015, in response to Petitioner's Petition for Penalties, Respondent stated "Respondent has not agreed to voluntarily pay workers' compensation benefits on account of the fact that there is a lack of proof as to Respondent's obligation to pay workers' compensation benefits." RX 4. Given the Arbitrator's foregoing conclusions as to temporary total disability benefits, Petitioner's request for penalties and attorney's fees pursuant to Sections 19(k), 19(l) and 16 for failure to pay such benefits is denied. With respect to medical benefits, outstanding medical bills from Dr. DelValle and Dr. Greatting in the amount of $750.62 for dates of service of March 5, 2015, March 12, 2015 and April 3, 2015 were admitted into evidence. PX 11. Petitioner testified that, to his knowledge, none of his outstanding medical bills have been paid. Respondent offered no evidence to indicate that it has paid any medical benefits. No evidence regarding the amount payable of medical benefits subject to 8(a), 8.2 and the medical fee schedule is present in the record. The Arbitrator notes that while Respondent disputed accident, it offered no credible evidence to negate or rebut the evidence that demonstrates that Petitioner immediately reported the accident to his on-site supervisor, that he sought treatment on March 4, 2015 with Respondent's company physician, that he underwent treatment with Dr. DelValle the following day, or that his history of accident and complaints in his shoulder have been consistent since the date of accident. The Arbitrator further notes that although Respondent disputed causation, its Section 12 examining physician, Dr. Heller, causally related his current condition of ill-being to his job duties and opined that his medical treatment was reasonable and necessary. RX 2. Respondent did not proffer a reason as to its basis for nonpayment of medical benefits or its dispute of causal connection in light of Dr. Heller's opinions, which the Arbitrator finds do not support, and instead run contrary to, an actual controversy concerning causation.

Based upon the foregoing and the totality of the record, the Arbitrator finds that Respondent has failed to establish that its delay in payment of medical benefits was reasonable, and the Arbitrator finds that said delay was unreasonable and vexatious. The Arbitrator accordingly awards Petitioner penalties equal to 50% of the amount payable by Respondent, pursuant to Sections 8(a), 8.2 and the medical fee schedule, for medical benefits ordered herein for the unreasonable and vexatious delay in the payment of those benefits, as provided in Section 19(k) of the Act. The Arbitrator further awards Petitioner attorney's fees equal to 20% of the amount payable by Respondent, pursuant to Sections 8(a), 8.2 and the medical fee schedule, for medical benefits ordered herein for the unreasonable and vexatious delay in the payment of those benefits, as provided in Section 16 of the Act.

With respect to Petitioner's request for Section 19(l) penalties, the Arbitrator notes that such penalties are appropriate where "the employee has made written demand for payment of benefits under Section 8(a) or Section 8(b)...." However, in this case, Petitioner demanded Respondent approve physical therapy and no demand for payment of the medical benefits incurred by Petitioner in the amount of $750.62 appears in the record. In light of *Hollywood Casino-Aurora* and given the absence of a demand for payment of the incurred medical bills, the Arbitrator declines to award Section 19(l) penalties.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WARD, ANTHONY Case# **12WC012159**

Employee/Petitioner

CHICAGO TRANSIT AUTHORITY

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

0320 LANNON LANNON & BARR LTD
MICHAEL S ROLENC
200 N LASALLE ST SUITE 2820
CHICAGO, IL 60601

0515 CHICAGO TRANSIT AUTHORITY
MICHELE MORRIS
567 W LAKE ST 6TH FL
CHICAGO, IL 60661

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

Anthony Ward
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **12** WC **12159**

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 **Lynette Thompson Smith**, Arbitrator of the Commission, in the city of **Chicago** , on **8/19/15**. By stipulation, the parties agree:

On the date of accident, **9/20/11**, 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 $**52,416.00**, and the average weekly wage was $**1008.00**.

At the time of injury, Petitioner was **56** years of age, ***single*** with **1** dependent child.

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

Respondent shall be given a credit of $**136,991.90** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**136,991.90**.

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 to Petitioner the reasonable and necessary medical services of the providers listed above, pursuant to the Medical Fee Schedule as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for any of the aforementioned bills that they have already paid.

Respondent shall also be given a credit of $**27,579.00** for medical benefits that have been paid to Hinsdale Hospital, and Respondent shall hold Petitioner harmless from any claims by Hinsdale Hospital for the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall also pay to Petitioner $**750.00** representing Petitioner's out-of-pocket expense as stated above.

Respondent shall pay Petitioner temporary total disability benefits of $**672.00**/week for **183-6/7** weeks, commencing **September 21, 2011** through **March 30, 2015**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent and total disability benefits of $**672.00**/week for life, commencing **March 31, 2015**, as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the***Rate Adjustment Fund***, as provided in Section 8(g) of the Act.

Both parties agreed and stipulated that Respondent has paid all temporary total disability/permanent total disability benefits through the date of this hearing.

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.

FINDINGS OF FACT

Petitioner testified in September 2011, he was employed by the Respondent as a track man. He had been so employed for 14 years. His job duties included inspecting and maintaining the railroad tracks. He had to change the railroad ties and use heavy equipment.

On September 20, 2011, it was agreed and stipulated to that Petitioner sustained an injury while working for the Respondent. Petitioner testified he was walking northbound from Roosevelt Road in the tunnel on the Red Line inspecting track. Petitioner testified he slipped on a grease spill and fell on the track, injuring his back, hip and right hand.

Petitioner testified that a co-worker stopped an oncoming train and helped him up. He was placed on the train and taken to the next stop where an ambulance was waiting for him.

Petitioner testified the ambulance took him to Mercy Hospital where he was examined. X-rays were negative for any fractures. Petitioner was diagnosed with multi-level degenerative disc disease of his lumbar spine (PX #1).

On September 22, 2011, Petitioner was seen by Dr. John Cudecki at URO Partners. Petitioner was complaining of groin pain following his fall in the subway 48 hours prior. Dr. Cudecki diagnosed Petitioner with epididymitis (PX #10).

Petitioner also came under the care of Dr. Butt at Optimum Healthcare. Dr. Butt performed spinal manipulations for him and also recommended an MRI. Dr. Butt also referred Petitioner to Dr. Kiokemeister, a pain doctor (PX #2).

On September 29, 2011, Petitioner was examined by Dr. Kiokemeister. Dr. Kiokemeister diagnosed Petitioner with low back pain and a lumbosacral radiculopathy. He recommended an MRI and prescribed Norco (PX #4).

Petitioner underwent the MRI at American MRI on October 3, 2011. The MRI revealed mild annular bulging of the disc at L3-L4 and stenosis. There was similar annular bulging of the disc at L2-L3, L4-L5 and L5-S1.

Petitioner returned to Dr. Kiokemeister on October 13, 2011. Dr. Kiokemeister reviewed the MRI and noted some left inguinal groin pain with swelling. He diagnosed Petitioner with a lumbosacral radiculopathy and a lumbar herniated disc and recommended an epidural steroid injection (PX. #4).

Petitioner underwent the lumbar ESI on October 31, 2011 at Magna Surgery Center. Petitioner then underwent additional epidural injections on November 15, 2011 and December 6, 2011 (PX. #4).

On December 13, 2011, Dr. Kiokemeister examined Petitioner and recommended he continue with his physical therapy.

On March 13, 2012, Dr. Kiokemeister advised that with Petitioner still having back pain, he should consider a bilateral L3-L4 ESI and to continue with physical therapy.

On March 27, 2012, Petitioner underwent a Section 12 examination with Dr. David Fardon at Midwest Orthopedics at Rush. Dr. Fardon indicated that there was no need for repeated injections or surgery but agreed Petitioner that was not yet at MMI. Dr. Fardon opined Petitioner needed aggressive work conditioning and should not return to work full-duty as a track man at this time. Dr. Fardon was of the opinion Petitioner could do sedentary and light work which does not place him in danger (RX #2).

Petitioner testified he had attempted to return to work for the CTA for a couple of hours in a light-duty capacity on April 4, 2012, but as he was walking up and down the stairs, he developed severe pain in his back and legs and was unable to walk. He was treated at Norwegian American Hospital (PX #3).
On April 9, 2012, Petitioner was seen by Dr. Charles Slack at Illinois Bone & Joint Institute. Petitioner was referred to Dr. Slack by Dr. Kiokemeister. Dr. Slack reviewed Petitioner's MRI and diagnosed him with severe low back derangement with symptomatic aggravation of degenerative lumbar disc and facet disease. Dr. Slack did opine that Petitioner was not a surgical candidate but suggested he obtain an EMG (PX #6).

On April 17, 2012, Petitioner was seen by Dr. Kiokemeister who also recommended a bilateral EMG which Petitioner underwent on April 30, 2012 at Neurology Consultants. The EMG study was normal.

On May 2, 2012, Petitioner returned to Dr. Slack who noted he had persistent derangement with aggravation of his degenerative disc disease. Dr. Slack recommended a lumbar facet block to determine if he would need radiofrequency lesioning. He continued to authorize Petitioner off work.

Petitioner testified he continued treating with Dr. Kiokemeister throughout 2012 on a regular basis. Dr. Kiokemeister would examine Petitioner and prescribed Norco, Oxycontin and Amitriptyline.

Petitioner also underwent bilateral L4-L5 and L5-S1 facet blocks on May 24, 2012 and September 25, 2012 (PX #4).

On October 24, 2012, Petitioner returned to Dr. Slack who recommended he continue following up with Dr. Kiokemeister. Dr. Slack opined that Petitioner was at MMI from an orthopedic standpoint but should continue getting his medications from Dr. Kiokemeister. He also suggested an FCE.

Petitioner underwent the FCE on January 28, 2013 at ATI. The FCE was determined to be valid and found Petitioner limited to the light physical demand level of work no more than 5 hours per day (PX #9).
On February 1, 2013, Petitioner returned to Dr. Slack who released him to return to work within the restrictions of the FCE.

On February 18, 2013, Petitioner underwent a second Section 12 examination with Dr. Fardon who opined he now needed to undergo a new MRI to rule out arachnoiditis or some other cauda equina dysfunction. Dr. Fardon did recommend Petitioner continuing in his pain management program until a further evaluation was completed. He did opine Petitioner did not have any pre-existing conditions that led to the injury and that were likely contributing to his incomplete and slow recovery from the injury. He further opined that Petitioner was permanently restricted from work that is above the light level and that he was not yet at MMI (RX #2).

On July 21, 2014, Petitioner was admitted to Hinsdale Hospital with complaints of chronic back pain and acute worsening of the low back pain for the past 4 days. Petitioner testified he was having difficulty walking and with the pain being so unbearable, he went to the emergency room. While hospitalized, Petitioner had an MRI and consulted with Dr. Robert Kazan for a neurological exam. Dr. Kazan reviewed the MRI and opined that Petitioner was developing a progressive paraparesis with numbness in the legs and a neurogenic bladder and needed to undergo surgery (PX #8).

On August 20, 2014, Petitioner underwent a decompressive lumbar laminectomy at L3-L4 and L4-L5 by Dr. Kazan (PX #7).

Following surgery, Petitioner continued treating with Dr. Kazan who, on October 17, 2014, recommended Petitioner undergo an FCE. Petitioner underwent the FCE on December 23, 2014. The results were valid and Petitioner was determined to be working at the light physical demand level (PX #9).

On January 5, 2015, Petitioner returned to Dr. Kazan who opined that Petitioner never worked in light work job and he now was considered to be completely disabled from his heavy work category (PX #7).

On March 6, 2015, Dr. Kazan requested a post-op MRI to look at the area of decompression to confirm there was nothing new as Petitioner was complaining of chronic right leg pain. Petitioner underwent the MRI on March 23, 2015 and it revealed post-surgical changes at L4-L5 (PX #7).

On March 30, 2015, Petitioner returned to Dr. Kazan who informed him he had reviewed his post-op MRI and he had an excellent decompression. He informed Petitioner he saw no evidence of any recurrence of stenosis or herniated discs. Dr. Kazan further opined that Petitioner would be unable to return to his work on the railroad as he is 60 years old and does not have the stamina or the ability

with the pain that he is experiencing to do that job. Dr. Kazan also issued a March 30, 2015 disability certificate stating that "patient is permanently disabled" (PX #7).

On April 29, 2015, Petitioner was re-examined for a third time by Dr. Fardon. Dr. Fardon opined that Petitioner needed ongoing pain management and further diagnostic effort and that his treatment to date was appropriate and necessary. He opined that all of Petitioner's current complaints are the result of the September 20, 2011 injury. Dr. Fardon opined that his definite diagnosis was congenital and degenerative forms of lumbar spinal stenosis and possibly arachnoiditis at the cauda equina. More importantly, Dr. Fardon opined that there were no pre-existing conditions directly related to this injury. Dr. Fardon also concurred with Dr. Kazan that Petitioner was not able to work full-duty and from a functional standpoint, he regarded him as completely disabled at this time (RX #2).

Dr. Fardon further opined that Petitioner was "permanently and totally disabled because he is unable to sit or stand long enough to fulfill the needs of any occupation he would be eligible for on a consistent basis" (RX #2).

Petitioner testified he last saw Dr. Kiokemeister on August 17, 2015 for an examination and a refill of his Oxycontin and Norco. Petitioner testified he presently has pain in his low back which radiates into his right foot. He walks with a cane which was prescribed to him by Dr. Kiokemeister.

Petitioner testified that after Dr. Slack released him to return to work with restrictions in February 2013; he did look for work but was unsuccessful.

The Arbitrator adopts the findings and opinions of Drs. Kiokemeister, Slack, Kazan and Fardon. The Arbitrator further finds Petitioner's testimony to be credible.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision regarding medical bills, the Arbitrator finds as follows:

Petitioner placed into evidence the following medical bills which were not objected to by Respondent:

West Suburban Neurosurgical	$ 20,616.00
Hinsdale Hospital (7/21/14)	$ 14,372.01
Hinsdale Hospital (8/20/14)	$ 2,250.00
Magna Surgical	$ 11,751.90
Optimum Health Chiropractic	$ 7,465.00
G&U Orthopedic	$ 5,550.49
Neurology Consultants	$ 2,280.00
Anesthesia of Chicago	$ 840.00

Midwestern Emergency Group	$ 486.00
Illinois Bone & Joint Institute	$ 212.00

Petitioner testified that he did make a payment of $750.00 to Hinsdale Hospital for the bill which was incurred for his August 20, 2014 admission. The payment is reflected in Petitioner's Exhibit #10 on the actual hospital bill and on Petitioner's bank statement.

Respondent made no objections to these bills. Both parties stated on the record that Respondent would be given credit for any of these bills if they were already paid.

The Arbitrator also notes that Respondent placed into evidence as Respondent Exhibit #1 a printout of all medical bills Respondent paid.

Based on Petitioner's testimony and the medical records placed into evidence by Petitioner, the Arbitrator finds the aforementioned medical bills to be reasonable and incurred as a result of necessary medical treatment Petitioner received for his work related injuries. The Arbitrator awards these bills pursuant to the Fee Schedule of the Act provided they remain unpaid.

The Arbitrator awards Petitioner his out-of-pocket expense of $750.00. Respondent shall be given a credit for any of those bills which they have already paid.

In support of the Arbitrator's decision as to the nature and extent of the injury, the Arbitrator finds as follows:

Petitioner's treating physician, Dr. Kazan, has declared Petitioner to be permanently disabled from working as of March 30, 2015. Respondent's Section 12 examiner, Dr. Fardon, concurred with that opinion on April 29, 2015.

The Arbitrator, therefore, finds that Petitioner is permanently disabled from any type of gainful employment as of March 30, 2015.

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
12WC12159
SIGNATURE PAGE

L. Thompson

Signature of Arbitrator

October 8, 2015
Date of Decision

OCT 8 - 2015

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 up	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Alicija Rafaj,

Petitioner,

vs. NO: 11 WC 30622

15IWCC0768

Alexian Brothers Behavioral Health Hospital,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under Section 19(b) having been filed by Petitioner herein and notice given to all parties, the Commission after considering the issues of causation, medical expenses, and temporary total disability benefits, and being advised of the facts and law, modifies and 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 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).

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 that the Arbitrator correctly found that Petitioner's CRPS is not causally related to the May 16, 2011 accident.

Though we agree with the Arbitrator's findings, we believe his reasoning and explanation needs further amplification. Additionally, we find the following:

Firstly, despite Respondent's efforts at accommodation, Petitioner resigned her

accommodated position of employment on June 2, 2012. Petitioner was assigned work within her restrictions. Petitioner alleged that she felt unsafe because patients were on the other side of the door of the area she was assigned to work. She further alleged that she was unable to contact her supervisor while she was in that area. These allegations do not ring true when considered together with other assertions made by the Petitioner.

Secondly, Petitioner alleged that after she left her accommodated employment with the Respondent, she worked only 2 hours a day for her father. Petitioner's claims of 2 hours of work a day are completely contradicted by the employment records provided by her father. These records demonstrate that Rafaj had been working a minimum of 14.75 hours a week for her father since 2011. (RX4) In fact, by the employment records submitted by her father, Petitioner worked 67 hours during the two-week period of November 5, 2013 through November 21, 2013. (RX4) This is in complete contradiction to Petitioner's claim that she is unable to work more than 2 hours a day.

Thirdly, on October 19, 2011, Petitioner reported that she felt a pop with some pain in her wrist to Dr. Papierski. The report is rather suspect in light of the fact that she denied such an event when speaking to Dr. Neal.

While the records indicate that this event did not constitute an intervening event, it does bring Petitioner's credibility into question. Ultimately, Petitioner's contradicted claims render Petitioner's testimony not credible. Therefore, the Commission affirms the Arbitrator's finding that Petitioner's CRPS is not causally related to the May 16, 2011 accident.

The Commission does note, however, that Respondent stipulated to a third period of temporary total disability, from April 11, 2012 through May 23, 2012, per the Request for Hearing form and at hearing when the Arbitrator went over the stipulations of the parties. (AX1,T.6-7) The Commission finds that Respondent is bound to this stipulation and, as such, finds that Petitioner is entitled to temporary total disability benefits for this period.

Finally, the Commission notes that in the Order Section of the Arbitrator's Decision, the Arbitrator awarded temporary total disability benefits from August 18, 2011 through November 17, 2000. Based on the Request for Hearing form, the correct date is November 17, 2011. The Commission hereby corrects the decision to reflect the date of November 17, 2011.

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 $307.43 per week for a period of 19-6/7 weeks, from August 18, 2011 through November 17, 2011, from January 27, 2012 through January 30, 2012, and from April 11, 2012 through May 23, 2012, that being the period of temporary total incapacity for work under Section 8(b), and that as provided in Section 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay reasonable and necessary medical services that are related to Petitioner's TFCC complex tear and DeQuervain's syndrome only, as provided under Sections 8(a) and 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 shall be given a credit of $6,293.33 for temporary total disability benefits that have been paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for temporary partial disability benefits is denied, because Petitioner resigned from a job that was within her medical restrictions.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim for the implementation of the spinal cord stimulator is denied.

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 $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: OCT 2 1 2015
MJB/ell
o-09/01/15
52

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF 19(b) DECISION OF ARBITRATOR

RAFAJ, ALICIJA
Employee/Petitioner

Case# **11WC030622**

15IWCC0768

ALEXIAN BROTHERS BEHAVIORAL HEALTH HOSPITAL
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:

0293 KATZ FRIEDMAN EAGLE ET AL
DAVID M BARISH
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0075 POWER & CRONIN LTD
DANIEL J ARTMAN
900 COMMERCE DR SUITE 300
OAKBROOK, IL 60523

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
19(b)

Alicija Rafaj
Employee/Petitioner

Case # **11** WC **30622**

v.

Alexian Brothers Behavioral Health Hospital
Employer/Respondent

15IWCC0768

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 29, 2014 and August 22, 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?
[x] TPD [ ] Maintenance [x] TTD

M. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other _____

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 Milton Black

November 16, 2014
Date

NOV 17 2014

FACTS

Petitioner was employed by Respondent as a mental health counselor. On May 16, 2011, Petitioner was helping to restrain a patient, when she was kicked in the right hand and wrist area by the patient, and then while trying to restrain the same patient her hand and wrist was grabbed, twisted, turned, and pulled. She was seen in the emergency room and diagnosed with a wrist sprain. She continued to have pain and eventually began treating with MidAmerican Orthopedics. She underwent surgery of a TFCC complex repair in August 2011. Post-operatively she was returned to work with a restriction of no use of the right hand. Respondent accommodated that restriction from November 18, 2011 to April 11, 2012, when Petitioner underwent a second surgery in the form of De Quervain's release with partial tenosynovitis and release of the A1 pulley.

Petitioner was released to return to work with no use of the right hand and no driving of a vehicle due to her use of Neurotin. Respondent was able to accommodate the restrictions beginning on May 24, 2012 and provided transportation to and from work, so that Petitioner could work through a transitional work program. Petitioner worked one day and part of a second day, and then she resigned.

Petitioner testified that beginning in the summer of 2012, she began to have pain into her elbow and she was eventually referred by Dr. Papierski to Dr. Zaffer and Dr. Alzoobi. Dr. Alzoobi performed injections and had Petitioner undergo an MRI of her cervical spine and her right shoulder. In March 2013, she underwent an EMG, which was read to be normal. In August of 2013 Petitioner began to have pain into her neck and shoulder. She also had a second EMG in August 2013, which was read to show cervical radiculopathy. This is consistent with the MRI of the cervical spine, which demonstrated a herniated disc. The MRI of the right shoulder was normal. Petitioner testified that she had her first symptoms to her neck and right shoulder nearly 14 months after she last worked in any capacity for Respondent.

Petitioner was diagnosed with complex region pain syndrome as to her right hand and wrist. The medical records of Dr. Zaffer, Dr. Alzoobi, and the report and testimony of Dr. Glaser reflect that their diagnoses are based upon Petitioner's subjective complaints. Spinal cord stimulator implantion has been prescribed, and Petitioner has requested it.

Petitioner was examined by Dr. Richard Noren at Respondent's request. Dr. Noren testified that Petitioner did not have any objective findings of complex region pain syndrome. Dr. Noren testified that, for example, her nails were polished.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

LIPSKY, DAVID Case# **06WC035883**

Employee/Petitioner

AMERICAN AIRLINES INC

Employer/Respondent

On 10/5/2015, 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 0.10% 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:

0696 RITTENBERG & BUFFEN
IVAN RITTENBERG
309 W WASHINGTON ST SUITE 900
CHICAGO, IL 60606

1109 GAROFALO SCHREIBER HART ETAL
DEREK A STORM
55 W WACKER DR 10TH FL
CHICAGO, IL 60601

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

DAVID LIPSKY,
Employee/Petitioner

Case # **06** WC **35883**

v.

AMERICAN AIRLINES, 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 **Arbitrator David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **August 31, 2015; and, September 24, 2015**. 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. [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 **July 23, 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 $**40,469.52**; the average weekly wage was $**778.26**.

On the date of accident, Petitioner was **44** 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.

The parties stipulated that Petitioner received all TTD, TPD, maintenance, and wage differential benefits to which Petitioner was entitled during the pendency of this case. See Arbitrator's Exhibit #1.

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

ORDER

J. MEDICAL EXPENSES

The respondent shall pay reasonable and necessary medical expenses of $0.00, as provided in Section 8(a) and 8.2 of the Act. See MEMORANDUM OF DECISION, attached hereto and made a part hereof as though fully set forth herein.

L. NATURE AND EXTENT OF THE INJURY

The respondent shall pay the petitioner permanent partial disability benefits, commencing on August 31, 2015, of $272.00 per 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. See MEMORANDUM OF DECISION.

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 David Kane

October 5, 2015
Date

OCT 5 - 2015

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID LIPSKY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 06 WC 35883
	)	
AMERICAN AIRLINES, INC.,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION

I. INTRODUCTION

This MEMORANDUM OF DECISION, is attached to the IWCC ARBITRATION DECISION and is made a part thereof as though fully set forth therein. The issues in dispute in the above captioned matter were as follows:

J. Were the medical services that were provided to the petitioner reasonable and necessary? Has the respondent paid all appropriate charges for all reasonable and necessary medical expenses?

L. What is the nature and extent of the injury?

II. FINDINGS OF FACT

The petitioner began working for the respondent in 1989 as a fleet service clerk. Up until July 23, 2006, the petitioner was able to perform all of the employment functions of a fleet service clerk which included loading and unloading the aircraft; removing freight and mail from the aircraft; working in the bag room; and, de-icing the plane. To perform these activities the petitioner had to lift between 50 to 100 pounds; and, he needed the ability to have a normal range of motion in his neck.

On July 23, 2006, while reloading a baggage cart, the tongue of the cart was struck pushing the petitioner into a steel beam at which time he struck his neck, right shoulder, and right arm. The petitioner noticed immediate pain in the right arm. The accident was immediately reported by the petitioner to the respondent.

The next day, July 24, 2006, the petitioner noticed that there was a bruise on his right shoulder. He sought medical care with his personal care physician, Dr. Hughes. At that point in time the petitioner provided a consistent description of the accident. The petitioner complained of pain and problems in the body parts outlined above. The petitioner underwent conservative care with Dr. Hughes from this date through August 14, 2006. (Pet.Ex.#3).

On August 21, 2006 the petitioner underwent an MRI of his cervical spine which evidenced a right sided disc protrusion at C5-6.

Subsequent to the MRI the petitioner came under the care of Dr. Bauer at the Center of Brain and Spine Surgery. Dr. Bauer recommended a course of conservative medical care. (Pet.Ex.#5).

At the request of the respondent the petitioner was examined by Dr. Quinn Regan on January 15, 2007. Dr. Regan opined that the petitioner had exhausted all conservative care for the condition in his cervical spine. (Resp.Ex.#2).

On January 30, 2007 Dr. Bauer performed a cervical spine fusion on the petitioner. (Pet.Ex.#4; Pet.Ex.#5).

Subsequent to the surgery the petitioner remained under the are of Dr. Bauer. (Pet. Ex. #5).

On March 24, 2008 Dr. Bauer indicated that the petitioner could return to work with a permanent 50 pound lifting, carrying, pushing and pulling restriction. The Doctor also noted that the petitioner had a limited range of motion in his neck as a result of the cervical fusion at C5-6 and C6-7. (Pet.Ex.#5).

On May 19, 2008 the petitioner was again examined by Dr. Regan at the request of the respondent. Dr. Regan concurred with Dr. Bauer regarding the petitioner's permanent restrictions. (Resp.Ex.#3).

The petitioner was again examined by Dr. Bauer on June 8, 2009. The Doctor noted that the fusion hardware was in proper anatomical alignment and that a solid fusion had formed. He again released the petitioner to return to work with the permanent restrictions which were previously outlined in this Decision. (Pet. Ex. #5)

Thereafter, the petitioner began vocational rehabilitation with Vocamotive. (Pet.Ex.#9). Through the efforts of the petitioner and Vocamotive, suitable employment was found for the petitioner commensurate with his background, education, training, and medical restrictions in a stable job market with Rivers Casino. (Resp.Ex.#1; and, Arb.Ex.#1).

In his new employment at Rivers Casino the petitioner was able to earn $520.00 per week as a prep cook. (Resp.Ex.#1; and, (Arb. Ex.#1).

The parties stipulated that in the petitioner's former employment with American Airlines as a fleet service clerk the petitioner would have been earning $928.00 per week as of the date of trial. (Arb.Ex.#1).

The trial in this matter was commenced on August 31, 2015. The trial was continued to allow the petitioner to present additional evidence regarding a claim as and for out of pocket medical expenses. When the trial was recommenced on September 24, 2015 the petitioner did not introduce any medical expenses.

III. ANALYSIS – CONCLUSIONS OF LAW

J. MEDICAL EXPENSES

In connection with the issue of whether the medical services that were provided to the petitioner were reasonable and necessary; and, whether the respondent has paid all appropriate charges for all reasonable and necessary medical eservices, the Arbitrator makes the following Decision:

1. Law

Pursuant to Section 8(a) of the Act, the employer is liable for all necessary medical, surgical and hospital services that are reasonably required to cure or relieve the effects of the accidental injury. 820 ILCS 305/8(a). It is the petitioner's burden to establish that the medical care at issue was reasonable and necessary to cure or relieve the effects of the accidental injury. *Peoria County Bellwood*, 115 Ill.2d 524 (1987). As the discussion set forth below will illustrate, the petitioner has failed to meet his burden and establish that there are any reasonable and necessary outstanding medical expenses for which the respondent is liable.

2. Analysis

Trial in the above captioned matter was commenced on August 31, 2015. The trial was continued for the closing of proofs until September 25, 2015, to allow the petitioner to present medical bills as and for out of pocket medical expenses.

When the trial was reconvened and proofs were closed on September 24, 2015, the petitioner did not introduce any medical expenses into evidence. Consequently, the Arbitrator finds that the petitioner has failed to establish that there are any outstanding medical expenses for which the respondent is liable in this matter. Accordingly, the Arbitrator finds that the respondent shall pay reasonable and necessary medical expenses of $0.00, as provided in Section 8(a) and 8.2 of the Act.

L. NATURE AND EXTENT OF THE INJURY

In connection with the NATURE AND EXTENT OF THE INJURY, the Arbitrator makes the following decision:

1. Law

As previously mentioned, the petitioner bears the burden of establishing by a preponderance of credible evidence all elements of his claim. The petitioner has elected as his permanency remedy

wage differential benefits pursuant to Section 8(d)1 of the Act. To establish an entitlement to benefits under this section of the Act, the petitioner must establish that as a result of the work injury he became partially incapacitated from pursuing his usual and customary line of employment. 820 ILCS 305/8(d)1. As the discussion set forth below will illustrate, the petitioner has established that as a result of his work injury he did become partially incapacitated from pursuing his usual and customary line of employment as a fleet service clerk for the respondent, and thereafter, he did suffer a wage loss as a result of the injury, and hence, is entitled to wage differential benefits pursuant to the aforesaid section of the Act.

2. Analysis

The parties in this matter entered into a series of stipulations. See Arbitrator's Exhibit #1. The Arbitrator finds that the testimony and evidence introduced by the parties support the stipulations. Thus, the Arbitrator makes the following findings:

- Accident:

  That as a result of the accidental injuries sustained by the petitioner on July 23, 2006, he became partially incapacitated from pursuing his usual and customary line of employment with the respondent.

- Vocational Rehabilitation:

  That the respondent commence vocational rehabilitation with the petitioner and through the efforts of the petitioner and the vocational counselor, suitable employment was found for the petitioner commensurate with his background, education, training, and medical restrictions in a stable job market with Rivers Casino. (Pet.Ex.#9; and, Resp.Ex.#1).

- Wage – New Employment:

  In his new employment with Rivers Casino the petitioner earned $520.00 per week. (Resp.Ex.#1; and Arb. Ex.#1).

- Wage – Former Employment:

  In his former employment with the respondent, as of the date of trial the petitioner would have been earning $928.00 per week. (Arb.Ex.#1).

- Remedy:

  The petitioner has elected to pursue wage differential benefits pursuant to Section 8(d)1 of the Act. (Arb.Ex.#1).

- Accrued Wage Differential Benefits:

  Since the petitioner's return to work at Rivers Casino the respondent did pay to the petitioner all benefits to which he would have been entitled under Section 8(d)1 of the Act as and for wage differential benefits. As of the date of trial, all benefits due and owing the petitioner under the aforesaid section of the Act had been paid to the petitioner by the respondent. (Arb.Ex.#1).

- Future Wage Differential Benefits:

  From August 31, 2015, the date of the initial trial in this matter, and continuing for the duration of the petitioner's disability, the respondent shall pay to the petitioner wage differential benefits pursuant to Section 8(d)1 of the Act in the amount of $272.00 per week ($928.00 - $528.00 = $408.00 x 2/3 = $272.00). All payments to the petitioner are subject to the terms, conditions, and limitations of the Illinois Workers' Compensation Act. (Arb. Ex.#1).

IV. CONCLUSION

After examining all of the evidence presented at trial, the Arbitrator makes the following findings:

- The respondent shall pay reasonable and necessary medical expenses of $0.00 as provided in Sections 8(a) and 8.2 of the Act.

- The respondent shall pay the petitioner permanent partial disability benefits, commencing on August 31, 2015, of $272.00 per week for the duration of the petitioner's disability, because the injuries sustained caused a loss of earnings, as provided in Section 8(d)1 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GROB, WARREN Case# **14WC003155**

Employee/Petitioner

PGT TRUCKING INC

Employer/Respondent

On 10/15/2015, 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 0.08% 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:

0874 FREDERICK & HAGLE
PHILIP W PEAK
129 W MAIN ST
URBANA, IL 61801

1454 THOMAS & ASSOCIATES
ROBERT A HOFFMAN
500 W MADISON ST SUITE 2900
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Warren Grob
Employee/Petitioner
v.
PGT Trucking, Inc.
Employer/Respondent

Case # **14** WC **3155**

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 **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Urbana**, on **8/13/15**. 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. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **2/8/13**, 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.

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

In the year preceding the injury, Petitioner earned $**57,200.00**; the average weekly wage was $**1,100.00**.

On the date of accident, Petitioner was **62** 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 general credit for any medical bills paid by its group medical plan for which credit is allowed under Section 8(j) of the Act.

ORDER

Petitioner failed to prove that he sustained an accident on February 8, 2013 that arose out of and in the course of his employment with Respondent or that his current condition of ill-being in his right shoulder and upper extremity is causally connected to his alleged injury. Petitioner's claim for compensation 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.

Barry Bridsey
Signature of Arbitrator

October 11, 2015
Date

ICArbDec p. 2

OCT 15 2015

Having reviewed and considered all the evidence in the record, the Arbitrator finds as follows:

Petitioner's primary care physician for some time has been Dr. Buchanan. Petitioner presented to Dr. Buchanan on March 1, 2013 regarding carpal tunnel symptoms in his left hand. The doctor's notes further mention that "He fell a month ago, he fell 4 to 5 feet out of his truck. He landed, hurt his left shoulder and left elbow, but is doing much better at this time." (PX 2, p. 1) No examination or diagnosis was made with regard to the aforementioned history/complaints. (PX 2, p. 1)

Petitioner returned to see Dr. Buchanan on June 7, 2013 for a three month follow-up regarding right arm pain. Petitioner reported that his right arm was "giving fits" in his shoulder down to his fingers. The following history is contained in the doctor's note: "several years mod. Prev MRI showed degenerative changes – 3 years ago – at Provena. Worse past sev. Weeks. Stay awake all night long. Bad MVA age 8." (PX 2, p. 3) On exam, Petitioner had range of motion in his neck free of pain, full range of motion of his shoulder without pain and intact sensation in his right upper extremity. Petitioner was diagnosed with a herniated cervical intervertebral disc with radiculopathy and prescribed medication. He was to return in one week. (PX 2, p. 4).

Petitioner returned one week later on June 14, 2013 reporting that his right shoulder was about the same with no weakness. Petitioner reported problems in his shoulder and elbow when shifting. A three month history of right shoulder pain was noted and the doctor wrote, "fell off truck – hit asphalt hard." Petitioner reported having undergone physical therapy for his right shoulder a few years earlier. Moderately severe pain was noted in the extremities with abduction. Dr. Buchanan's diagnosis was primary osteoarthritis of the right shoulder. He ordered x-rays and an MRI. Petitioner was also given a right shoulder injection. (PX N2, pp. 7-8)

Petitioner underwent a right shoulder x-ray on June 14, 2013. The impression was mild AC joint arthritis and a lateral downsloping acromion was noted. A cervical spine x-ray of that same day revealed moderate multilevel spondylosis. (PX 2, pp. 10-11)

Petitioner underwent no further treatment for his right shoulder until he returned to see Dr. Buchanan on October 3, 2013 due to "right shoulder pain and muscle is a hard knot." At that time the doctor noted Petitioner had "ripped right biceps tendon" and had pain with abduction of the right shoulder. "Several years of right shoulder pain" was also noted along with prior therapy to the shoulder. Petitioner was noted to have right shoulder pain with passive abduction and adduction. An "obvious" partial biceps tear was noted. Due to "acute on chronic right shoulder pain and a new partial right biceps tendon rupture" an MRI was ordered. (PX 2, pp. 12-14)

Petitioner underwent a right shoulder MRI on October 11, 2013 due to a non-traumatic rupture of his biceps tendon and osteoarthrosis localized primarily in the shoulder region. It revealed a full thickness tear of the distal supraspinatus tendon at its insertion, severe infraspinatus tendinosis and peritendinitis, a small amount of fluid in the subacromial subdeltoid bursa and small glenohumeral joint effusion, a suspected biceps tendon rupture, and moderate AC joint arthritis and mild glenohumeral joint arthritis. (PX 2, pp. 15-16)

Petitioner was referred by Dr. Buchanan to Dr. Kohlmann. (PX 1)

In advance of his appointment with Dr. Kohlmann Petitioner completed a Patient History form on October 22, 2013. In it he indicated he was seeing the doctor for a right shoulder torn biceps/rotator cuff

problem that began on February 13th when he fell out of a truck. He marked the injury as "Workmen's Compensation." (PX 1, pp. 1-5)

Dr. Kohlmann saw Petitioner on October 30, 2013. Petitioner gave a history of having problems with the right arm since he fell out of a truck on February 13, 2013 landing on his right side on asphalt. Petitioner recalled lying on the ground for about five minutes and then he started moving around and thought his shoulder and arm were feeling a bit better and he "went on his way." Thereafter, he continued to experience symptoms which continued to worsen and went to Dr. Buchanan who proceeded with a work-up. Petitioner denied any problems with his shoulder prior to the fall and "was certain" in his own mind that the fall resulted in the rotator cuff tear and biceps tendon rupture that he was presenting with. (PX 1, p. 7). Dr. Kohlmann performed an examination and reviewed the x-ray of June 14, 2013 and the MRI of October 11, 2013. Petitioner's right shoulder appeared normal but his right arm biceps muscle was balled up in the distal arm and not full where it should be full. Petitioner's right shoulder had very painful range of motion. (PX 1, p. 8). He diagnosed Petitioner with a full thickness right shoulder supraspinatus tendon tear with long head of the biceps rupture. (PX 1, p. 9). He further indicated:

> "There is no question in my mind that the fall in February from the truck onto the asphalt on the patients [sic] right side resulted in the right arm biceps tendon rupture and the rotator cuff tear." (PX 1, p. 9)

Dr. Kohlmann recommended right shoulder arthroscopy acromioplasty rotator cuff repair, but decided to leave the biceps tendon rupture alone as it had been ruptured for a long time. (PX 1, p. 9). He also noted that Petitioner did not complain of much pain in the affected shoulder on examination. (PX 1, p. 9). A letter was sent to Dr. Buchanan regarding the examination and recommendations of the doctor. (PX 1, pp. 5-6)

Petitioner had a visit with Dr. Buchanan on November 4, 2013 in advance of his shoulder surgery. Dr. Buchanan noted Petitioner had declined getting a second opinion. Petitioner was on medical leave and receiving SSI. Petitioner's right shoulder physical exam remained unchanged. (PX 2, pp. 17-19)

Petitioner had surgery on November 22, 2013. (PX 3; PX 2, pp. 24-25). The post-operative diagnosis was of a large full-thickness retracted supraspinatus tendon tear, right shoulder, with complete biceps avulsion rupture. (PX 3).

Petitioner was seen for his initial follow-up on December 4, 2013, and given prescriptions for Dilaudid and Tramadol for pain. (PX 1, p. 13). He was put on restrictions of limited right shoulder use. (PX 1, p. 13).

Petitioner's employment with Sudbury Express, Inc. was terminated voluntarily effective December 9, 2013. (PX 13)

Petitioner signed his Application for Adjustment of Claim herein on January 15, 2014. (AX 2)

Petitioner was seen again by Dr. Kohlmann on January 22, 2014, and instructed on avoiding overuse and heavy lifting. Petitioner was complaining of shoulder joint pain and swelling after use and some pain over the biceps are mainly. Petitioner had been shoveling snow and noting increased pain. (PX 1, p. 15). His final visit with Dr. Kohlmann's office was on March 10, 2014, at which time Petitioner complained of weakness in the right arm which he did not feel was improving. He also complained of weakness in his right upper extremity related to a biceps tear. (PX 1, p. 17). Petitioner indicated that even lifting a dish off the table made it hurt. (PX 1, p. 17). They discussed a possible referral to occupational therapy, which Petitioner refused. (PX 1, p.

18). Petitioner was instructed to follow-up with Dr. Kohlmann in four weeks, but was not given any restrictions. (PX 1, p. 18).

Petitioner presented to Dr. Richard Goding at Christie Clinic on May 20, 2014 regarding right shoulder pain. Petitioner explained that he had previously undergone shoulder surgery with Dr. Kohlmann but had continued to have pain and his shoulder felt tired all of the time. Petitioner had good range of motion albeit he reported "discomfort." Petitioner had a splint on his left wrist due to his left carpal tunnel syndrome and was not currently working as he was left hand dominant. Based upon his physical examination Dr. Goding suspected a right rotator cuff sprain/ recurrent rotator cuff tear. He ordered another MRI. Dr. Goding further suspected that Petitioner likely retore the shoulder as a result of shoveling heavy snow after the prior repair. (PX 2, p. 27)

X-rays of Petitioner's right shoulder were taken on May 20, 2014 and revealed mild AC joint arthritis unchanged from previous films. (PX 2, p. 29)

Dr. Buchanan re-examined Petitioner on July 24, 2014 regarding Petitioner's hypertension. Petitioner was noted to be losing weight due to changes in his diet. His activities included shoveling, mowing, trimming. On examination Petitioner displayed right shoulder pain with internal rotation and some thenar atrophy. No treatment recommendations were made with regard to Petitioner's right shoulder. (PX 2, p. 31)

Petitioner underwent a right shoulder MRI on August 11, 2014 which revealed severe right acromioclavicular joint arthritis with undersurface marginal osteophytes that encroached on the surpraspinatus tendon. There was evidence of the previous surgery as well as a full thickness tear of the supraspinatus tendon anteriorly with tendon retraction medial to the lateral edge of the acromium. There was also a suspicion of a tear of the anterior inferior labrum.

Petitioner followed up with Dr. Goding on August 14, 2014. The doctor reviewed the MRI noting it revealed a recurrent rotator cuff tear. Petitioner was also seen for an unrelated issue with carpal tunnel syndrome and he was scheduled for carpal tunnel surgery on September 10, 2014. (PX 2, p. 36).

Petitioner followed up with Dr. Goding was on October 23, 2014, at which point the doctor recommended another rotator cuff repair of the right shoulder. (PX 2, p. 37).

The second surgery was performed on November 5, 2014. (PX 4). Dr. Goding performed a right shoulder revision rotator cuff repair, SLAP debridement, subacromial decompression, Mumford distal clavicle resection, and removal of old sutures. (PX 4). The post-operative diagnosis was of a recurrent right shoulder rotator cuff tear, subacromial impingement, acromioclavicular arthritis, and superior labral tear from anterior to posterior. (PX 4).

Petitioner was seen by Dr. Goding for his first post-surgical visit on November 13, 2014. At that time, Dr. Goding referred Petitioner for physical therapy. (PX 2, p. 43). Physical therapy was completed from December 22, 2014 through February 23, 2015 at Christie Clinic. (PX 2, pp. 50-95). At the time of the February 23, 2015 discharge from therapy, Petitioner demonstrated improvement in strength and flexibility, although his strength was not yet back to normal, and he was discharged to a home exercise program. (PX 2, pp. 93-95).

Petitioner was last seen by Dr. Goding on March 19, 2015. At that point, he indicated to Dr. Goding that he had returned to all normal activities. (PX 2, p. 96). Dr. Goding noted that Petitioner had an excellent outcome, and would only need to be seen as necessary. (PX 2, p. 96).

Petitioner's case proceeded to arbitration on August 13, 2015. Respondent's representative at the hearing was Paul Vargo. Witnesses testifying included Petitioner, David Stierwalt, John Rosenbeck, and Paul Vargo. The disputed issues were accident, notice, causal connection, medical bills, temporary total disability, and the nature and extent of any disability.

Petitioner testified that he worked for Respondent as a semi-truck driver. He was an over-the-road truck driver who would typical start a route on a Sunday, and end on a Wednesday or Thursday. On or about February 8, 2013, he was exiting his truck when he fell and landed on his right shoulder on the asphalt parking lot. He was in the process of removing his personal effects from the truck as his route had ended and he was preparing to return home. As he went to step down, he reached for a grab bar with his left arm, missed, and lost his balance. In the process of falling to the ground, he came into contact with the side mirror of a co-worker's pickup truck and knocked the mirror off. Petitioner testified that he hit hard, and laid there for about five to ten minutes. He did not notice any pain immediately. Petitioner testified that he felt pretty good as he went home with no dizziness or pain. He further acknowledged that he didn't go the hospital right away. As he continued to work in the weeks and months thereafter, he began to notice increasing pain and limitation in the right shoulder.

Petitioner testified that the injection helped for a period of time, but that the pain eventually returned, and he went back to Dr. Buchanan on October 3, 2013. Petitioner had still been working for Respondent from the date of accident until that appointment.

Petitioner testified that he was unhappy with the outcome of surgery, and sought a second opinion with Dr. Richard Goding on May 20, 2014.

With regard to the visit with Dr. Goding on May 20, 2014, Petitioner testified that he noticed soreness in his shoulder after shoveling snow, but did not have a specific event whereby he reinjured his shoulder.

Petitioner testified that he called his co-worker, John Rosenbeck, after the occurrence to report the damage he had caused to Mr. Rosenbeck's personal vehicle. He testified that he offered to pay for the damage.

Petitioner admitted that he was not certain as to the exact date of the occurrence, and that it could have been either February 8, 2013 or February 9, 2013, and depended upon whether he returned from his route on either Wednesday or Thursday.

Petitioner testified that about a week after the occurrence, he reported the incident to his supervisor Dave Stierwalt. He testified that he completed another route on the Sunday through Thursday following the accident, and that upon his return, he sat down in Mr. Stierwalt's office to report what happened. He was not asked to fill out an accident report, and no record was made of their conversation. Dave Stierwalt testified at trial that he was Respondent's fleet manager at the time of the accident, and would be the individual to whom the drivers would report an accident. He testified that has no recollection of Petitioner ever reporting the alleged accident, and specifically stated that no such conversation ever happened. However, he also conceded that there would be no document, note, report or other writing that would have been generated by him to record such a report of accident by any driver.

John Rosenbeck testified at trial that the side mirror had been knocked off his truck, and that he had received a phone call from Petitioner who told him he had knocked the mirror off and offered to pay for the damage. Mr. Rosenbeck didn't recall when this occurred. He did not know how the mirror was broken. Mr. Rosenbeck declined Petitioner's offer to pay for the damage as he was able to repair it himself. Mr. Rosenbeck

testified that no one talked to him about the incident. He didn't know if Petitioner spoke to anyone at work about the incident.

Respondent also called Paul Vargo, Respondent's director of risk management and insurance, to testify. Mr. Vargo testified that he reviewed internal records, and they show no report of an accident. He did not become aware of the incident until October 11, 2013. He indicated that Respondent's procedure for handling accidents is that the drivers and/or supervisors will report any accidents to his office and staff for further handling. His office is in Pennsylvania. However, Mr. Vargo also conceded that there are two possibilities for why an accident report would not exist in his office: 1) that the driver never reported it or 2) that the supervisor to whom a driver reports an accident didn't pass it along to his office.

The Arbitrator concludes:

Issue (C) Accident.

Petitioner failed to prove he sustained an accident on February 8, 2013 that arose out of and in the course of his employment with Respondent. In support thereof, the Arbitrator notes the following.

After the alleged accident, Petitioner continued to work full duty and sought no medical treatment for several weeks. He testified that he was feeling pretty good when he left work on February 8, 2013. When Petitioner did seek medical treatment with Dr. Buchanan on March 1, 2013, he gave a history of having fallen out of his truck a month earlier. That would have been earlier than February 8, 2013. The Arbitrator could consider this a minor discrepancy; however, Petitioner was also adamant that the accident occurred on a Wednesday as he would come home on Wednesdays and that was what he was doing when he fell. The Arbitrator takes judicial notice that February 8, 2013 was a Friday. Petitioner also returned to Dr. Buchanan on June 7, 2013 and referenced a three month history of right arm pain. He had been working full duty in the interim. His three month history of right arm pain would date back to early March of 2013 but he further added that it had been "worse the past several weeks." At the next visit on June 14, 2013 Petitioner attributed problems in his shoulder to trouble when shifting. While Petitioner did report that he had fallen off a truck onto asphalt, exactly when (and where) this occurred has not been proven by a preponderance of the evidence and it is Petitioner's burden to prove a specific date, time, and place of accident. Petitioner's alleged accident was not witnessed. Furthermore, Petitioner's testimony regarding the accident was not corroborated by John Rosenbeck. While Mr. Rosenbeck acknowledged that Petitioner told him he broke the mirror off his truck, that doesn't mean that Petitioner fell off his truck and injured his shoulder nor does it provide any details or corroboration for when the alleged fall occurred.

In addition to the foregoing, Petitioner testified that he reported the accident to his dispatcher. However, he acknowledged that he failed to do so immediately. He admitted that he did not report it that evening of the alleged occurrence or the next day or even the next day that he worked. He claimed that he reported it when he returned from his next run approximately one week after the alleged incident. The dispatcher, Dave Stierwalt testified that Petitioner never reported that he fell in Urbana on February 8, 2013. When one considers the totality of the testimony of Petitioner, Dave Stierwalt and Pau Vargo (who heard nothing about the accident until October of 2013), it is hard to believe that Petitioner reported the alleged accident to anyone given the fact there is no evidence of the accident being reported.

Additionally, Petitioner's medical records do not altogether support his claim. Again, there is the discrepancy in when the alleged accident may have occurred. While it is true that Petitioner went to the doctor on March 1, 2013 Petitioner testified (and the records show) that the visit was for his left carpal tunnel

syndrome which he testified was not related to his work. During that visit, he did mention that he fell a month earlier getting out of his truck (no reference to work as opposed to a private vehicle); but, he reported that he landed on his left shoulder and elbow, not his right shoulder. While Petitioner testified that the doctor's note was incorrect, no corroborating evidence was submitted. Furthermore, the office note indicates that no treatment or examination was undertaken to either of Petitioner's shoulders. The doctor did add, however, that Petitioner was doing "much better at this time." This notation does not sound like the sort of problem that would give rise to shoulder surgery eight to nine months later.

Issue (F) Causal Connection.

Even assuming, arguendo, that Petitioner did sustain an accident on February 8, 2013, he failed to prove that his current condition of ill-being in his right shoulder was causally connected to the accident. The only medical evidence to support Petitioner's claim is the opinion of Dr. Kohlmann in his report dated October 30, 2013 (Pet. Ex #1); however it appears that it is based upon inaccurate information and no independent review of Petitioner's prior medical records.

Petitioner failed to prove that his right biceps tear was causally connected to the accident. There is no reference or notation of a right biceps tear until October 3, 2013, eight months after the alleged accident. Dr. Buchanan, who had been treating Petitioner since his alleged accident, referred to the complaint as "new." While Dr. Kohlmann expressed a causation opinion in his office note, that opinion was based solely on the history as provided to him by Petitioner – ie., that Petitioner had no prior right shoulder problems and that he "was certain" in his mind that the fall resulted in the injuries he presented to the doctor with. Dr. Kohlmann never obtained or reviewed Petitioner's earlier treatment records which would have shown the absence of any biceps complaints/symptoms until the October 3, 2013 office visit and histories indicating prior right shoulder problems. Instead, Dr. Kohlmann simply relied upon Petitioner's "belief" that he injured his shoulder and biceps tendon in the fall from the truck. That belief alone was insufficient to establish causation herein.

With regard to Petitioner' right shoulder complaints, Dr. Kohlmann again did not have the benefit of reviewing all of the earlier treatment records. Had he, he would have seen that even if one assumes Petitioner did report right shoulder complaints on March 1, 2013 to Dr. Buchanan, he also reported he was doing much better and needed neither an examination or treatment. He then presented for additional care three months later and acknowledged a history of several years of right shoulder problems that had worsened over the past "several weeks." Petitioner was diagnosed with a herniated disc at that time as he had full range of motion of his shoulder. He then returned one week later and while he mentioned falling off a truck, he really focused his shoulder and elbow complaints on "shifting." Petitioner's treatment at that point was conservative and he underwent no further treatment for another seven months. Petitioner's complaints at that point in time were quite new – the biceps tendon was hard as a knot and he had obvious right shoulder pain with limited movement.

Petitioner's claim for compensation is denied. All remaining issues are moot and no benefits are awarded.

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

BILLICH, JOHN Case# **15WC002218**

Employee/Petitioner

J B HUNT TRANSPORT SERVICES INC

Employer/Respondent

On 10/20/2015, 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:

208 CAPRON & AVGERINOS PC
DANIEL F CAPRON
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

0507 RUSIN & MACIOROWSKI LTD
JEFFREY T RUSIN
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John Billich
Employee/Petitioner

v.

J.B. Hunt Transport Services, Inc.
Employer/Respondent

Case # **15** WC **02218**

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 **Jessica Hegarty**, Arbitrator of the Commission, in the city of **Wheaton**, on **August 20, 2015**. 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. [ ] 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. [x] Other **Petitioner's entitlement to prospective medical treatment**

FINDINGS

On the date of accident, **June 24, 2015**, 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 $**49,084.36**; the average weekly wage was $**943.93**.

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

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

Respondent shall be given a credit of $**38,027.10** for TTD.

ORDER

The respondent shall provide the necessary authorizations for the petitioner to undergo left knee replacement surgery.

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

10/14/15
Date

ICArbDec19(b)

OCT 20 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN BILLICH,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 15 WC 02218**
	)	
J. B. HUNT TRANSPORT SERVICES, INC.	)	
	)	
Respondent.	)	

ADDENDUM TO THE DECISION OF THE ARBITRATOR

This matter was heard before Arbitrator Jessica Hegarty on August 20, 2015 in Wheaton, Illinois. The only disputed issues are causal connection and prospective medical treatment.

Findings of Fact

The Petitioner sustained an accidental work injury to his left knee in 2010 which gave rise to an arthroscopic surgery performed by Dr. William Farrell of Parkview Orthopaedic Group. The Petitioner testified that he returned to work after approximately eight weeks lost time, that he experienced no difficulty with his left knee following his return to work, that he sought no additional treatment for his left knee and that he never filed a workers' compensation claim for that injury.

On June 24, 2014, The Petitioner was removing a lock from underneath a trailer while in a squatting position when he experienced a sharp pain in his left knee. He then drove to Kalamazoo, Michigan where he unloaded his trailer and returned to the Respondent's facility in Naperville, Illinois. By that point, the Petitioner's left knee was painful and swollen, so he was directed by the Respondent's safety department to Meridian Medical Center.

The Petitioner was seen on June 24, 2014 by Dr. Louis Papaeliou at Meridian Medical Center. He complained of left knee pain since twisting it while bending under a trailer to release a lock. Dr. Papaeliou suspected a torn medial meniscus and he prescribed an MRI. (PX 1, p. 43) On July 1, 2014, an MRI was performed which revealed a complete tear of the anterior and medial collateral ligaments, a torn medial meniscus, degenerative arthritis and chondromalacia. (PX 1, p. 73-74) On July 2, 2014, Dr. Papaeliou reviewed the MRI with the Petitioner and referred him to Dr. Michael Dorning, an orthopedic surgeon. (PX 1, p. 38)

On July 3, 2014, the Petitioner was examined by Dr. Dorning who prescribed physical therapy and a knee immobilizer. (PX 1, p. 36) The prescription for physical therapy was renewed on July 22, 2014. (PX 1, p. 31) On August 14, 2014, Dr. Dorning noted that the Petitioner's ACL tear was producing no instability and his MCL tear had healed. Surgery was prescribed to repair the torn medial meniscus. (PX 1, p. 23)

The Petitioner testified that he opted to pursue further treatment with Dr. William Farrell of Parkview Orthopaedic Group, the physician with whom he had treated in 2010 for left knee surgery. He saw Dr. Farrell on August 27, 2014. The initial chart note clarifies that in 2010, Dr. Farrell "scoped his knee" and found "chondromalacia and some early arthritic changes which were debrided arthroscopically." (PX 2, p. 7) Dr. Farrell also noted that the Petitioner "was doing well, back at work, full and regular duty and was basically doing well prior to this episode." (PX 2, p. 7) Debridement surgery was recommended, but Dr. Farrell noted that if this did not provide relief, joint replacement surgery would need to be considered. (PX 2, p. 8)

On September 18, 2014, the Petitioner underwent arthroscopic debridement of chondromalacia in the medial and patellofemoral compartments of his left knee. (PX 2, p. 28-29) The partially torn ACL was not able to be reconstructed. (PX 2, p. 6) Post-operative physical therapy was administered. When the Petitioner continued to complain of pain and swelling, Dr. Farrell administered a steroid injection to the knee on January 14, 2015. (PX 2, p. 3)

On February 4, 2015, Dr. Farrell noted that the injection had provided the Petitioner with only temporary relief. X-rays revealed evidence of a bone-on-bone deformity in the medial compartment of the Petitioner's left knee. Dr. Farrell recommended a knee replacement. (PX 2, p. 1)

On February 13, 2015, Dr. Farrell wrote to the Respondent's adjuster, outlining his findings and recommendations. In addition, he addressed the etiology of the Petitioner's condition:

> The accident on 6/24/14 caused an aggravation of a pre-existing condition to Mr. Billich's knee. He minimized pain prior to this episode despite the fact that he had surgery in 2010. When I say minimize, the fact of the matter was that he was able to work full and regular duty as a truck driver, and without the need for subsequent follow up visits to see me. Unfortunately, the episode and occurrence on 6/24/14 aggravated the pre-existing condition such that the continued conservative options did not afford him any reasonable control of his symptoms....In summary, Mr. Billich sustained a work-related occurrence on 1/24/14 (sic) with an aggravation of a pre-existing condition involving his left knee. (PX 3)

The Respondent elected to have the Petitioner evaluated by Dr. Joshua Jacobs on April 13, 2015 pursuant to Section 12 of the Act. Dr. Jacobs also reviewed copies of the Petitioner's treating medical records. He agreed that the Petitioner has severe

osteoarthritis of the left knee. He felt, however, that the Petitioner's accident of June 24, 2014 did not cause this condition and that it pre-existed. He did not comment on whether the osteoarthritis may have been aggravated by the work accident. Dr. Jacobs agreed that the Petitioner needed a left total knee arthroplasty. (RX 3)

The Petitioner saw Dr. Farrell as recently as May 20, 2015 and the doctor's nurse practitioner as recently as July 1, 2015, at which time they continued to await authorization for knee replacement surgery. (RX 2)

On August 4, 2015, Dr. Jacobs issued a supplemental report following his review of records relating to the treatment of the Petitioner's left knee in 2010. After reviewing these records, Dr. Jacobs reiterated his opinion that the Petitioner's osteoarthritis pre-existed the accident of June 24, 2014. He felt that the Petitioner would likely have required total knee arthroplasty regardless of the accident at work. (RX 4)

II. Conclusion of Law.

In support of the Arbitrator's decision relating to whether the Petitioner's condition of ill-being is causally connected to the accident ("F") and the Petitioner's entitlement to prospective medical treatment ("O"), the Arbitrator concludes as follows:

Dr. Farrell, the Petitioner's treating doctor, has indicated that the work accident served to aggravate the Petitioner's pre-existing condition. Dr. Jacobs, the Respondent's Section 12 examiner, has indicated that the Petitioner's condition pre-existed the work accident (a point on which Dr. Farrell agrees) but he does not comment on whether the work accident served as an aggravating factor. Although Dr. Jacobs opined that the Petitioner would likely have required knee replacement surgery even in the absence of the work accident, he does not comment on whether the accident might have hastened the inevitable.

The Arbitrator finds the opinions of Dr. Farrell to be more credible than those of Dr. Jacobs. Not only does Dr. Farrell have the advantage of perspective, having treated the Petitioner in 2010 and currently, his opinions are more in line with the undisputed facts.

The question of whether the Petitioner's knee condition was aggravated by the accident at work is illuminated by the fact that from November, 2010 until June 24, 2014, the Petitioner required no medical care for his knee. He was able to work full time in an arduous occupation without lost time or the need to see a doctor. The accident of June 24, 2014 produced immediate pain which has been unremitting since that time, despite one arthroscopic procedure and significant attempts at conservative management.

Based on the foregoing, the Arbitrator concludes that the Petitioner's current condition of ill-being regarding his left knee, including the need for replacement surgery, is causally connected to the accident at work, and that the Respondent shall provide the necessary authorization so that the surgery can proceed.

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

LEWIS, DANIEL Case# **13WC007188**

Employee/Petitioner

M4 CONCRETE INC

Employer/Respondent

On 10/15/2015, 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 0.08% 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:

0365 BRIAN J McMANUS & ASSOC, LTD
MARK CONNOLLY
30 N LASALLE ST SUITE 2126
CHICAGO, IL 60602

0766 HENNESSY & ROACH PC
ERIN FIORE
140 S DEARBORN ST 7TH FL
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DANIEL LEWIS
Employee/Petitioner

v.

M4 CONCRETE, INC.
Employer/Respondent

Case # **13** WC **7188**

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 **STEFFEN**, Arbitrator of the Commission, in the city of **CHICAGO**, on **8/5/15**. 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. [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 _____

FINDINGS

On the date of accident, **2/26/15**, 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 $**3,203.70**; the average weekly wage was $**1.218.26**.

On the date of accident, Petitioner was **28** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of $**97,425.04** for TTD, $**0** for TPD, $**0** for maintenance, and $**2,850.00** for other benefits, for a total credit of $**100,275.04**.

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

ORDER

Respondent shall be given a credit of $**97,425.04** for TTD, $**0** for TPD, $**0** for maintenance, and $**2,850.00** for other benefits, for a total credit of $**100,275.04**.

Respondent shall pay Petitioner temporary total disability benefits of $812.09/week for 127 weeks, commencing 2/27/2013 through 8/5/2015, as provided in Section 8(b) of the Act. Respondent shall receive credit for TTD payment that have been made for said period.

The Respondent shall authorize and pay for the tarsal tunnel release as prescribed by Dr. Gregory Dumanian, MD.

Penalties are awarded as follow:

Pursuant to Section 19(k) the Arbitrator Awards $1,430.19 in penalties representing 50% unpaid TTD.

Pursuant to Section 19(l) the Arbitrator awards Petitioner $ 30.00 per day for the 59 days of non-payment of benefits or $ 1,770.00.

. Pursuant to Section 16 the Arbitrator awards $572.07 in attorneys' fees representing 20% unpaid TTD

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

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

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

Ketki S. Steffen
Signature of Arbitrator Ketki Shroff Steffen

10/14/15
Date

ICArbDec19(b)

OCT 15 2015

FACTUAL BASIS

The Petitioner, Daniel Lewis was 28 years old at the time on his undisputed work accident of February 26, 2013. He had graduated high school in 2001 and started working a job through a labor union. At the time of his accident, Petitioner worked for Respondent, M4 Concrete, Inc. as a concrete laborer. Petitioner testified that he had no prior accidents or injuries to his right foot or ankle.

Petitioner testified regarding the details of his work accident. He stated that his job duties included pouring concrete, forming concrete, stripping, digging, tying rebar and everything involved in pouring concrete. He testified that he suffered an injury to his right ankle while performing his work duties.

Since the date of the accident he has undergone two surgeries to his right ankle. (Tr Pg. 12) He was first diagnosed with an unstable fracture of the right ankle and underwent an open reduction internal fixation by Dr. Robin Vargo of Hinsdale Orthopedics. This was performed on March 29, 2013 at Good Samaritan Hospital. He did undergo physical therapy after that surgery however his right ankle did not fully recover.

He sought out the second opinion of Dr. Armen Kelikian, MD who he first saw on January 20, 2014 (Tr Pg. 13). Dr. Kelikian ordered a CT scan and eventually prescribed a second surgery that was performed on June 26, 2014. This surgery consisted of the removal of three hardware screws in his right ankle. Dr. Gregory Dumanian, MD of Northwestern Medicine also performed part of this surgery consisting of an excision of a right sural nerve neuroma and reconstruction of the sural nerve neuroma with a nerve graft (Tr Pg. 13).

After this second surgery, Mr. Lewis continued to see both Dr. Kelikian and Dr. Dumanian and began a second round of physical therapy. The last time he saw Dr. Kelikian was October 27, 2014 and at that time Dr. Kelikian believed he had tarsal tunnel syndrome in his right ankle. His care and

treatment was then deferred to Dr. Dumanian for additional nerve treatment. Since that time, Dr. Dumanian performed two cortisone injections into the petitioner's right ankle. (Tr Pg. 15). The first was performed on January 14, 2015 and provided Mr. Lewis with temporary relief of pain in his right ankle. Mr. Lewis concluded physical therapy on March 13, 2015 at which time the therapists determined that his progress had plateaued.

The Petitioner returned to see Dr. Dumanian on March 18, 2015 who also believed Mr. Lewis had tarsal tunnel syndrome and recommended a tarsal tunnel release. This surgery was not approved by the respondent. (Tr Pg. 16) His next appointment with Dr. Dumanian was on May 20, 2015 and at that time the pain in his right ankle had returned. Dr. Dumanaian performed a second cortisone injection which again provided Mr. Lewis with relief. (Tr Pg. 17) Dr. Dumanian also ordered an EMG and ultrasound to further confirm the presence of tarsal tunnel syndrome. These tests were paid for by the Respondent.

The Petitioner next saw Dr. Dumanian on July 1, 2014 who again recommended a tarsal tunnel release. The petitioner testified that he wants to undergo the tarsal tunnel release and wants to do anything he can to get his foot better. At the time of trial Mr. Lewis complained of pain in and around his right foot and shooting pain that goes from the bottom of his foot into his kneecap. He never had any of these complaints prior to the accident. (Tr Pg. 18) At no point has any treating doctor returned him to work full duty. (Tr Pg. 18 to 19).

The petitioner testified that had does not feel he could return to work full duty because his job is very labor intensive and his ankle is very weak. (Tr Pg. 19) He has shooting pain that goes from his ankle to his kneecap and it's hard to do daily activities just being at home. He testified that he has difficulty walking for a couple hours and will have to sit down upon doing so. If he overexerts himself his ankle begins to swell. (Tr Pg. 19)

At the request of the Respondent, the petitioner was examined by Dr. Anand Vora, MD on December 12, 2014. That examination consisted of a physical exam and an X-ray and review of some medical reports. (Tr Pg. 20) Petitioner testified that he attended another independent medical examination with Dr. Anand Vora on December 12, 2014. Petitioner testified that Dr. Vora performed a quick examination, did not ask him about his job duties, did not perform an FCE and did not ask him to perform any functional tasks. Respondent submitted three reports from Dr. Vora. RX3, RX4, RX5. Dr. Vora's report dated December 12, 2014, noted that Petitioner had disproportionate subjective complaints compared to the objective evidence. RX3. Dr. Vora opined that Petitioner's past treatment had been reasonable and that the only ongoing care he required was topical patches to address discomfort while wearing shoes. Id. The doctor stated Petitioner was not at maximum medical improvement due to the length of time needed for nerve regrowth, but he did not anticipate any work restrictions from an ankle standpoint. Id. The doctor noted he did not have any operative reports to review at this examination. Id.

Dr. Vora then drafted an addendum report, which is also dated December 12, 2014. He reviewed records from Dr. Dumanian, Dr. Kelikian, ATI Physical Therapy, and the operative report(s) of June 26, 2014. Dr. Vora noted that the current pain complaints involving the medial ankle and tarsal tunnel are not documented anywhere else in the prior records, nor was those pain complaints noted at the time of his own examination. He again opines that there is no objective evidence to support the ongoing subjective complaints. Dr. Vora notes the unusual existence of the sural nerve injury but does state that all past treatment has been reasonable. Dr. Vora again opines that the only future treatment would be for addressing any sural nerve regrowth and that a tarsal tunnel release is not indicated. He specifically states:

> I respectfully would not agree that this petitioner would require tarsal tunnel release as the mechanism of an inversion injury to the ankle by the original injury description, syndesmotic injury and other associated constellation of orthopedic injuries suggesting inversion certainly would not cause a tarsal tunnel injury.

> There are no records of subsequent tarsal tunnel injury or iatrogenic injury nor any evidence of any symptoms of tarsal tunnel related complaints throughout the records as relates to any work-related injury. At this point, there is no rationale that would support the need for tarsal tunnel surgery and any need for tarsal tunnel surgery would be unrelated to any work-related condition should this be considered.

Dr. Vora goes on to opine that Petitioner would not require any work restrictions, even with sural neuritis, and can return to his original job. He again opines that Petitioner is at maximum medical improvement but for nerve regrowth, which grows at approximately 1 centimeter per year. Last, Dr. Vora performed an AMA impairment rating analysis and found that Petitioner suffered a 2% lower extremity impairment rating, which corresponds to a 1% whole body rating. RX4.

Respondent obtained another report from Dr. Vora, dated July 16, 2015. Dr. Vora reviewed the EMG and the ultrasound and noted that there was no space occupying lesion indicative of tarsal tunnel syndrome. The doctor also noted that literature does not support a tarsal tunnel surgery without a space occupying lesion as the prognosis would be guarded. As to a positive response to cortisone injections, the doctor advised that injections can improve multiple conditions and that the injection is not a definitive test for tarsal tunnel syndrome. Dr. Vora again notes that the current symptoms do not relate directly or indirectly to a work injury and that he is "unable to relate the mechanism of injury, initial treatment, or subsequent treatment to the development of tarsal tunnel syndrome directly or indirectly." RX5.

Petitioner testified that he underwent an EMG and an ultrasound. Dr. Dumanian ordered these tests to confirm the diagnosis of tarsal tunnel. PX3. The EMG was administered on June 26, 2015, and was read by Dr. Takashi Nishida to show evidence of isolated right sural neuropathy with the remainder of the test being normal. Id. The ultrasound was administered on June 26, 2015, as well, and interpreted by Dr. Thomas H. Grant, DO, to show focal hypoechoic appearance compatible with a neuropathy of the distal right tibial nerve, no evidence of nerve entrapment and possible involvement of the proximal medial platar nerve. Id. Petitioner testified that Dr. Dumanian continues

to recommend tarsal tunnel surgery. On July 1, 2015, Dr. Dumanian continued to recommend a tarsal tunnel release and stated in support:

> As Petitioner has had 2 positive results from cortisone shots, we elected to study him both with an ultrasound and nerve study. The ultrasound did show changes in the medial plantar nerve but I thought it was more a hypoechoic change, as opposed to compression. The nerve test was normal by EMG.
>
> Regardless, he has a positive result from an ultrasound and 2 positive results from injections. Therefore, I would recommend a tarsal tunnel release. Id.

Petitioner testified that he continued to suffer pain and discomfort and would like to undergo the tarsal release surgery.

ARGUMENT/ANALYSIS

IN SUPPORT OF THE ARBITRATOR'S DECISION CONCERNING (F) IS THE PETITIONER'S CURRENT CONDITION OF ILL BEING CAUSALLY RELATED TO THE INJURY THE ARBITRATOR FINDS AS FOLLOWS:

The Petitioner is a fairly young man who started working as a concrete laborer soon after his high school graduation. At the age of 28 he suffered a serious work accident to his right ankle and the accident and the two surgeries that followed were accepted by the Respondent. Petitioner testimony in court was credible with little or no exaggeration of his injuries or current condition. His willingness and intent to return to work and heal from his injury was obvious and evident during his in court testimony. Prior to his accident there were no injuries or pre-existing condition that may muddy the waters regarding Petitioner's present medical situation,

Petitioner testified that he underwent two foot surgeries. He also received cortisone shots which provided good relief but that the relief was short-lived. He testified that he continued to suffer from pain in and around his foot and has shooting pain that goes form the bottom of his foot to his kneecap. In March, 2015, following the shots and an MRI, his treating physician, Dr. Dumanian, has recommended a tarsal tunnel release procedure. Respondent obtained an IME from Dr. Anand Vora in December, 2014. Dr. Vora found that all past treatment was reasonable but that Petitioner is at

MMI may return to work and that the tarsal tunnel release is not indicated as Petitioner's subjective complaints are not supported by objective findings. In essence, Respondent is contesting causal connection of Petitioner's current complaints based on the findings of Dr. Vora. The Arbitrator finds that there is causal connection and that the opinion of Dr. Dumanian is more persuasive on this issue as it is supported by the nature of the accident and injury, the well documented medical history and Petitioner's credible testimony that is supported by objective medical findings.

In reaching this conclusion, the Arbitrator notes that the history and the success and failures of Petitioner's prior medical treatment support his position. The Petitioner has undergone two right ankle surgeries. The first was an open reduction internal fixation of his right ankle on March 29, 2013 at Good Samaritan Hospital (Px. 1). He continued to have pain in his right ankle. Dr. Armen Kelikian examined him and on January 20, 2014 documented his symptoms of burning pain and stiffness in his right ankle. (Px. 2) He performed a second repair nature surgery on the petitioner's ankle on June 26, 201. The procedure consisted of the removal of three hardware screws. Dr. Gregory Dumanian, MD also performed part of this surgery consisting of the excision of a right sural nerve neuroma and reconstruction of the sural nerve neuroma with a nerve graft. (Px. 2, 3, and 4)

Following the surgery, Petition started treating with Dr. Kelikian. Dr. Kelikian;s medical notes document a consistent history that Petitioner's symptoms have never completely resolved. The petitioner testified that he has pain in his right foot that shoots up to his right kneecap to this day. Respondent accepted and paid both surgeries and the IME Dr. Vora found the treatment reasonable and necessary.

Respondent finds issue with the Petitioner's current complaint from this point on. Based on the review of the prior medical treatment and the solid and clear documentation of Petitioner's unresolved pain and medical issue, the Arbitrator finds Dr. Vora's opinion to be misplaced. Initially, the Arbitrator notes that the Petitioner was in great health, young, able to work a very labor heavy job

and had no pre-existing issues with his ankle prior to his work accident. Dr. Vora's opinion is lacking as his examination of the Petitioner is not extensive or long term, and his expertise in evaluation the MRI results that he relies on is limited.

In contract, the opinions of Dr. Kelikian and Dr. Dumanian are credible and supports Petitioner's causal connection claim. At his October 27, 2014 appointment with Dr. Kelikian, Dr. Kelikian believed Mr. Lewis had tarsal tunnel syndrome and referred him to Dr. Dumanian for continued nerve treatment. At the petitioner's January 14, 2015 appointment Dr. Dumanian's records indicate that the tapping of Mr. Lewis's tibial nerve did create some of the symptoms he was feeling with respect to tarsal tunnel syndrome. (Px. 3)

Petitioner underwent two contisome injections into the area of the tarsal tunnel and they provided significant but temporary complete relief of his symptoms. Petitioner testified that he was symptom free for 4 to 5 weeks after his first injection. (Px. 3) Dr. Dumanian finds that a significant indicated that the tarsal tunnel surgery is indicated. This finding also supports Petitioner's position that his current condition is related to his work accident.

Additional support and evidence for Dr. Dumanian opinion can be found in the EMG and nerve test that Petitioner underwent. These test results help support the diagnosis of the tarsal tunnel . . On July 1, 2015 Dr. Dumanian records state:

> "he has had two positive results from cortisone shots we elected to study them both with ultrasound nerve study. Ultrasound did show changes in the medical plantar nerve but I thought it was a hypoechoic change as opposed to compression. The nerve test was normal by EMG. Regardless he has had a positive result from an ultrasound and two positive results from injections. Therefore I would recommend a tarsal tunnel release."

Based on a review of the medical opinion of the IME and treating physician and well as a review of the objective test results and Petitioner's in-court testimony, the Arbitrator finds that Petitioner's current right ankle symptoms are causally connected to his work accident. There is no evidence any intervening accident and profuse evidence that Petitioner continues to suffer ankle pain

from his work accident and needs carpal tunnel release surgery to correct his problems. This is additionally documentation throughout the physical therapy records at ATI (Px. 5).

In discounting Dr. Vora's opinion the Arbitrator further notes that Dr. Vora found the previous care given by Dr. Dumanian to be reasonable. He also agreed with the diagnostic cortisone injections that were administered. His opinion that Petitioner is at MMI and can return to full duty, unrestricted job that is labor heavy is less credible in light of a lack of a functional capacity evaluation or consideration of Petitioner's job obligations. He provides an opinion that Petitioner return to work without an objective test which is reasonably warranted for an accepted accident, failed prior surgery and a Petitioner whose current subjective pain complaints are well documented. (Respondent's Exhibit 4; Tr Pg. 20 to 21). The evidence clearly indicated that Dr. Vora did not discuss Petitioner's job duties with him, nor did he perform a functional capacity evaluation. Dr. Vora did not have him perform any functional tasks so have some perspective regarding Petitioner's ability to lift any weights or crouch or bear weight upon his injured ankle. (Tr Pg. 20). His opinion that Petitioner is capable of return to work lacks objective testing and criteria. In contrast Petitioner's treating physicians only returned him to sedentary duty. Dr. Vora does not sufficiently explain the basis to discredit the treatment physician opinion. Therefore, the Arbitrator finds that the Petitioner's current condition is causally related to his work accident.

The Arbitrator also notes that Dr. Vora's 16, 2015 addendum (Respondent's Exhibit 5) does little to overcome his unpersuasive opinion. In this opinion, in response to question No. 2 Dr. Vora does state:

> "**I do believe that cortisone injections are reasonable treatments** if the diagnosis of tarsal tunnel syndrome is suspected as one diagnostic parameter amongst many that should be put into context with the clinical scenario and mechanism of injury and subsequent treatments. These subjective reports of improvement are simply that, subjective and **may indeed represent presence of tarsal tunnel syndrome**, however, in my opinion may also be a result of general improvement after cortisone injection which may be nonspecific and unrelated to tarsal tunnel syndrome or any other pathologic condition."

Essentially Dr. Vora almost confirms that that Mr. Lewis is suffering from tarsal tunnel syndrome and that cortisone injections are diagnostic in nature and that positive cortisone injections could show the presence of tarsal tunnel syndrome. Mr. Lewis' records and testimony both show that he improved drastically after each of the two cortisone injections done by Dr. Dumanian. (Px. 3) The Arbitrator finds this dichotomy within Dr. Vora'

Unlike Dr. Vora, Dr. Dumanian explains his opinion regarding the need for the tarsal tunnel release. (Px. 3) Dr. Dumanian's July 1, 2015 records state:

> "He has a positive result from an ultrasound and 2 positive results from injections. Therefore I would recommend a tarsal tunnel release. There is nothing else I can offer the patient. We will keep him at light duty for now."

Therefore Dr. Dumanian's opinions are more persuasive than that of Dr. Vora.

Finally, Dr. Vora is opinion is lacking in regards to his explanation that Petitioner is at MMI, without restrictions. At the time of his initial evaluation of the petitioner on December 12, 2014 Dr. Vora opined that he did not believe the Petitioner was at maximum medical improvement and that would be anticipated at <u>approximately one year or even up to two years depending on the length of nerve injury requiring treatment and repair</u>. (RX 3). Even if one were to accept Dr. Vora's opinions that Petitioner is at MMI, it is difficult to find support for Dr. Vora's recommendation that Petitioner has no restrictions in his right foot. This unrestricted return to work opinion undermines and conflicts with his prior comments.

With respect to maximum medical improvement, Dr. Vora's opinions states:

> "It should be noted that nerve regeneration can take years and as such outside of this particular variable, I do believe the claimant is at maximum medical improvement and no further intervention is necessary other than monitoring nerve regeneration as deemed appropriate. For this reason, I do believe that the claimant is at maximum medical improvement other than taking into the count the sural nerve regeneration factor which has a lengthy time line of approximately 1 cm per year." (Respondent's Exhibit 4, Page 3)

His opinions that the Petitioner is at maximum medical improvement and can return to work full duty are in total contrast to the evidence and his own prior findings.

In contrast, Petitioner's position that his current condition is causally connected is supported by his testimony, his treating physician, physical therapy records and findings from ATI. Specifically, March 13, 2015 ATI record states,

> "Patient continues to present with impairments involving strength, flexibility, joint mobility, gait, pain, proprioception, body mechanics, lifting mechanics. These deficits limit patient's ability to perform these tasks: ascending stairs, carrying, cleaning, vacuuming, sweeping, climbing ladder, crawling, descending stairs, jogging/running, kneeling, lifting from floor, operating heavy machinery, physical activities, exercising, golfing, pulling/pushing tasks, sleeping > 6 hours, squatting, sustaining standing, walking, walking on uneven surfaces. Prior to injury patient worked as a union laborer."

Under the circumstances the Arbitrator finds that the Petitioner, who started his work-life as a healthy young individual, did suffer an inversion-type serious injury to his right ankle and has never completely healed. **His condition of ill being is causally related to the February 26, 2013 work accident.**

IN SUPPORT OF THE ARBITRATOR'S DECISION CONCERNING (K) IS THE PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL TREATMENT CARE THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator adopts her findings and reasoning regards to causal connection and the testimony and opinion of Dr. Vora and Dr. Dumanian and incorporates the same in regards to this findings and opinion on the issue of prospective medical treatment. Petitioner seeks approval for a tarsal tunnel release recommended by Dr. Gregory Dumanian.

The Arbitrator finds that a tarsal tunnel release is reasonable, necessary and causally connected. The Petitioner desires to have this procedure and return to good working health. Therefore, the arbitrator awards this prospective medical including other reasonable pre and post-operative care for the same.

IN SUPPORT OF THE ARBITRATOR'S DECISION CONCERNING (L) THE AMOUNT OF TTD THE ARBITRATOR FINDS AS FOLLOWS:

The Petitioner seeks TTD payments for 127 weeks for the period of 2/27/13 through 8/5/15. Petitioner claims that per the medical opinion of Dr. Gregory Dumanian that he was only capable of sedentary work and the Respondent did not accommodate these restrictions. The Respondent alleges that Petitioner's current condition is unrelated to his work accident and that Petitioner is at MMI and capable of returning back to full duty work per the opinion of their IME Dr. Vora.

The Arbitrator finds that Petitioner has not reached MMI and had work restrictions. Absent accommodations by the Respondent, Petitioner is entitled to the requested TTD.. It should be noted that at the time of his initial evaluation of the petitioner on December 12, 2014, Dr. Vora did not believe the Petitioner was at maximum medical improvement and that opined that it would be anticipated at approximately one year or even up to two years depending on the length of nerve injury requiring treatment and repair. (RX3). Dr. Vora also found the first two procedures and the diagnostic cortisone shots to be reasonable. Dr. Vora's opinion that Petitioner is capable of returning to full duty would have more credence if accompanied by an FCE evaluation and a consideration of Petitioner heavy work duties. Lastly it is noted, that Dr. Vora changed/modified his opinion that Petition is capable of returning to work in without examining the Petitioner a second time and in response to an April 9, 2015 letter from Respondent's counsel, (Respondent's Exhibit 4).

Dr. Vora's opinions that Petitioner could return to work full duty are simply not persuasive and are not based on objective data. More compelling are the physical therapy notes from ATI on March 13, 2015 that document Petitioners physical inability to his return to full duty work: They state as follows:

> "Daniel Lewis is a 30 y/o male who presents to physical therapy with signs and symptoms consistent with physician's diagnosis of (R) neuralgia/Neuritis, (R) sural neurectomy. Patient has made objective improvements with ROM. These improvements have increased patient's ability to perform these tasks: ascending stairs, descending stairs,

and driving. Patient continues to present with impairments involving strength, flexibility, joint mobility, gait, pain, proprioception, body mechanics, lifting mechanics. These deficits limit patient's ability to perform these tasks: ascending stairs, carrying, cleaning, vacuuming, sweeping, climbing ladder, crawling, descending stairs, jogging/running, kneeling, lifting from floor, operating heavy machinery, physical activities, exercising, golfing, pulling/pushing tasks, sleeping > 6 hours, squatting, sustaining standing, walking, walking on uneven surfaces. Prior to injury patient worked as a union laborer: construction that requires a PDL of heavy. Patient is currently not working: Temporarily and totally disabled. Due to plateaued progress, patient will be discharged at this time."

Therefore, based on the causal connection finding and the finding regarding Petitioner's need for prospective medical care, the Arbitrator also finds that the Petitioner is entitled to TTD payments for the requested 127 week period at a temporary total disability rate of $812.09 per week and totaling $103,135.43 in benefits. Respondent may receive credit for any TTD that has been paid for said period.

IN SUPPORT OF THE ARBITRATOR'S DECISION CONCERNING (M) SHOULD PENALITES OR FEES BE IMPOSED UPON RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

Section 19(k) of the Act provides in relevant part that a penalty may be imposed when there has been unreasonable or vexatious delay in payment of compensation or when proceeding institute by the employer are frivolous or for purpose of delay. *Boker v. Illinois Industrial Commission*, 141 Ill. App. 3D 51, 56, 489 NE. 2D 913, 197, 95 Ill. Dec. 351 (1986). Section 19(l) of the Act similarly provides for the imposition of a penalty when the employer "without good and just cause" fails to pay or delays payment of TTD payments. *Boker*, 141 Ill. App. 3d 56, 489 N.E. 2d at 917.

Section 16 provides, in relevant part, that attorney fees may be awarded when the employer has engaged in unreasonable or vexatious delay, intentional underpayment, or frivolous defenses under 19(k). *Boker*, 141 Ill. App 3d at 58, 489 N.E. 2d at 919. The intent of these sections is to implement the Act's purpose of expediting the compensation of industrially injured workers and penalizing an employee who unreasonably, or in bad faith, delays or withhold compensation due an employee. *Continental Distributing Co. v. Illinois Industrial Commission*, 98, Ill, 2d, 207, 414, 456,

N.W. 2d 847,850, 75 Ill. Dec26 (1983); *Avon Products, Inc. v. Illinois Industrial Commission*, 82, Ill. 2d297, 301-02, 412 N.E. 2d 468, 470, 45 Ill. Dec. 117(1980). Penalties for delayed payment are not intended to inhibit appeals of employers who, acting in good faith, honestly believe that an employee is entitled to compensation. Rather, they are intended to promote the prompt payment of compensation where due and to deter there occasional employer or insurance carriers who might withhold payment from other than legitimate motives. *Avon Products, Inc., v. Illinois Industrial Commission*, 82, Ill. 2d at 301-02, 412 N.E3d at 470.

When a delay in paying compensation has occurred, the employer bears the burden of justifying the delay. *Board of Education v. Illinois Industrial Commission*, 93, Ill 2d 1, 9, 442 N.E. 2d 861,865, 66 Ill. Dec 300(1992); *Smith v. Illinois Industrial Commission*, 170 Ill. App. 3 626, I 632,525 N.E.2d 81, 85, 1221 Ill. Dec. 275 (1988) Whether the employer's conduct justifies the imposition of penalties is to be considered in terms of reasonableness and is factual determination for the arbitrator. *Avon Products, Inc. v. Illinois Industrial Commission*, 82, Ill. 2d at 302, 412 N.E.2d at 470; *Boker,* 141 Ill. App.3d at 57, 489 N.E.2d at 918. Upon a careful review of the facts in this case, the Arbitrator specifically finds that Respondent' conduct in this case was not reasonable.

In reaching this determination, the fact-finder should be aware that the intent of the Workers' Compensation Act in allowing recovery of additional compensation and attorney's fees is to implement the Act's purpose to expedite the compensation of industrially injured workers and penalize an employer who unreasonably, or in bad faith, delays or withholds compensation due an employee. McMahan v. Indus. Comm'n, (4th Dist. 1997) 289 Ill.App.3d 1090, 1093. It is applicable in cases of malicious delay or improper purpose, as well as in cases of ordinary delay without justification. Id. The standard to which an employer is to be held is one of objective reasonableness in his belief; it is not good enough merely to assert an "honest belief" that a workers' compensation claim is invalid or that an award is not supported by the evidence to avoid sanctions. Bd. of Educ. of

City of Chicago v. Indus. Comm'n, 93 Ill.2d 1, 10 (1982). Here, it was objectively reasonable for Respondent to rely on the opinions of its Section 12 examiner, Dr. Vora. Moreover, preauthorization of a surgical procedure is not required under the Act. See Hollywood Casino-Aurora, Inc. v. Illinois Workers' Comp. Comm'n, (2nd Dist. 2012) 967 N.E.2d 848, 852.

In assessing Petitioner's request for penalties, the Arbitrator is mindful that the Respondent has paid full TTD benefits to Petitioner for some period and did promptly notify the Petitioner of their intent to terminate benefits in reliance upon Dr. Vora's. The Arbitrator is also mindful that Respondent had initially authorized extensive treatment in this matter. The parties also stipulated that Respondent has paid or will agree to pay all medical bills through July 1, 2015. There is no evidence of any treatment after July 1, 2015 as Petitioner is awaiting authorization for the tarpal tunnel release procedure.

In spite of Respondent's conduct and efforts the Arbitrator award penalties in this matter for the following reason:

1. Petitioner was a healthy young man who suffered an undisputed and serious inversion-type injury to his foot while performing his duties in furtherance of his employer's business.

2. Although Respondent did authorize and pay for the first two surgeries, the medical evidence is undisputed that all physicians (including IME) found these necessary, reasonable and related.

3. There is undisputed evidence that there were complications and that the first surgery was a failure.

4. There is no evidence of a break in Petitioner's symptoms or pain during this case's timeline. The evidence that Petitioner continues to suffer the ill-effects of his accident is clear and convincing. Even Dr. Vora, although he denies causation as to the tarpal tunnel surgery, agrees that the procedure for the same is reasonable and warranted.

5. Dr. Vora'a opinion of full duty release, without restriction, is largely unsupported by any physical capability testing. Respondent's reliance on this fact is unreasonable if not wrongful.

6. The ATI records clearly dictate a contrary result that Petitioner would have restrictions in light of his heavy duty labor work.

7. There is little explanation of Dr. Vora's sudden change in opinion that led him to issue a full duty, unrestricted release without so much as a second examination of a Petitioner who is of a young age and engaged in a heavy-duty occupation. This is doubly aggravating in light of Dr. Vora first examination which was very quick and not thorough (i.e. he lacked essential medical records of the prior surgery)

In light of these findings, The Arbitrator finds respondent's termination of TTD benefits to be wrongful, vexatious and without cause. Termination and non-payment of medical was based upon a flawed and unpersuasive Section 12 exam of Dr. Anand Vora, MD. Dr. Vora believed that the Petitioner was capable of full duty work despite the fact that he still had significant restrictions. The Petitioner's treating physician, Dr. Gregory Dumanian, MD, gave the Petitioner restrictions of sedentary duty and at his last appointment at ATI Physical Therapy, the therapist itemized numerous restrictions that the Petitioner had. Dr. Vora came to the conclusion that the Petitioner was capable of full duty work four months after last seeing the Petitioner and without inquiring as to the type of work the Petitioner performed or by performing a functional capacity evaluation. His opinions are clearly lacking and Respondent's reliance of the same was unreasonable..

As such, pursuant to Section 19(k) the Arbitrator Awards $1,430.19 in penalties representing 50% unpaid TTD. The Arbitrator also Awards petitioner $ 30.00 per day for the 59 days of non-payment of benefits or $ 1,770.00 pursuant to 19(l). Lastly the Arbitrator awards $572.07 in attorneys' fees representing 20% unpaid TTD pursuant to Section 16.

IN SUPPORT OF HER FINDINGS REGARDING CREDIT TO RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS;

This Arbitrator awards Respondent a credit for payment of TTD benefits already made. The parties stipulated that Petitioner received $97,425.04 in TTD benefits. Said credit is to be set off against Respondent's liability for TTD payment pursuant to the Arbitrators current findings that Respondent is liable for TTD payments for 127 weeks for the period of 2/2/7/13 through 8/5/15.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GREEN, BRENDA Case# **10WC041336**

Employee/Petitioner

CHICAGO TRANSIT AUTHORITY

Employer/Respondent

On 10/21/2015, 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:

0307 ELFENBAUM EVERS & AMARILIO
JOSEPH D AMARILIO
940 W ADAMS ST SUITE 300
CHICAGO, IL 60607

0515 CHICAGO TRANSIT AUTHORITY
ARGY KOUTSIKOS
567 W LAKE ST 6TH FL
CHICAGO, IL 60661

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

Brenda Green
Employee/Petitioner

v.

Chicago Transit Authority
Employer/Respondent

Case # **10** WC **41336**

Consolidated cases: **D/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 **Molly Mason** , Arbitrator of the Commission, in the city of **Chicago**, on **9-29-15**. 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 **8-11-10**, 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 lumbar spine condition of ill-being ***is*** causally related to the accident. For the reasons set forth in the attached decision, Petitioner failed to establish causation as to the need for treatment she underwent after April 13, 2011.

In the year preceding the injury, Petitioner earned $**61,942.40**; the average weekly wage was $**1,191.20**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **2** dependent children.

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

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

Respondent shall be given a credit of $**17,297.91** for TTD, $**680.67** for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

Respondent is entitled to a credit of $**3,600.00** under Section 8(j) of the Act.

The parties entered into stipulations concerning incurred medical expenses and temporary total disability. Arb Exh 1. Accordingly, the Arbitrator makes no findings as to those issues.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $669.64 /week for 27.5 weeks, representing 5.5% loss of use of the person as a whole under 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.

Molly C Mason
Signature of Arbitrator

10/21/15
Date

OCT 2 1 2015

Brenda Green v. Chicago Transit Authority
10 WC 41336

Arbitrator's Statement of Issues

The parties agree that Petitioner sustained an accident on August 11, 2010, while working as a customer service supervisor for Respondent. They also agree that Petitioner experienced problems with her back, knees and right ankle prior to that accident. They reached stipulations as to temporary total disability and medical expenses. Arb Exh 1.

The disputed issues include causation and nature and extent. Arb Exh 1.

Arbitrator's Findings of Fact

As noted above, Petitioner acknowledged experiencing back pain prior to the August 11, 2010 work accident. She described that pain as intermittent and responsive to Tylenol. She underwent right ankle surgery, including insertion of hardware, in 2008. Dr. Brink performed this surgery. RX 1, pp. 73-74. The need for this surgery arose out of a work accident of February 18, 2008. Petitioner filed a claim against Respondent in connection with this accident. This claim was settled in March 2009. RX 4.

Records in RX 1 reflect that Petitioner saw Dr. Chelich, her personal care physician, for low back pain in May 2006, January 2008 and the latter part of 2008. Records in RX 4 reflect that Dr. Wallner diagnosed low back pain in October 2005 and January 2006. A sleep study report dated April 18, 2005 reflects a history of "intermittent low back pain with radiation into the right leg." RX 1, p. 69. A lumbar spine X-ray report dated June 8, 2006 reflects a history of "chronic low back pain," with the radiologist seeing no significant arthritic changes. RX 1, p. 65. On October 23, 2008, Dr. Wallner prescribed therapy for low back pain. On October 31, 2008, she released Petitioner to work as of November 1, 2008. RX 4. On December 22, 2008, Dr. Chelich released Petitioner to work as of December 29, 2008, citing a diagnosis of "acute lumbar sacral strain." RX 1, p. 19. On December 29, 2008, the doctor released Petitioner to work as of January 2, 2009, citing a diagnosis of low back pain. RX 1, p. 18. It appears Petitioner underwent a lumbar spine MRI in December 2008 but no report is in evidence. RX 1, p. 48. On May 21, 2010, Petitioner went to the Emergency Room at Ingalls Memorial Hospital and complained of left hip and low back pain secondary to being jarred on the train two days earlier. Petitioner also reported having injured her left hip at work on January 19, 2010 but indicated she did not seek care after this injury because she had previously experienced similar pain which resolved with Motrin. The examining physician noted paraspinal tenderness in the left lower back area, tenderness to palpation of the lateral left hip and no pain with straight leg raising. He ordered lumbar spine and left hip X-rays, which were essentially negative. He diagnosed hip and lumbar strains. He injected the left hip and prescribed Ultram.

Petitioner testified she began working for Respondent in September of 1980. As of the accident, her duties included delivering supplies, cash and "replenish" cards to station agents

and handling traffic control for big events. She was typically on her feet all day, traveling from station to station. She regularly lifted and transported items such as signs and 10-pound "banks."

Petitioner testified she regularly experienced knee and right ankle pain as of the August 11, 2010 accident but was otherwise in good health.

Petitioner testified she was working at the 35th Street station during a White Sox game on August 11, 2010. As she was standing on a platform, talking with a customer, she felt someone forcefully hit her in the back, pushing her forward. The customer she had been conversing with managed to prevent her from falling by catching her under her arms. She later realized that an intoxicated female passenger had struck her.

Petitioner testified she experienced ankle pain immediately after the accident. About thirty minutes later, she began experiencing low back pain.

Petitioner testified she reported the injury. [Notice is not in dispute]. At her supervisor's direction, she went to Ingalls Occupational Health.

Records in PX 1 reflect that Petitioner saw Dr. Gawo at Ingalls Occupational Health on August 14, 2010. Petitioner reported being "shoved from behind" by an intoxicated passenger three days earlier, falling forward onto another person. Petitioner complained of 6/10 pain in the neck, upper right thoracic area, low back, left hip and right shoulder, as well as "pain, swelling and popping in the right ankle." Petitioner reported having undergone right ankle surgery two years earlier. PX 1, pp. 3, 8-11, 15.

Dr. Gawo ordered X-rays of the right ankle and pelvis.

On spinal examination, Dr. Gawo noted paraspinal tenderness in the right upper and mid-back as well as both sides of the lower back. On right ankle examination, the doctor noted a limited range of motion, a metallic foreign body and a "pop" in the lateral malleolar area. Dr. Lee, a radiologist, indicated she compared the right ankle X-rays with X-rays taken on February 29, 2008. She noted the presence of a plate and six screws through the distal right fibula, no acute fracture or dislocation and osteophytes off the plantar aspect of the calcaneus and dorsal aspect of the tarsometatarsal joints. PX 1, p. 6. A different radiologist, Dr. Ahuja, described the pelvic and left hip X-rays as showing mild to moderate degenerative changes and no evidence of acute fracture or dislocation. PX 1, p. 7.

Dr. Gawo imposed various restrictions, including no use of the right arm to lift/carry over 10 pounds, and referred Petitioner to a foot and ankle specialist. PX 1, p. 5.

Petitioner testified she opted to see an orthopedic surgeon of her own selection, Dr. Thometz. She first saw Dr. Thometz on August 25, 2010, by which time she was experiencing "unbelievable" low back pain and difficulty walking.

Dr. Thometz's initial note of August 25, 2010 reflects a history of a work-related left hip injury of January 10, 2010, requiring an Emergency Room visit of May 21, 2010, as well as the work accident of August 11, 2010. With respect to the latter, the doctor indicated Petitioner "was shoved by an individual and fell," injuring her lower back, left hip and right ankle. The doctor also noted a history of open reduction/internal fixation right ankle surgery in 2008.

On right ankle examination, Dr. Thometz noted mild soft tissue swelling, some palpable spurs, pain at end range for dorsiflexion, diffuse tenderness over the fibula over the area of the surgical incision and "palpable hardware underneath." He obtained right ankle X-rays, which showed the surgical hardware, no remarkable ankle arthropathy and mild mid-foot arthropathy. On hip and lumbar spine examination, the doctor noted a reduced range of left hip motion, some pain with right hip external rotation, pain on lumbar extension and no palpable spasm or focal tenderness. Hip X-rays showed "some very mild symmetric degenerative change with slight spurring in the acetabulum laterally for the left hip."

Dr. Thometz diagnosed "persistent left hip, lower back pain, right ankle sprain and probable cervical strain." He prescribed Lodine and lumbar spine and left hip MRI scans. RX 2, p. 78.

Petitioner underwent the MRIs on September 20, 2010. RX 2, pp. 87-90. RX 5. The lumbar spine MRI showed degenerative facet changes at L5-S1 and no significant stenosis. The left hip MRI showed no evidence of a fracture or dislocation.

Petitioner also saw Dr. Brink on September 20, 2010. The doctor noted the prior right ankle surgery. He also noted he had not seen Petitioner in some time. He indicated that Petitioner reported recently losing her balance and falling at work after being pushed by a passenger. He indicated that Petitioner reported experiencing low back and right ankle pain after this incident.

On right ankle examination, Dr. Brink noted some mild edema on the lateral aspect of the ankle, pain on palpation of the anterior talofibular and calcaneal fibular ligament areas, no significant anterior drawer test, no significant lateral inversion with stress testing and instability of the ankle "from previous injuries."

Dr. Brink diagnosed a Grade 1 right ankle sprain and low back pain. He prescribed therapy to increase the ankle's range of motion. He indicated Petitioner's pain was "not the same as it was in the past, which is related to the previous surgery." He also indicated that new X-rays showed "no evidence of new fracture or dislodgement of the plate or screws." He directed Petitioner to follow up with him after completing therapy. RX 3, p. 43.

On September 29, 2010, Dr. Thometz discussed the MRI findings with Petitioner and recommended back therapy. RX 2, p. 69. On October 22, 2010, Dr. Thometz noted that Petitioner was tolerating work but still experiencing low back and left hip pain. He prescribed a

Medrol Dose-Pak and additional therapy. RX 2, p. 69. On November 17, 2010, he noted that Petitioner complained of a lot of back pain and right ankle discomfort, particularly when standing. He diagnosed a lumbar strain and prescribed additional therapy. He noted that Petitioner wanted to try to avoid light duty and injections. RX 2, p. 69.

Petitioner underwent an initial physical therapy evaluation at Flexeon Rehabilitation on October 5, 2010. The evaluating therapist noted that Petitioner reported falling while working on August 11, 2010 after being pushed in a large crowd. He also noted that Petitioner had seen Drs. Thometz and Brink since this accident, with Dr. Thometz recommending back therapy and Dr. Brink recommending right ankle therapy. He further indicated that Petitioner had continued working since the accident but felt unable to do as much walking as she had before.

The evaluating therapist described Petitioner's gait as mildly antalgic over the right leg with reduced stance time and increased left lateral trunk shift throughout. RX 2, pp. 180-183. PX 4, pp. 3-6.

Petitioner continued attending therapy on a regular basis thereafter, with the therapist initially noting complaints of low back "locking" and right ankle pain/brace usage.

Petitioner returned to Dr. Brink on October 18, 2010. The doctor described the low back as Petitioner's "main issue" but indicated Petitioner was still complaining of right ankle pain, instability and a grinding sensation. He was unable to detect crepitus when he put the ankle through range of motion testing. He indicated that "most of this is due to ankle weakness but [Petitioner's] biggest concern right now is her back pain and obesity." He recommended that Petitioner continue therapy. RX 3, p. 38.

On November 8, 2010, the Flexeon therapist noted that Petitioner was still experiencing some low back discomfort but reported less "locking." PX 4, p. 21. On November 18, 2010, the therapist noted that Petitioner complained of increased low back pain secondary to "preparing a holiday CTA train." On November 23, 2010, the therapist noted that Petitioner reported some right ankle improvement secondary to undergoing an injection with Dr. Brink the previous day. PX 4, p. 28. [Dr. Brink's records reflect he administered a diagnostic block on November 22, 2010. RX 3, p. 36.] On December 7, 2010, the therapist indicated Petitioner complained of moderate low back stiffness due to a recent "fender bender." PX 4, p. 33. On December 14, 2010, the therapist noted that Petitioner was using a TENS unit at home and rated her pain at 6/10. On January 10, 2011, the therapist noted that Petitioner had attended 38 sessions to date and reported 70% overall improvement since beginning therapy. PX 4, p. 49.

On January 20, 2011, Dr. Charuk noted that Petitioner remained symptomatic and was still awaiting approval for the EMG. He directed Petitioner to stay off work until after the EMG was completed. RX 2, p. 62.

On January 24, 2011, Petitioner returned to Dr. Brink and complained of pain in the area of the previously inserted surgical hardware. The doctor recommended removal of the hardware, noting that this was "common with this kind of procedure." He indicated that Petitioner wanted to defer this surgery so that she could address her more pressing back-related issues. RX 3, p. 35.

Petitioner underwent a bilateral lower extremity and lumbar paraspinal muscle EMG on January 27, 2011. Dr. Khanna performed the testing. He noted a history of the August 11, 2010 work accident. He indicated that Petitioner reported experiencing back pain and primarily right-sided leg complaints since this accident.

Dr. Khanna described Petitioner's gait as antalgic. On examination, he noted tight low lumbar paraspinal muscles, 5/5 strength and intact sensation in both legs and negative straight leg raising bilaterally. He described the EMG results as "essentially unremarkable." RX 5.

A therapy progress note of February 15, 2011 reflects that Petitioner complained only of right ankle soreness. PX 4, p. 64. Subsequent notes reflect complaints of low back stiffness and soreness. On April 4, 2011, the therapist noted that Petitioner complained of moderate right-sided low back soreness secondary to going to work to take drug tests and complete paperwork in anticipation of resuming work. PX 4, p. 82. A note of April 6, 2011 reflects that Petitioner reported feeling good despite working four hours daily. PX 4, p. 83. A note dated April 12, 2011 reflects that Petitioner denied low back pain and complained only of right ankle tenderness and pressure in the area of the surgical screws. RX 2, p. 143.

On April 13, 2011, Dr. Charuk noted that Petitioner had done well following the injection and therapy and was "back to doing most of her regular job." He recommended she finish her remaining therapy sessions and resume full duty on April 15, 2011. He described Petitioner as having "no pain and no problems." RX 2, pp. 70-71. RX 7. An accompanying form dated April 13, 2011 reflects that Petitioner reported having "no problems at this time." RX 2, p. 72.

Petitioner also saw Dr. Brink on April 13, 2011. The doctor noted that Petitioner complained of right ankle pain in the area of the plate as well as "pain intrinsic to the ankle itself." He described this intrinsic pain as "partly from the injury." He indicated that a person can occasionally experience synovitis and arthritic changes in the ankle "due to the realignment of the ankle after an injury." He noted that Petitioner was scheduled to return to work. He injected the right ankle with Cortisone and indicated Petitioner could require a right ankle arthroscopy in the future. He opined that "most of it is due to synovitis." RX 3, p. 34.

Petitioner was discharged from physical therapy on April 27, 2011, with the therapist noting that Petitioner was now experiencing "only very mild pain at the lumbar spine and on a more infrequent basis than previously." RX 3, p. 32.

Petitioner returned to Dr. Thometz on May 18, 2011, with the doctor recording the following interval history:

> "She had an injection with Dr. Charuk and had quite a bit of improvement. However, while back at work, her symptoms are recurring and she is actually having more discomfort through her ankle and her knee. She has been recommended to consider having hardware removed from her right ankle. She has been having a sharp catching pain through the medial aspect of her right knee. She has pain through the ankle both medially and laterally. She is having recurrent back pain as well."

On right ankle examination, Dr. Thometz noted mild tenderness over the hardware, some tenderness directly anteromedial through the ankle, some dorsal spurring through the mid-foot, a good range of motion with discomfort on resisted inversion, no remarkable crepitus and the ability to stand on the heels and toes. On right knee examination, he noted full extension, flexion to about 125 degrees, diffuse tenderness over the anteromedial to mid-medial joint line and pain deep in the knee with McMurray's. He interpreted standing right knee X-rays as showing moderately advanced medial compartment arthropathy with moderate patellofemoral arthropathy. He injected the right knee, prescribed Voltaren gel for the knee and ankle and recommended that Petitioner return in one month. RX 2, p. 60.

Petitioner described a work-related occurrence of June 2011 in which she bent over to pick up several 25-pound packages of poster board. When she righted herself, she felt low back pain.

On June 17, 2011, Dr. Charuk noted that Petitioner reported straining her back on June 15, 2011 secondary to the trains "snatching harder than usual." He indicated that Petitioner reported increased back pain after this strain, along with increasing numbness going into her buttocks and anterior thighs. He noted that Petitioner rated her current pain at 7/10.

On examination, Dr. Charuk noted lumbar flexion of 80 degrees with pain, lumbar extension of 20 degrees with pain, negative straight leg raising and lumbar paraspinal tenderness bilaterally in the L4-L5 and L5-S1 region.

Dr. Charuk recommended a repeat lumbar spine MRI along with continued Ibuprofen and Norco. He took Petitioner off work and indicated he would repeat the facet injections if necessary. RX 2, pp. 55-58.

Petitioner returned to Dr. Thometz on July 1, 2011 and complained of increasing right ankle pain since an incident a year earlier. Petitioner indicated she was now experiencing pain over the front and outside part of the ankle, associated with swelling, limping and decreased function.

On right ankle examination, Dr. Thometz noted a well-healed incision, tenderness over the lateral aspect of the incision, "right over the plate and screws," and a decreased range of

motion with mild discomfort over the anterior aspect of the ankle joint, worse laterally than medially. After reviewing previously taken X-rays, he diagnosed "right ankle internal derangement with symptomatic hardware." He recommended Petitioner consider undergoing a right ankle arthroscopy with hardware removal. He indicated Petitioner wanted time to think about this. RX 2, p. 54.

The repeat lumbar spine MRI, performed on July 5, 2011, showed a "stable appearance" since the previous study of September 20, 2010. The radiologist noted mild disc bulging without significant stenosis at L4-L5 and degenerative facet changes and mild disc bulging with no significant stenosis at L5-S1. RX 2, p. 84. RX 5.

At Respondent's request, Petitioner saw Dr. Gleason for purposes of a Section 12 examination on July 12, 2011. The doctor's report reflects he is associated with the Illinois Bone & Joint Institute.

Dr. Gleason noted that Petitioner reported injuring her low back at work a year earlier and experiencing some continued low back pain after resuming work in March 2011. He also noted that Petitioner reported injuring her lower back and right shoulder at work on June 15, 2011, while picking up packages of alert signs from the floor. He indicated that Petitioner described her low back pain as increasing and sharpening after the June 15, 2011 accident. He noted that Petitioner had been off work since June 15, 2011, had recently undergone a repeat lumbar spine MRI scan and was awaiting an injection by Dr. Charuk.

Dr. Gleason indicated he reviewed reports concerning the lumbar spine MRIs of September 20, 2010 and July 5, 2011, Dr. Khanna's EMG report and records from Ingalls, Dr. Thometz, Flexeon, Dr. Charuk, Dr. Wallner and Dr. Tansey.

Dr. Gleason described Petitioner's gait as non-antalgic. He indicated Petitioner was able to stand on her heels and toes. On lumbar spine examination, he noted a little tenderness over the right lower paralumbar area, no spasm, tenseness or asymmetry, bending to the knees and extension to 10 degrees and negative straight leg raising bilaterally. On bilateral shoulder examination, he noted equal ranges of motion in all planes and negative impingement testing. On right ankle examination, he noted a 2-inch scar with palpable metal underlying "which is tender." He indicated the right knee measured 17 ¼ inches in circumference, versus 17 ¾ inches on the left. He indicated the right calf measured 16 ¾ inches in circumference, versus 17 ½ inches on the left.

Dr. Gleason obtained lumbar spine and right shoulder X-rays. He interpreted the films as showing no evidence of fracture, dislocation, osseous or joint pathology.

Dr. Gleason opined that the June 15, 2011 incident "may have temporarily caused a low back condition in terms of a soft tissue strain and or a temporary aggravation" but that this condition had resolved as of his examination. He further opined that Petitioner "has no current low back condition pertaining to the recent reported injury of June 15, 2011." He saw no

evidence of permanency and found no need for work restrictions. He recommended a home exercise program and occasional use of over the counter medication. RX 6.

On July 25, 2011, Dr. Brink re-examined Petitioner, noting complaints of right ankle pain, instability and grinding and difficulty walking. The doctor described Petitioner as having experienced a "bad ankle sprain of the lateral aspect of the right ankle." He again recommended hardware removal and investigation of the joint. He recommended a right ankle MRI, noting that Petitioner "is still under a workman's comp umbrella because the injury we are treating happened at work." RX 3, p. 31.

On August 3, 2011, a claims examiner with Sedgwick CMS sent Dr. Gleason's report to Petitioner's counsel and indicated Petitioner's benefits were being terminated as of that date. RX 2, p. 110.

On August 17, 2011, Dr. Charuk recommended a third bilateral L4-L5, L5-S1 facet injection and continued therapy. He directed Petitioner to remain off work pending the third injection. RX 2, pp. 47-49.

Dr. Charuk administered the third injection on September 7, 2011. RX 2, pp. 45, 118.

On October 5, 2011, Dr. Charuk noted that Petitioner responded well to the facet injections and was "doing significantly better." He indicated that Petitioner was still experiencing pain with prolonged standing, sitting and lifting but that her pain rating was done to 3-4/10. He recommended six physical therapy sessions and released Petitioner to light duty with no sitting, standing or walking for more than 30 minutes without 5-minute changes in position and no twisting or lifting more than 10 pounds for the next month. RX 2, pp. 45-46.

On November 9, 2011, Dr. Charuk noted complaints of worsening pain, especially at night, with that pain radiating into both legs down to the feet. He indicated Petitioner rated her pain at 4-5/10. On examination, he noted no gait abnormalities, 5/5 strength, lumbar flexion limited to 30 degrees with pain and lumbar extension limited to 10 degrees with pain. He referred Petitioner to Dr. Miz for a surgical consultation, noting that Petitioner had been "through physical therapy without significant improvement." He recommended that Petitioner take Norco on an occasional basis as needed for pain. RX 2, p. 42. He took Petitioner off work pending her appointment with Dr. Miz. RX 2, p. 43.

Petitioner saw Dr. Miz on November 17, 2011. The doctor's history reflects that Petitioner reported injuring her lower back and legs in August 2010 when she was shoved by an inebriated passenger. The history also reflects that Petitioner was ultimately able to resume full duty "with significant improvement" after undergoing a variety of injections throughout 2010 but gradually experienced recurrent pain thereafter "after doing some repetitive bending and lifting" in June. The doctor noted that Petitioner had undergone additional injections, along with therapy, "since this exacerbation." He described Petitioner's current back pain as "primarily axial in location" with some intermittent, activity-related referred pain into the hips

and thighs. He indicated that Dr. Charuk had released Petitioner to restricted duty but that Petitioner was off work since the restrictions "apparently could not be accommodated." He also noted that Petitioner's workers' compensation benefits had been suspended after an IME in the summer of 2011.

Dr. Miz described Petitioner as "significantly overweight." He described her gait as unremarkable. He noted some tenderness over the lumbosacral junction, mild pain with lumbar extension/flexion and lateral bending, negative straight leg raising and no sensory deficits. He interpreted the lumbar spine MRI scans as showing "relatively normal findings above L5" and degenerative disc changes with loss of disc hydration at L5-S1. He saw no evidence of disc herniation or spinal stenosis.

Dr. Miz's impression was a "syndrome of chronic low back pain likely related to L5-S1 pathology." He presented Petitioner with the option of continuing conservative care with Dr. Charuk or undergoing a lumbar discogram and post-discogram CT scan "to determine if L5-S1 is indeed her pain generator." He indicated Petitioner planned to discuss these options with Dr. Charuk. RX 2, p. 39.

A therapy progress note dated November 29, 2011 reflects that Petitioner reported being able to perform up to 3 to 4 hours of light activity at home before her back pain began. The note also reflects that Petitioner rated her pain at 7-8/10 after 3 to 4 hours of light activity and up to 9-10/10 with heavier activities or for longer duration. RX 2, p. 101.

Petitioner returned to Dr. Charuk on December 7, 2011. The doctor noted that Dr.Miz had discussed the possibility of a discogram but that Petitioner wanted to "hold off at this time." The doctor indicated that Petitioner "wants to return back to work and see how she does." He noted that Petitioner's pain score was "down to 2-3/10" and that Petitioner could now flex to 45 degrees without pain. On examination, he noted no sacroiliac joint tenderness. He released Petitioner to work as of December 8, 2011. PX 7, pp. 1-3.

Petitioner testified that, on December 7, 2011, Dr. Charuk did not recommend any additional injections and told her she was not a surgical candidate.

Petitioner did not undergo the recommended right ankle MRI until December 9, 2011. The radiologist interpreted the MRI as showing post-surgical changes of the distal fibula and a "cystic focus along the anterior aspect of the medial malleolus which may be arthritic in nature." He saw no evidence of tendinous disruption and no definite evidence of ligamentous disruption. RX 3, p. 27.

On December 13, 2011, Dr. Brink discussed the MRI results with Petitioner via telephone. He indicated the MRI showed lateral ankle ligament disruption and some arthritic changes but did not show a talar dome lesion. RX 3, p. 26.

Petitioner returned to Dr. Brink on December 19, 2011. On examination, Dr. Brink noted clicking with range of motion of the right ankle. He attributed this to either the hardware or the "rocking of the talus into the ankle mortise." He indicated that Petitioner's clinical findings outweighed her MRI findings, noting that Petitioner reported being unable to lie on her right side or wear work shoes. He scheduled Petitioner for right ankle surgery. RX 3, p. 25. He completed an Attending Physician's Statement indicating Petitioner's condition arose from her employment, citing a bus-related accident of February 2008. RX 3, p. 24.

Petitioner saw Dr. Nolden on January 5, 2012, with the doctor recording a history of the August 2010 work accident and subsequent care. The doctor indicated Petitioner had resumed working on December 7, 2011, per Dr. Miz, but had gone off work again as of December 19, 2011. He noted that Petitioner complained of constant, burning pain in her lower back, aggravated by walking, as well as numbness and weakness in her legs and feet. He indicated Petitioner denied any lasting relief from therapy and the three injections. Based on his MRI review and clinical findings, he identified Petitioner's pain generator as facet arthropathy at L5-S1. He recommended that Petitioner see a pain management specialist for facet injections at that level. He did not recommend any surgery. PX 5.

On January 20, 2012, Dr. Brink operated on Petitioner's right ankle at Ingalls Same Day Surgery. He removed the plate and screws from the ankle and reinforced the anterior talofibular ligament and lateral ankle joint capsule. RX 3, pp. 18-20.

At the first post-operative visit, on January 23, 2012, Dr. Brink described Petitioner as doing well and placed her right ankle in a new splint. On February 9, 2012, he removed the stitches and obtained X-rays. On February 16, 2012, he prescribed therapy. RX 3, pp. 12-14.

Petitioner began a course of right ankle therapy at Flexeon Rehabilitation on February 21, 2012. The evaluating therapist noted that Petitioner "had returned to work in early December 2011 but, due to pain, could not continue" and was now planning to take early retirement in March. RX 3, p. 10.

Petitioner testified she retired on March 1, 2012, at a reduced pension rate. Prior to retiring, she tried to work despite her low back pain but "could not take it." Her knee and hip problems, along with her hypertension, also played a role in her decision to retire. She is now 59 years old. She is not presently employed.

On March 15, 2012, Dr. Brink noted no crepitus or range of motion difficulties in the right ankle. He prescribed additional therapy and special insoles. On May 10, 2012, he noted that Petitioner reported being able to feel the anchors in the ankle. He obtained new X-rays and indicated the anchors might have moved and become painful. He recommended surgical removal of the anchors. He indicated Petitioner planned to think about this. RX 3, pp. 2-4.

Petitioner testified she last underwent back-related treatment on January 5, 2012. She currently takes Motrin 800 mg. Her personal care physician, Dr. Wallner, prescribes this medication. She takes the Motrin for her knees, hip and back.

Petitioner testified she is unable to perform any strenuous activities. Even routine activities, such as laundry, cause her problems. She finds it painful to walk. She spends a lot of time resting and lying down. Her overall quality of life has deteriorated. Due to back pain, she can only sit for about 20 minutes before feeling the need to change positions. On a good day, she can stand continuously for 10 to 15 minutes. When she has to stand for longer periods, her right upper thigh gets numb. She is able to drive but cannot kneel, crouch or run. If she bends over, she feels as if her back "locks" and she is fearful she will be not able to stand back up. She can reach overhead but she limits her lifting to 5 to 10 pounds. When she goes to a movie or a restaurant, she "shifts around" in her seat.

Under cross-examination, Petitioner acknowledged that some of her current complaints are attributable to her knees and right ankle. Her most recent care has related to her shoulder and knees. The person who shoved her on August 11, 2010 made contact with an area in her back between her shoulders. She did not fall to the ground because the customer who was in front of her managed to catch her. She was at full duty status as of the June 2011 incident. When she transported items to station agents, she carried those items in her arms. Respondent did not provide her with a rolling suitcase. The June 2011 incident occurred after she bent down to grab signs off the floor. It was when she trying to right herself that she felt pain. Prior to the August 2010 work accident, she had to present a doctor's note to Respondent after being off work due to back pain. It is "possible" she went to the Emergency Room due to hip and low back pain on May 21, 2010 but the pain she experienced at that time was not the same type of pain she experienced after the August 2010 accident. Before January 2012, her back pain would wax and wane. The injections helped intermittently. Her back pain never disappeared but she was released to full duty at times after the August 2010 accident. Her right ankle became more problematic after the August 2010 accident because she could feel the screws that Dr. Brink had surgically inserted in 2008. She had problems walking after the August 2010 accident. The screws in her ankle were "sticking out." She is not sure whether she changed her manner of walking. She recalls returning to light duty in April 2011 and then performing full duty between April 17, 2011 and June 2011. She went back off work on June 16, 2011. She was released to return to work on August 5, 2011 and December 8, 2011. Her knee problems affect her gait and this in turn affects her low back.

No witnesses testified on behalf of Respondent.

Arbitrator's Conclusions of Law

<u>Did Petitioner establish a causal connection between the undisputed work accident of August 11, 2010 and her claimed current conditions of ill-being? What is the nature and extent of the injury?</u>

With respect to the right ankle, the Arbitrator finds that the August 11, 2010 accident caused a sprain superimposed on a significant pre-existing post-operative condition, with the effects of the sprain resolving. The Arbitrator further finds that Petitioner failed to establish causation as to the need for the hardware removal surgery and as to her current post-operative right ankle condition of ill-being. In so finding, the Arbitrator relies primarily on Dr. Brink's Attending Physician Statement, in which he attributed Petitioner's complaints and the need for the surgery to a previous work accident that occurred in 2008. The Arbitrator also notes that, while Petitioner testified she felt as if her previously inserted surgical screws protruded after the August 11, 2010 accident, Dr. Brink noted no screw or plate dislodgement on X-ray on September 20, 2010. In the Arbitrator's view, Dr. Brink was in the best position to comment on causation, since he operated on Petitioner's right ankle after the 2008 work accident.

The Arbitrator turns to Petitioner's claimed current low back condition of ill-being. The Arbitrator views that condition is multi-factorial. Having considered Petitioner's account of the August 11, 2010 accident as well as the records and reports pre- and post-dating that accident, the Arbitrator finds that the accident caused a soft tissue injury superimposed on a significant pre-existing lumbar spine condition, with that injury significantly improving by April 2011, as evidenced by Petitioner's resumption of full duty. The Arbitrator attributes Petitioner's subsequent worsening to factors having nothing to do with the August 11, 2010 accident, including persistent ankle- and knee-related gait issues which have increased over time. The Arbitrator finds that Petitioner failed to establish causation as to the need for the lumbar spine and right ankle treatment she underwent after April 13, 2011.

Based on the foregoing findings, the Arbitrator awards no permanency for the right ankle. The Arbitrator awards permanency equivalent to 5.5% loss of use of the whole person, or 27.5 weeks of benefits under Section 8(d)2 of the Act, relative to the low back condition. In arriving at this award, the Arbitrator relies on the lumbar spine MRI of September 20, 2010, which showed facet changes at L5-S1 but no stenosis and the negative EMG of January 27, 2011, along with Dr. Charuk's full duty release of April 2011.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KOHL, SHARON Case# **12WC020950**

Employee/Petitioner

ESTEE LAUDER INC

Employer/Respondent

On 10/21/2015, 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:

5317 JOHN J CASTANEDA
47 DuPAGE COURT
ELGIN, IL 60120

2097 GRANT & FANNING
PAUL-ERIC SEAL
300 S RIVERSIDE PLZ SUITE 2050
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)

Xxx None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SHARON KOHL,
Employee/Petitioner

v.

ESTEE LAUDER, INC.,
Employer/Respondent

Case # **12** WC **020950**

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 **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Elgin**, on **September 24, 2015**. 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 [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **February 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 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 $**22,285.64**; the average weekly wage was $**428.57**.

On the date of accident, Petitioner was **56** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**1,650.00** for other benefits, for a total credit of $**1,650.00**.

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

ORDER

Denial of benefits

Based on the Arbitrator's findings of no accident and no causal connection for the current conditions of ill-being, no benefits are awarded under 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.

Carolyn M. Doherty

Signature of Arbitrator

10/15/15

Date

OCT 2 1 2015

FINDINGS OF FACT

Petitioner, a 56 year old Estee Lauder employee, testified that on 2/8/12 she worked for Respondent as a Clinique associate. As such, her duties required her to travel to different store locations and educate store employees about the Clinique product line. Petitioner testified that she traveled to large retail stores such as Macy's or Carson's which had a Clinique counter in the makeup department of the store. Once she arrived at the store Petitioner worked at the Clinique counter with store employees educating the store employees on the use and sale of Clinique products. Petitioner testified that she drove her own vehicle to work and that she worked scheduled shifts of either 11 am to 4 pm or 2 pm to 7 pm. Petitioner's hourly time was tracked via store computer and her shift hours worked were approved by the store manager. Petitioner testified that she always worked an average of 20 hours per week but that she was given different shift hour assignments each week. Petitioner received mileage reimbursement if she traveled over 25 miles out of her assigned territory.

Petitioner testified that while at work she wears a white coat. Petitioner testified that she started her shift behind the Clinique counter in the store to educate the store employees. In addition to educating store employees, Petitioner testified that part of her duties required her to leave the counter and walk through the store handing out flyers to store customers with the goal of bringing the store customers to the Clinique counter to facilitate product sales. Petitioner testified that she was paid for her 15 minute breaks which she used to get coffee or use the bathroom.

Petitioner testified that on 2/8/12, she was assigned to work at a Carson's in the Fox Valley mall on the 11 am to 4 pm shift. Petitioner testified that she arrived at the Carson's store and began her shift. Petitioner testified that at one point around 1 pm the counter was slow so the store manager said Petitioner could take her break and get coffee. Petitioner testified that she walked out of Carson's and into the mall wearing her white coat and carrying Clinique flyers in her pocket. Petitioner testified that she walked through the mall on her way to Gloria Jean's coffee shop and that she passed out flyers to mall customers on her way. Petitioner testified that she got coffee at Gloria Jeans and then started her walk back through the mall to Carson's. Petitioner testified that while walking back from Gloria Jean's to Carson's she saw a store called Gilly Hicks where she knew her daughter liked to shop. Petitioner testified that an employee from the Gilly Hicks store approached her to hand her a Gilly Hicks flyer. Petitioner testified that she did not approach the woman in order to give her a Clinique flyer but rather to receive the Gilly Hicks flyer from the woman. Petitioner testified that she walked into the Gilly Hicks store and tripped on the steps which were inside the store entrance. PX 21 is a photo of the Gilly Hicks entryway. The photo depicts the doorway, the two steps inside the doorway going up into the store and a large lighted chandelier hanging inside the store. Petitioner testified that she does not know what caused her to trip up the steps but that she was distracted by the woman at the door with flyers and by the large chandelier which caught her eye.

Petitioner testified that immediately after the fell she was disoriented and had immediate soreness in her knees, right elbow, left hand and back. Petitioner was taken by ambulance to the ER at Rush Copley and did not complete her work shift. Petitioner testified that she described the accident to the ambulance paramedics and to the ER doctors.

Following the fall of 2/8/12, Petitioner underwent extensive medical treatment. Petitioner underwent initial conservative care for both shoulders, both elbows and both knees including physical therapy and injection to her

shoulder and both knees. She also underwent care for her left wrist and underwent a left thumb surgery performed by Dr. Chen on 3/27/12. Dr. Puppala performed left shoulder surgery on 4/8/12 and no tear was found. Dr. Daley performed a left knee surgery on 6/14/12 and a total right knee replacement on 7/31/12.

Following an MRI of her left shoulder 10/16/12, Dr. Puppala recommended an additional left shoulder surgery noting that the MRI showed a partial thickness left shoulder tear. Dr. Puppala noted on 10/22/12 that the left shoulder tear now seen was "likely overuse from recent knee surgery while using assistive devices for her left knee." PX 4. Petitioner received more injections to her left shoulder from Dr. Puppala thereafter.

On referral from her primary doctor, Dr. Gutta, Petitioner saw Dr. Fernandez in January 2013. Dr. Fernandez x-rayed Petitioner's left elbow and recommended an EMG on 1/30/13. Dr. Fernandez performed left elbow surgery in February 2013 and Petitioner attended physical therapy thereafter. Petitioner continued physical therapy at ATI for her left elbow until she was discharged from care by Dr. Fernandez on May 14, 2013.

On May 2, 2013 Petitioner was sent to Dr. Belich for a Section 12 exam for her knees. Prior to this accident Petitioner had a torn meniscus in her right knee in 2006. Dr. Belich examined the petitioner regarding her bilateral knee conditions. RX#1, p.3. Dr. Belich opined that the petitioner had pre-existing bilateral osteoarthritis and that the incident of February 8, 2012 did not cause, accelerate or worsen the conditions in either knee. RX#1, p.3. He noted that the left knee surgery was four months after the fall and that it showed osteoarthritic changes and no evidence of a meniscal tear. He disagreed with the need for right knee replacement 5-1/2 months after the fall without first attempting conservative measures of relief. He noted that Petitioner received only one steroid injection to the right knee between fall and knee replacement. Dr. Belich opined that the petitioner had reached maximum medical improvement for both knees and could return to work full duty. RX#1, p.3.

Petitioner saw Dr. Daley in June 2013 and an x-ray of the right knee was taken. Dr. Daley discharged Petitioner in June 2013 but told her to return in one year for a repeat right knee x-ray.

With regard to Petitioner' bilateral knees, Dr. Daley testified that he performed left knee arthroscopic surgery on petitioner on June 14, 2012 and a total right knee replacement on July 31, 2012. PX#6, pp. 68-69 and PX#14, pp. 21-22. Dr. Daley testified via deposition that he is board-certified in orthopedics and limits his practice to hip and knee problems. PX#19, p.6. Dr. Daley opined that all of the treatment provided to the petitioner in her right and left knee was a result of the aggravation of her preexisting condition in her right and left knees. PX#19, pp. 22-23, 32. Dr. Daley opined that petitioner's fall on February 8, 2012 might or could have aggravated the preexisting condition in her left knee as petitioner informed Dr. Daley that "her fall precipitated and brought on her symptoms and therefore was related . . her pain complaints would be related to the fall she's describing." PX#19, pp. 23-24. With regard to petitioner's right knee, Dr. Daley opined that "(s)he clearly had longstanding arthritic changes in her knee, but apparently had no or must have been minimal symptoms for her to report that to me, and the injury, which sounds like a fall, had aggravated and precipitated her pain." PX#19, p. 32.

On cross-examination, Dr. Daley admitted that the arthritic changes seen on the MRI and x-rays of the petitioner's right knee "would not be interpreted as being related to a recent trauma." PX#19, p. 43-44. Dr. Daley also admitted that no meniscal tear was seen on the left knee during the arthroscopic surgery and that arthritic changes would not be related to any recent trauma. PX#19, pp. 41,45-46.

On July 2, 2013, Petitioner underwent another left shoulder MRI. Thereafter, Dr. Puppala again recommended an additional left shoulder surgery which he performed on 9/12/13. Petitioner attended physical therapy

thereafter for her left shoulder. Petitioner continued seeing Dr. Puppala for post-op care and on May 1, 2014 Dr. Puppala discharged Petitioner from care.

Dr. Choi also examined this petitioner's upper extremities under section 12 of the act at the respondent's request in October 2014. He agreed that the left shoulder treatment including 2 surgeries was reasonable to treat the left shoulder rotator cuff tear, superior labral tearing and subacromial impingement. Dr. Choi found Petitioner at MMI for her left shoulder. Dr. Choi noted that he did not have complete records on Petitioner's left shoulder or left elbow treatment and surgeries. As a result, he felt it "challenging" to assess causation for these conditions. However, based on the records he did review, Dr. Choi opined no causation between this petitioner's alleged mechanisms of injury and her current conditions of ill being in her left shoulder and left elbow noting that these conditions are usually the result of repetitive overuse rather than trauma. (RX2). In so opining, Dr. Choi further noted that no tear was seen during the first left shoulder surgery in April 2012.

Petitioner testified that she has never returned to work for Respondent and that she has had no subsequent accident or injuries to any of the involved body parts. Petitioner is not claiming any back injury due to the occurrence as she has had a chronic back issue since 1989. Petitioner continues to take Neurontin 1200 milligrams and 7.5 milligrams of Norco daily. She also takes Ambien to sleep at night. Petitioner testified that when the weather changes she wears a knee brace. After 15 minutes of driving her leg becomes stiff. Petitioner testified that her current symptoms include chronic right knee pain. She has not seen any physician for these body parts since her discharge in 2014. Petitioner testified that she receives Medicare and SSDI.

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

(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? (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? TTD (L) What is the nature and extent of the injury? (N) Is Respondent due any credit?

Based on the record in its entirety, the Arbitrator finds that Petitioner did not prove by a preponderance of the credible evidence that her fall on 2/8/12 arose out of and in the course of her employment by Respondent. In so finding, the Arbitrator initially notes that the parties agree that Petitioner was a traveling employee but that alleged accident did not occur while Petitioner was traveling to or from work. Directly at issue is whether Petitioner's accident arose out of and in the course of her employment by Respondent.

The Arbitrator notes that Petitioner described handing out flyers as one of her duties for Respondent. She testified that typically handed out the flyers to customers shopping in the assigned store. Petitioner testified that she had arrived at Carson's and started her shift at 11:00 am. Around 1:00 pm, Petitioner obtained permission from the store manager to take her paid 15 minute break. Petitioner testified that she typically used her break to get coffee or use the bathroom. On this occasion, Petitioner left Carson's and walked through the mall to Gloria Jean's for coffee. Petitioner was wearing her work attire white coat and carrying Clinique flyers while walking to the coffee shop.

Petitioner testified that she obtained the coffee and started to walk back to Carson's through the mall. Petitioner testified that she saw a store, Gilly Hicks, where she knew her daughter liked to shop. Gilly Hicks is a store with no relationship to Carson's or Clinique. Petitioner further testified that she saw a Gilly Hicks employee handing out flyers outside the store and thought she would take a flyer and buy something for her daughter. Petitioner did not testify that the Gilly Hicks employee approached her for one of the Respondent's flyers or that Petitioner handed the woman one of Respondent's flyers. Rather, Petitioner testified that she took the Gilly Hicks flyer, started to walk into the store and then tripped on the two steps inside the doorway of the Gilly Hicks store. Petitioner testified that she was distracted by the woman and the lighted chandelier inside the store while entering the store.

In finding that Petitioner's fall did not arise out of Petitioner's employment, the Arbitrator notes that Petitioner was engaged in an act of personal comfort in that she was "on a coffee break." However, the Arbitrator finds that this sole fact does not provide a sufficient basis to find that Petitioner's fall arose out of her employment. Rather, the Arbitrator notes that there is nothing in the record to support the requisite finding of an increased risk attributable to Petitioner's employment such that the arising out of component is met. Although the Arbitrator finds that it is not unreasonable to assume Petitioner might hand out flyers or be incidentally approached by mall customers for a flyer outside of her assigned store while she walked through the mall on a break, Petitioner did not testify that was the case in this instance. Petitioner was not injured while handing out Respondent's flyers among the general public in the mall. The Arbitrator further notes that Petitioner did not fall on company premises or in the open mall but rather in the entryway of a store wholly unrelated to her job duties. Finally, Petitioner did not testify that she was in a hurry to return to Carson's while entering the unrelated store.

Further, the evidence does not support a finding that the fall occurred in the course of Petitioner's employment by Respondent. Although Petitioner was on a coffee break and fell during her work hours, the Arbitrator notes that Petitioner's deviation from work to personal activity occurred when she approached the Gilly Hicks employee for a flyer with the intent to enter the Gilly Hicks store and shop for her daughter. Petitioner did not testify that she approached the Gilly Hicks employee in order to give her a Clinique flyer but rather to obtain a Gilly Hicks flyer for her own personal use. Petitioner was in the middle of this personal deviation and had not reentered the course of her employment at the time she fell. Accordingly, the Arbitrator finds that Petitioner sufficiently deviated from a work activity to a personal pursuit breaking the link between her injury and her employment.

Finally, the Arbitrator finds that even if Petitioner had an accident that arose out of and in the course of her employment by Respondent, Petitioner's conditions of ill-being are not causally related to the accident or injury of 2/8/12. Based on the medical evidence, the Arbitrator finds Petitioner's left upper extremity injures to the left shoulder and left wrist are not causally related to her injury of 2/8/12. In so finding, the Arbitrator notes that Petitioner fell on the right side; the lack of any symptoms to the left shoulder or left elbow or left wrist at the time of the emergency room visit, and the lack of diagnosis or findings related to trauma rather than degenerative conditions or conditions more susceptible to repetitive type of trauma per her treating physician Dr. Puppala.

The Arbitrator further finds no causal connection for Petitioner's left knee or her right knee. Petitioner clearly had significant degenerative arthritis in both knees which long pre-existed this fall in February 2012. The Arbitrator notes Dr. Daley's causal opinion is based on the lack of Petitioner's complaints of knee symptoms in either knee before this fall followed by her temporal complaints after the fall. However, the Arbitrator finds that the strength of Dr. Daley's opinion on causal relationship is fatally diminished by his further testimony that the arthritic changes seen on the MRI and x-rays of the petitioner's right knee would not be interpreted as being

related to a recent trauma, that no meniscal tear was seen on the left knee during the arthroscopic surgery and that arthritic changes of the left knee would not be related to any recent trauma. PX#19, pp. 41,45-46.

Based on the Arbitrator's findings on the issues of Accident and Causal Connection, all remaining issues are moot, no findings are made on those issues and no benefits are awarded to Petitioner under the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MEYER, MARGARET
Employee/Petitioner

Case# **08WC042329**

09WC007081

DRURY INN
Employer/Respondent

On 10/21/2015, 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:

1157 DELANO LAW OFFICES LLC
PATRICK JAMES SMITH
1 S E OLD STATE CAPITAL PLZ
SPRINGFIELD, IL 62705

2396 KNAPP, OHL & GREEN
L DAVID GREEN
6100 CENTER GROVE RD
EDWARDSVILLE, IL 62025

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

Margaret Meyer
Employee/Petitioner

v.

Drury Inn
Employer/Respondent

Case # 08 WC 42329

Consolidated cases: 09 WC 07081

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 21, 2015. 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 September 9, 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 not causally related to the accident.

In the year preceding the injury, Petitioner earned $17,131.40; the average weekly wage was $329.45.

On the date of accident, Petitioner was 34 years of age, married with 4 dependent child(ren).

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 $3,900.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $3,900.00.

Respondent is entitled to a credit of $513.20 under Section 8(j) of the Act.

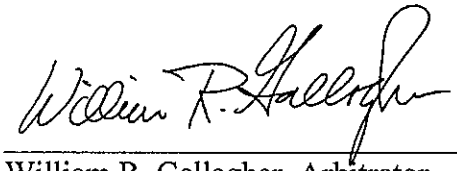
ORDER

Respondent shall pay reasonable and necessary medical services provided to Petitioner on September 9, 2008, of $1,823.23 as identified in Petitioner's Exhibits 30, 42, and 51, as as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. All other medical bills are denied.

Based upon the Arbitrator's conclusions of law attached hereto, all other compensation 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.



William R. Gallagher, Arbitrator

October 16, 2015
Date

OCT 2 1 2015

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 case number 08 WC 42329, the Application alleged Petitioner sustained an injury to her left shoulder on September 9, 2008. According to the Application, Petitioner was on the floor cleaning and, when she came up she hit a door knob which caused her to be thrown back down to the floor. In case number 09 WC 07081, the Application alleged Petitioner sustained an injury to her "Left shoulder, cervical, lumbar back and head" on December 31, 2008. According to the Application, Petitioner was walking out of the employees' restroom, slipped and fell hitting her head, back and shoulders (Petitioner's Exhibit 1). Respondent disputed liability in both cases on the basis of accident and causal relationship (Arbitrator's Exhibits 1 and 2). The two cases were previously consolidated for trial.

Petitioner began working for Respondent in March, 2008, as a housekeeper. At trial, Petitioner testified that she sustained a prior injury to her left shoulder; however, she stated that she had not received any medical treatment for that prior left shoulder injury since 1996. Petitioner testified that she had full use of her left shoulder when she began working for Respondent. Petitioner also stated that she had no prior neck or low back symptoms.

In regard to Petitioner's prior left shoulder injury, this was also a workers' compensation case which was settled for 67.5% loss of use of the left arm (Respondent's Exhibit 3). Petitioner testified that she had three surgical procedures performed in connection with that prior injury. When questioned whether she had multiple dislocations of her left shoulder prior to September, 2008, Petitioner stated that she could not remember.

Petitioner testified that she injured her left shoulder on September 9, 2008, [in the transcript the question was asked using the incorrect date of September 8, 2008] when her left shoulder struck a door knob as she was getting up after cleaning a floor. Following the accident, Petitioner was seen in the ER of St. John's Hospital. According to the ER records, Petitioner's left shoulder struck a "drawer" and was dislocated. The record also noted that Petitioner had a history of dislocated shoulders in the past and had undergone several surgeries. X-rays were obtained which revealed no evidence of a dislocation. The diagnostic impression was stated as "Dislocated left shoulder with spontaneous reduction." (Petitioner's Exhibit 6).

On September 15, 2008, Petitioner was seen by Dr. Mark Greatting, an orthopedic surgeon, who previously treated Petitioner for left shoulder dislocations. Dr. Greatting's record of that date noted that he performed left shoulder surgery on Petitioner in 1993 and Petitioner subsequently had two more left shoulder surgeries performed in 1996 by Dr. Post in Chicago. Petitioner informed Dr. Greatting that it had been many years since her shoulder had become dislocated. On examination, Dr. Greatting noted that the shoulder was stable and that it was unknown for sure if and when the shoulder actually dislocated. He authorized Petitioner to be off work and ordered physical therapy (Petitioner's Exhibit 6).

On September 23, 2008, Petitioner went to the ER of St. John's Hospital because of left shoulder pain. The ER record stated that Petitioner was sitting at a desk and her left shoulder "seemed to

dislocate." The record also noted that Petitioner had undergone surgery and had been there in the past when the shoulder was dislocated and spontaneously reduced. Again, the diagnostic impression was "Dislocated left shoulder with spontaneous reduction." (Petitioner's Exhibit 6).

Petitioner began physical therapy on October 1, 2008. At that time, Petitioner informed the therapist of the work-related injury of September 9, 2008, as well as the three prior left shoulder surgeries. In that regard, Petitioner advised that the three surgeries were performed because of her having dislocations of her left shoulder (Petitioner's Exhibit 4).

In the physical therapy record of October 16, 2008, it stated that Petitioner was at a restaurant the night before and when she attempted to empty her plate into a to-go box, the left shoulder went out of its socket and back in. The record also stated that Petitioner was going to see her family doctor about her neck and back because she had sustained a fall at IHOP on a wet floor and injured herself (Petitioner's Exhibit 4).

In the physical therapy record of October 23, 2008, the record stated that Petitioner's left shoulder symptoms had been getting worse since "falling at IHOP on 9/23/08." (Petitioner's Exhibit 4). Petitioner was subsequently evaluated by Dr. Jay Riseman, her family physician, on October 27, 2008, for left shoulder and low back pain. This record noted that Petitioner fell at IHOP on October 23, 2008 (Respondent's Exhibit 12).

At trial, when Petitioner was questioned about the fall she sustained at IHOP, she was uncertain as to exactly when it occurred but that it was sometime after September 9, 2008, but before December 31, 2008. Petitioner testified she was going into the bathroom and slipped and fell on her butt. When questioned if she dislocated her left shoulder as a result of this fall, Petitioner stated that she could not recall.

Petitioner had a CT/arthrogram of the left shoulder performed on November 3, 2008. Dr. Greatting saw Petitioner on November 10, 2008, and reviewed the diagnostic study. He opined that it revealed a partial thickness rotator cuff tear and that one of the suture anchors from her previous surgical procedures was out of the bone in the area of the greater tuberosity. He recommended arthroscopic surgery with possible rotator cuff repair and removal of the suture anchor or possible anterior labral repair/stabilization. Dr. Greatting released Petitioner to return to work with restrictions effective December 23, 2008 (Petitioner's Exhibit 4).

In regard to the accident of December 31, 2008, Petitioner testified that she was working light duty and was walking out of an employee bathroom which was adjacent to the laundry room. Petitioner testified that she sustained a slip and fall at that time.

Following the accident of December 31, 2008, Petitioner was taken to the ER of Memorial Medical Center. According to the ER record, Petitioner stated that she was unsure whether she passed out and may have "slipped on detergent." Petitioner was diagnosed with neck and back pain and instructed to see her family physician (Petitioner's Exhibit 2).

At trial, Petitioner said nothing about slipping and falling because of detergent or any other foreign material being on the floor. In regard to the accident of December 31, 2008, three

witnesses testified on behalf of the Respondent. Two of the witnesses testified live at trial and the other was deposed and said deposition was received into evidence at trial.

Flora Coffey was deposed on March 14, 2013, and her deposition testimony was received into evidence at trial. Coffey is retired but was a housekeeper for Respondent during the time Petitioner was employed there. On December 31, 2008, Coffey was folding laundry when Petitioner went to the bathroom. She found Petitioner on the bathroom floor lying on her back. Coffey testified that there was nothing on the floor where Petitioner fell including Tide or any other detergent. She stated that Petitioner complained of left shoulder pain at that time (Respondent's Exhibit 8; pp 9-17).

Ellie Lansing testified at trial. At the time of the accident of December 31, 2008, Lansing was the Assistant Manager. Lansing no longer works for Respondent because she returned to school to become an RN. Lansing testified that she received a telephone call about the accident and went to the location shortly afterward. She stated that she did not see any foreign material including Tide or detergent on the floor where Petitioner fell.

Bobbie Haley testified at trial. Haley has worked for Respondent for 25 years and is the Maintenance Engineer. He also received a call that there had been an accident in the laundry room on December 31, 2008. When he arrived at the scene of the accident, Haley observed Petitioner lying on the floor and stated that there was nothing on the floor where Petitioner fell, nor did he observe anything on Petitioner's clothing or shoes which could have caused her to fall. He also testified that it was not necessary for him to clean the floor afterwards.

Petitioner was seen by Dr. Greatting on January 13, 2009. According to his record of that date, on December 31, Petitioner went to the bathroom, washed her hands and was unaware that Tide had been spilled on the floor. Petitioner slipped on the Tide and remembered waking up on the floor and people over her asking if she was okay. Dr. Greatting's record of that date also noted that "She does not remember actually falling at work which is concerning to me." Dr. Greatting opined Petitioner sustained a bruise of the left shoulder and elbow. He authorized Petitioner to be off work and ordered physical therapy (Petitioner's Exhibit 4).

On January 16, 2009, Petitioner was evaluated by Dr. Cecile Becker, for recurrent falls/blackouts. According to Dr. Becker's record of that date, Petitioner informed her that she fell on December 31, 2008. Petitioner stated that "...she was coming out of the bathroom and the next thing she remembers she was laying on the floor looking upwards." Dr. Becker suspected that Petitioner may have had a seizure so she ordered an EEG. This was performed on January 21, 2009, and was normal (Respondent's Exhibit 13).

Petitioner received physical therapy and, when seen by Dr. Greatting on January 28, 2009, he released Petitioner to return to work without restrictions effective February 9, 2009. When Dr. Greatting saw Petitioner on March 3, 2009, he noted that Petitioner was scheduled for arthroscopic surgery on March 20, 2009 (Petitioner's Exhibit 4).

Petitioner began working for Springfield Clinic on March 5, 2009, as a Medical Assistant. At that time, Petitioner was still receiving temporary total disability benefits. At trial, Petitioner

testified that she did not believe that her continued receipt of temporary total disability benefits was improper.

Dr. Greatting performed arthroscopic surgery on Petitioner's left shoulder on March 20, 2009. The procedure consisted of removal of an intra-articular loose body, subacromial decompression and mini rotator cuff repair (Petitioner's Exhibit 4).

Subsequent to the surgery, Petitioner returned to work for Springfield Clinic on March 26, 2009, and worked 61.75 hours between that date and April 8, 2009 (Respondent's Exhibit 6). Petitioner was continuing to draw temporary total disability benefits during that period of time.

Petitioner was evaluated Midwest Occupational Health Associates (MOHA) on April 30, 2009, for an injury she sustained at Springfield Clinic on April 28, 2009. Petitioner stated that she slipped on some urine on the bathroom floor and fell striking her left elbow on a toilet paper holder and landed on her buttock. Petitioner was diagnosed with a left elbow contusion and lumbar spine contusion. Petitioner was authorized to continue to work full duty (Respondent's Exhibit 13).

On August 12, 2009, Petitioner was evaluated by Dr. William Payne, an orthopedic surgeon, for neck and low back pain. He diagnosed lumbago and cervicalgia and ordered physical therapy. Petitioner received physical therapy for her low back and neck from September 8 through September 29, 2009 (Petitioner's Exhibits 8 and 10).

On September 4, 2009, Petitioner was evaluated by Dr. Kotswara Narla, a neurologist, for her low back and neck pain. In regard to the accident of December 31, 2008, Petitioner informed Dr. Narla she fell at work and remembered waking up on the floor and that they thought she fell on a wet floor. Petitioner also advised Dr. Narla that she had not worked since the fall. Dr. Narla opined that Petitioner had cervical pain with bilateral shoulder radiation and lumbar back pain with bilateral leg radiation. He recommended further diagnostic studies (Petitioner's Exhibit 11).

Dr. Greatting saw Petitioner on September 17, 2009, and he imposed permanent work/activity restrictions in regard to Petitioner's left shoulder. Specifically, Dr. Greatting opined that Petitioner was not to lift more than 10 pounds with her left arm, not to lift more than 10 pounds at waist level, not to lift more than five pounds above the waist to the shoulder level and not to lift more than two pounds above shoulder level (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Frank Petkovich, an orthopedic surgeon, on March 24, 2010. Dr. Petkovich was deposed on September 30, 2010, and his deposition testimony was received into evidence at trial. Dr. Petkovich testified that he examined Petitioner in regard to both accidents and he reviewed medical records and diagnostic studies that were provided to him. In regard to the accident of September 9, 2008, Dr. Petkovich opined that Petitioner sustained a left shoulder contusion as a result of that accident. Dr. Petkovich further opined that the left shoulder surgery of March 20, 2009, was not related to the September 9, 2008, work injury because all of the operative findings were for chronic changes inconsistent with an acute injury. Further, Dr. Petkovich opined that Petitioner could perform the same work that she was performing prior to September 9, 2008, but that she should have had some

restrictions at that time because she had previously undergone three surgical procedures (Respondent's Exhibit 7; pp 12-29).

In regard to the accident of December 31, 2008, Dr. Petkovich opined that Petitioner sustained a spinal contusion, primarily to the lumbar spine. He opined that Petitioner was at MMI and not in need of any further medical treatment for that injury (Respondent's Exhibit 7; pp 29-30).

Petitioner was seen by Dr. Joseph Bilyeu on July 16, 2010, for right leg and low back symptoms. He ordered physical therapy which Petitioner received from August 5, through August 24, 2010. In the physical therapy record of August 5, 2010, Petitioner stated that she injured herself at work in December, 2008, when she slipped and fell. That record noted that Petitioner did not remember falling but was found lying flat on her back (Petitioner's Exhibit 22).

Petitioner was seen by Dr. Joseph Williams, an orthopedic surgeon, on May 10, 2011, for her low back pain. At that time, Petitioner completed an intake sheet which stated that she remembered coming out of the bathroom and then waking up laying on her back in liquid Tide with the maintenance man over her asking if she was okay. She also indicated on the form that the accident occurred on December 31, 2009 (not December 31, 2008) and that this was the last date that she had worked (Petitioner's Exhibit 13).

Dr. Williams opined that Petitioner had chronic low back pain, mild lumbar degenerative disc disease, moderate L5-S1 left sided foraminal stenosis and right lower extremity pain. He reviewed an MRI that was performed on March 24, 2011, and opined that surgery was not indicated. He recommended conservative treatment including epidural steroid injections and physical therapy. He initially treated Petitioner from May through September, 2011.

On October 28, 2011, Dr. Williams wrote a letter to Petitioner's counsel wherein he commented on the issue of causality stating: "With regard to the question of causality, is difficult, if not impossible to say whether or not the symptoms that she is currently complaining of are the result of the fall she sustained on December 31, 2008. Ms. Meyer has degenerative disc disease that easily explains her current symptoms. Whether or not she had an exacerbation of her condition secondary to the fall would be difficult to determine from a medical standpoint. If she did in fact have an exacerbation, one would think it would be self-limited." (Petitioner's Exhibit 15).

At trial, Petitioner testified that she was involved in a motor vehicle accident on November 19, 2011, when she was rear-ended by another vehicle. She testified that she sustained injuries to her right knee and neck as result of this accident; however, she also stated that she sustained no injuries to either her low back or left shoulder as a result of that accident.

Following the accident of November 19, 2011, Petitioner was seen at the ER of St. John's Hospital. According to the ER record, Petitioner complained of pain in the right knee, neck, left shoulder and head (Respondent's Exhibit 11).

Petitioner was subsequently seen by Dr. Bilyeu on November 23, 2011. At that time, Petitioner complained of back, shoulder and right knee pain. Dr. Bilyeu ordered an MRI of the right knee (Respondent's Exhibit 14).

On December 15, 2011, Petitioner was evaluated by Dr. Greatting in regard to her left shoulder. According to Dr. Greatting's record of that date, Petitioner informed him that she was not having any problem with her left shoulder except for some occasional discomfort until she sustained the accident of November 19, 2011. Dr. Greatting's impression was "Left shoulder injury due to motor vehicle accident." He ordered a CT arthrogram of the left shoulder (Respondent's Exhibit 13).

On February 21, 2012, Petitioner was again seen by Dr. Williams for both her low back and left shoulder symptoms. Dr. Williams recommended that Petitioner have an MRI of her left shoulder (Petitioner's Exhibit 15).

Dr. Williams subsequently saw Petitioner on March 12, 2012, primarily because of Petitioner's left shoulder pain. His record of that date stated that Petitioner was doing "rather well" until she sustained the motor vehicle accident on November 19, 2011. He described this as being a "new injury" to the left shoulder that occurred as result of the motor vehicle accident of November 19, 2011 (Petitioner's Exhibit 15).

An MRI/arthrogram was performed on Petitioner's left shoulder on March 29, 2012. It revealed that the rotator cuff was intact, that there were post-surgical changes about the shoulder and that there was a slight irregularity or small tear of the labrum (Petitioner's Exhibit 15).

Dr. Williams saw Petitioner on April 20, 2012, primarily for her neck and left shoulder symptoms. He opined that Petitioner had a C3-C4 central disc protrusion and ordered physical therapy. In regard to the left shoulder, he referred Petitioner to Dr. Christopher Maender, an orthopedic surgeon (Petitioner's Exhibit 15).

Dr. Maender evaluated Petitioner on May 9, 2012, and he noted that Petitioner had a 20 year history of left shoulder pain. At that time, Petitioner informed Dr. Maender that prior to the motor vehicle accident, her pain was "tolerable" but that the motor vehicle accident caused her to sustain a rotator cuff tear and shoulder dislocation. Dr. Maender deferred making any treatment recommendations until he reviewed all of the medical records and diagnostic studies (Petitioner's Exhibit 15).

Dr. Maender subsequently saw Petitioner on May 23, 2012. At that time, Dr. Maender opined that further left shoulder surgery was not indicated. He did suggest Petitioner seek another opinion either in St. Louis or Chicago (Petitioner's Exhibit 15).

Petitioner was evaluated by Dr. Leesa Galatz, an orthopedic surgeon, on August 28, 2012. Dr. Galatz examined Petitioner in regard to both her neck and left shoulder symptoms. In regard to the left shoulder, she opined that further left shoulder surgery was not indicated (Petitioner's Exhibit 21).

Dr. Williams was deposed on October 2, 2012, and his deposition testimony was received into evidence at trial. When Dr. Williams was questioned about whether there was a causal relationship between the accident of December 31, 2008, and Petitioner's low back condition he

testified that "It would be nearly impossible for me to state for sure whether or not, with any certainty that fall caused her back pain based on what she said and based on what we see on the MRI. The only thing we could do is show that she had, according to her own history no pain before the fall, and then the pain started after the fall. However, I cannot find any medical evidence on the MRI or the studies that would suggest an acute injury had occurred." Dr. Williams agreed that the fall could have exacerbated the symptoms; however, he opined that this would have been a "temporary exacerbation." In regard to the motor vehicle accident of November 19, 2011, Dr. Williams testified that Petitioner's low back symptoms worsened afterward (Petitioner's Exhibit 16; pp 10-13).

Dr. Maender was deposed on October 19, 2012, and his deposition testimony was received into evidence at trial. In regard to Petitioner's left shoulder condition, Dr. Maender testified that the motor vehicle accident did not have any effect on Petitioner's left shoulder condition. This was based on the history that Petitioner gave to him wherein she informed him that her left shoulder pain was significant both before and after the accident (Petitioner's Exhibit 18; p 10).

On cross-examination, Dr. Maender acknowledged that when Dr. Williams had evaluated Petitioner's left shoulder on March 12, 2012, Petitioner informed Dr. Williams that her left shoulder was doing well prior to the motor vehicle accident of November 19, 2011 (Petitioner's Exhibit 18; pp 21-22).

Petitioner continued to receive medical treatment for her low back symptoms from several medical providers from February, 2013, through January, 2015. This included Dr. Williams, Dr. Per Freitag, Dr. Ferdinand Salvacion and Dr. Windie McKay (Petitioner's Exhibits 15, 20, 24, 25 and 54).

As previously noted herein, Petitioner began working for Springfield Clinic on March 5, 2009, as a Medical Assistant and, even though Petitioner was working, she continued to draw temporary total disability benefits. At trial, Petitioner testified that her job duties included cleaning/stocking examination rooms, preparing patients for doctor visits, organizing the nursing station, etc.

At trial, Petitioner testified that she was a probationary employee for Springfield Clinic and was let go at the end of her probationary period. Petitioner's employment records were received into evidence at trial and they revealed that Petitioner's employment was terminated on June 5, 2009. The records noted that Petitioner had been disciplined for poor job performance; however, the specific reason given for her termination was that she attended a physician's appointment during her scheduled work time and did not seek prior approval or clock out for the appointment. This was considered as theft of time which resulted in her termination (Respondent's Exhibit 6).

When questioned about her termination, Petitioner acknowledged her signature on the document that informed her of her termination. However, Petitioner still stated that she was not advised that the basis for her termination was theft of time.

Petitioner is a Social Security disability recipient and the Deciding awarding benefits was received into evidence at trial. According to the Decision, Petitioner worked until May 30, 2009, because of a second injury. At the time of her Social Security hearing, Petitioner also testified

that she was in a car accident in November, 2011, and she sustained injuries to the left shoulder, back and knee (Respondent's Exhibit 19).

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 her employment for Respondent on September 9, 2008, to her left shoulder.

In support of this conclusion the Arbitrator notes the following:

Petitioner testified that she injured her left shoulder when it struck a door knob as she was in the process of getting up after cleaning a floor.

While the ER records stated that Petitioner struck a "drawer" and not a door knob, the record was otherwise consistent with how this accident occurred.

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 September 9, 2008.

In support of this conclusion the Arbitrator notes the following:

Prior to September 9, 2008, Petitioner sustained a significant injury to her left shoulder which required three surgeries. While Petitioner claimed that she had full use of her left shoulder prior to September 9, 2008, the ER record of that date indicated that Petitioner had a history of dislocated shoulders in the past.

When Petitioner was seen at the ER on September 23, 2008, she stated that her left shoulder seemed to dislocate while sitting at a desk and the record indicated that Petitioner had been there in the past for dislocations and spontaneous reductions of her left shoulder.

Petitioner also informed her physical therapist that her left shoulder dislocated after putting food in a to-go box and that her left shoulder symptoms were worse after she sustained the fall at IHOP on September 23, 2008. At trial, when questioned as to whether she dislocated her left shoulder at the time she sustained the fall at IHOP, Petitioner could not recall.

Respondent's Section 12 examiner, Dr. Petkovich, opined that Petitioner sustained a left shoulder contusion as a result of the accident of September 9, 2008, but that the other left shoulder findings were not related to the accident because they were chronic changes inconsistent with an acute injury.

In regard to the motor vehicle accident of November 19, 2011, Petitioner testified that she did not sustain any further injury to her left shoulder as result of it. However, that is inconsistent

with statements Petitioner made to various medical providers including the ER personnel, Dr. Greatting and Dr. Williams.

While Dr. Maender opined that the motor vehicle accident of November 19, 2011, did not have any effect on Petitioner's left shoulder condition, the Arbitrator assigns no weight to this opinion because it is based upon an inaccurate history provided to him by Petitioner.

When Petitioner's Social Security disability claim was heard, she testified that she sustained an injury to her left shoulder as a result of the November, 2011, motor vehicle accident.

Petitioner returned to work on March 5, 2009, and continued to draw temporary total disability benefits. At trial, Petitioner testified that she did not believe this was improper. Further, Petitioner's employment was terminated on June 5, 2009, because of theft of time. While Petitioner acknowledged her signature on the termination document, she still testified that she did not know that this was the basis for her being terminated.

Based on the preceding, the Arbitrator finds Petitioner's credibility to be highly suspect.

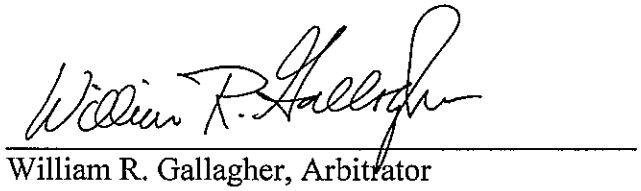
In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that the medical treatment provided to Petitioner on the day of the accident, September 9, 2008, was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services provided to Petitioner on September 9, 2008, of $1,823.23 as identified in Petitioner's Exhibits 30, 42 and 51, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. All other medical bills are denied.

In regard to disputed issues (K) and (L) the Arbitrator makes the following conclusion of law:

Based on the Arbitrator's conclusion of law in disputed issue (F) the Arbitrator concludes that Petitioner is not entitled to temporary total disability benefits or permanent partial disability benefits.



William R. Gallagher, Arbitrator

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

GILL, JAMES Case# **10WC017778**

Employee/Petitioner

ABF FREIGHT SYSTEMS INC

Employer/Respondent

On 10/9/2015, 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 0.06% 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:

0274 HORWITZ HORWITZ & ASSOC
MARK WEISSBURG
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

2965 KEEFE CAMPBELL BIERY & ASSOC
TIMOTHY J O'GORMAN
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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
19(b)

James Gill
Employee/Petitioner
v.
ABF Freight System Inc
Employer/Respondent

Case # **10 wc 17778**

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 **8/26/15 & 9/24/15**. 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 [x] Maintenance [x] TTD

M. [x] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [x] Other **Vocational Rehabilitation**

FINDINGS

On the date of accident, **4/18/10**, 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 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 $**93,251.08**; the average weekly wage was $**1,793.29**.

On the date of accident, Petitioner was **59** 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 $**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

All benefits awarded were related to the 10/1/09 incident as detailed in the decision for case 10 WC 15607. The incident on 4/18/10 was merely a manifestation and continuation of the condition caused by the accident on 10/1/09. See that decision for further detail.

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. Rhine
Signature of Arbitrator

October 9, 2015
Date

ICArbDec19(b)

OCT - 9 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MOLENDA, ANTHONY
Employee/Petitioner

Case# **13WC022024**

14WC004876

CENTRAL GROCERS
Employer/Respondent

On 10/21/2015, 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:

0293 KATZ FRIEDMAN EAGLE ET AL
DAVID M BARISH
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

3998 ROSARIO CIBELLA LTD
BENJAMIN BRESLAU
116 N CJICAGO ST SUITE 600
JOLIET, IL 60432

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

- [ ] 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

Anthony Molenda
Employee/Petitioner

v.

Central Grocers
Employer/Respondent

Case # **13** WC **22024**

Consolidated cases: **14 WC 4876**

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 5, 2015**. 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 **March 6, 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 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 $**47,570.66**; the average weekly wage was $**876.35**.

On the date of accident, Petitioner was **46** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**268.00 for payment of medical bills** or other benefits, for a total credit of $**268.00**.

Respondent is entitled to a credit of $**162.00** under Section 8(j) of the Act.

ORDER

Because the petitioner failed to meet his burden to prove an accident that arose out of his employment as well causation, his requests for payment of medical bills, temporary total disability, and permanent partial disability 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

10/16/15
Date

OCT 2 1 2015

FINDINGS OF FACT

Petitioner filed two claims that have been consolidated: 13 WC 22024 for an alleged date of accident of March 6, 2013; and 14 WC 4876 for an alleged date of accident of February 27, 2013. This decision is for the claim filed under 13 WC 22024, in which Petitioner is alleging injuries to both feet due to repetitive trauma. The issues in dispute in that case are: 1) accident, 2) causation, 3) medical expenses, 4) TTD, and 5) nature and extent.

Petitioner testified that he began working for the Respondent approximately six years prior to his alleged accident date. Over these six years, the Petitioner described performing a number of different job duties and titles ranging from being an "order picker" to a "forklift driver." He alleged that he has worked in similar jobs for the past 27 years. At the time of his alleged injury, the Petitioner was driving what he called a "jeep". This jeep was similar to a standup forklift. He would stand on the forklift for approximately two hours at a time and then would receive a customary 15 minute break. He would also receive longer breaks for a meal. The Petitioner alleged that he typically worked either five shifts a week at eight hours a shift or four shifts a week at ten hours a shift and that he spends all day on his feet.

Petitioner testified that as part of his employment with Respondent, he is required to wear steel toe boots. Respondent would allow a boot vendor to come into the facility to provide boots for the employees – all of which were paid for by the Respondent. The Petitioner testified that he had five to seven boot styles from which to choose. The employees would try on the different boots, select the style and size they liked best, and the Respondent would order the boots chosen by the employees. The Petitioner testified that he was not required to select a boot from the Respondent's selection of boots. Instead, the Petitioner testified that he could go to a store of his choosing and select any boot he wanted, as long as it was within the posted safety requirement of a steel-toed boot. If the Petitioner had purchased his boots elsewhere, he could submit his receipt to the Respondent and would be reimbursed for his out-of-pocket costs.

Petitioner testified that prior to 2013, he would use Iron Age insulated boots that were normally worn when working in cold storage. When Petitioner went to get new boots some time in 2013, Petitioner was not allowed to select the Iron Age boots by the vendor, and instead chose Wolverine steel toe boots, that did not have any insulation. Soon thereafter, Petitioner began noticing his feet were sore, tender and burning. Petitioner testified that he began limping after using these boots. Petitioner resorted to wearing gym shoes on certain days because his Wolverine boots were uncomfortable. Because the use of gym shoes at the Respondent's work place was in violation of the steel toe boot requirement, Petitioner's supervisor had a discussion with Petitioner. Petitioner told his supervisor about his discomfort with the Wolverine boots and the supervisor provided him with cushioned inserts for his boots. Petitioner testified that the inserts made the Wolverine boots fit tighter and caused him to limp even more.

On March 5, 2013, Petitioner did not report to work because of a snow storm. On March 6, 2013, Petitioner woke up with swollen feet. Because he had difficulty walking, he went to Rochelle Community Hospital where he was subsequently diagnosed with plantar fasciitis, given crutches and taken off work. Records from that medical provider show that the Petitioner had tripped two weeks prior at work. They also indicate the Petitioner was breaking in a new pair of boots and that his complaints of pain were in his right foot.

On March 8, 2013, the Petitioner presented to Dr. Liakos at Midwest Orthopedic Institute stating that he had an accident. (Px. #3). He alleged that the onset of pain was February 27 or February 28. He was complaining of

right foot pain. According to the note from Dr. Liakos that same date, the Petitioner alleged a fall either on February 27 or February 28. He reported to the doctor that fell over a pallet and suffered some sort of twisting injury to his right foot. (Px. #3).

The Petitioner continued to treat at Midwest Orthopedic Institute with Dr. Liakos. (Px. #3). The Petitioner continued to complain of pain in both feet. Throughout his treatment with Dr. Liakos, the records note a fall at work as well and at no point mention a pallet being dropped on the Petitioner's foot, as the Petitioner testified. Initially, the doctor stated that he could not explain why the Petitioner was having difficulty weight-bearing since he was already six weeks out from the alleged injury. The doctor specifically noted that most patients with plantar fasciitis were weight bearing at this point and were able to tolerate work. Therefore, the doctor ordered an MRI of the right ankle.

The Petitioner presented to Midwest Orthopedic Institute on April 23, 2013 for an MRI of his right ankle. (Px. #3). This MRI a muscle strain and edema, but no tears or fractures were seen. Another MRI was ordered so the doctor could see the rest of the Petitioner's right foot. Again, this MRI revealed only a muscle strain. (Px. #3). No fractures were seen to support the suspicion of an avulsion fracture as diagnosed in the ER and by Dr. Liakos.

After returning to Dr. Liakos following the MRIs, the petitioner was prescribed physical therapy due to his continued complaints. (Px. #3). The doctor also recommended the Petitioner obtain a larger size boot to see if that would relieve his symptoms. Ultimately, when the Petitioner returned on August 6, 2013 to Dr. Liakos, it was recommended that the Petitioner finish his physical therapy and return to work the following week. (Px. #4). The last time the Petitioner was seen by Dr. Liakos was August 26, 2013, when the Petitioner was advised to continue working full duty.

On December 20, 2013, Dr. Liakos prepared a letter at the request of the Petitioner. (Px. #4). The doctor stated that he did not believe that the Petitioner's fall from February 27 or February 28 was likely the cause of his condition and was not caused, aggravated, or accelerated due to his boots. Again, the doctor noted that the Petitioner fell at work. This letter did not mention at any point a pallet falling on the Petitioner's right foot. The doctor noted the Petitioner's pain was fairly symmetric, but slightly more on the right. He also noted the Petitioner showed some inflammation and edema on the center aspect of the muscles on the MRI which could be related to pressure and shoe wear. The doctor felt that the Petitioner's ill-fitting boots could have contributed to this pain and noted that the Petitioner had significant improvement after he switched to other boots and utilize orthotics.

The Petitioner also requested a report from Dr. Jeffrey Coe at Occupational Medicine Associates of Chicago. (Px. #5). Dr. Coe reviewed the Petitioner's records and evaluated the Petitioner for the purposes of an impairment rating. In his history and summary, the doctor noted the Petitioner suffered a twisting injury to his right ankle after a trip at work while working for the Respondent on February 27, 2013. The doctor felt that there was a causal relationship between both injuries suffered by the Petitioner and his work duties for the Respondent. He felt that injuries did cause permanent disability to both feet and that the Petitioner had reached maximum medical improvement. The doctor calculated the Petitioner's impairment by using the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition. The diagnosis was bilateral plantar fasciitis with residual symptoms. The doctor felt that the final right foot impairment rating was 2 percent and the final left foot impairment rating was 1 percent.

The Respondent obtained a Section 12 Independent Medical Evaluation report from Dr. Simon Lee dated April

9, 2015. Dr. Lee examined the Petitioner. The Petitioner told Dr. Lee that his symptoms essentially began on March 6, 2013. Although, the Petitioner noted that his symptoms began prior to that date when he obtained a new pair of work boots. The Petitioner told Dr. Lee that he was not able to return to work until he was able to obtain a new pair of work boots in a larger size as well as receive orthotics. The Petitioner was still complaining of residual symptoms at this appointment, which was approximately two years after the alleged date of injury. Dr. Lee diagnosed the Petitioner with right foot and heel pain. In his opinion, Dr. Lee found no causal relationship of any alleged work injury to the condition originating or causing the Petitioner's symptoms or complaints. Dr. Lee stated there was no evidence based on the Petitioner's statements that there was any specific trauma to his foot. Dr. Lee opined that there was no repetitive injury. The doctor noted that the Petitioner had complaints of ill-fitting shoe wear, however, he found no reason why the Petitioner did not report this ill-fitting shoe wear issue immediately rather than attempt to continue to wear the shoes on a prolonged basis. Dr. Lee also took issue with the fact that the original documentation and report appeared to indicate right-sided symptoms and complaints, but at the evaluation, the Petitioner was complaining of diffuse and relatively atypical bilateral lower extremity symptoms and complaints that would not be substantiated by any work related injury or the original injury to the right lower extremity. The doctor also did not feel that plantar fasciitis was an accurate diagnosis. The Petitioner's symptoms showed some tenderness over the medial plantar fascia region but that the Petitioner had more diffuse pain in all other areas that were also symmetric and did not have discrete anatomical diagnoses or basis. The doctor opined that the Petitioner had some diffuse and non-specific edema with the plantar musculature and subcortical bone but there was no evidence substantiating the cause of these symptoms. The doctor agreed that the Petitioner was at maximum medical improvement and that he could continue working his full and previous work duties with no restrictions.

Respondent presented a recorded statement from the Petitioner taken on March 8, 2013, the same date as his first visit with Dr. Liakos, and the same day he filled out the above-referenced intake form Dr. Liakos. (Rx. #5). In this recorded statement, the Petitioner told the claims adjuster at Sentry Insurance that he had fallen somewhere between February 17 and February 26. This recorded statement makes no mention of a pallet hitting or being dropped on his foot on February 27 or February 28. Furthermore, at the end of this recorded statement, the Petitioner stated that he felt that he had definitely gotten hurt at work, but did not know exactly when the injury had happened.

Petitioner testified that as a result of his injury, he notes that "he's not me anymore." He hurts everyday with limping, stiffness, burning and pain. He no longer works out like before and has to take care of his mother's 5 acre property, including cutting down trees and cutting the grass.

CONCLUSIONS OF LAW

1. With regard to the issue of accident, the Arbitrator finds that the Petitioner failed to meet his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's testimony and the medical evidence. Petitioner is alleging a repetitive trauma accident, but there was insufficient evidence of repetitive work activity to substantiate a repetitive trauma claim. In reviewing the Petitioner's testimony and the medical evidence, essentially, the Petitioner is claiming that wearing uncomfortable boots rose to the level of an accident. However, the records indicate the Petitioner could have chosen different boots or bought his boots on his own for which he would be reimbursed by Respondent. Instead, Petitioner chose to continue wearing the uncomfortable boots to the point his feet began to hurt more. Petitioner first testified that he wore a different brand of steel toe boots that were insulated and comfortable. Although the boot vendor did not provide this model of boot for Petitioner in 2013, there is nothing in the evidence that indicates Petitioner could have either

continued wearing his old boots or else purchase another pair of the more comfortable boots at the Respondent's expense. In light of these facts, the Arbitrator concludes that Petitioner failed to prove he sustained an accident on March 6, 2013.

2. Based on the Arbitrator's findings with regard to the issue of accident, all other issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

VARGAS, MARIO Case# **12WC043619**

Employee/Petitioner

CHICAGO TRANSIT AUTHORITY

Employer/Respondent

On 10/19/2015, 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 0.08% 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:

0525 TOPPER & WEISS LTD
BARRY WEISS
19 S LASALLE ST SUITE 1202
CHICAGO, IL 60603

0515 CHICAGO TRANSIT AUTHORITY
ANDREW ZASUWA
567 W LAKE ST 6TH FL
CHICAGO, IL 60661

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

MARIO VARGAS
Employee/Petitioner
v.
CHICAGO TRANSIT AUTHORITY
Employer/Respondent

Case # **12 WC 43619**

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 August 24, 2015. After reviewing all of the evidence presented and pursuant to stipulation of the parties, 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 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*** causally related to the accident.

In the year preceding the injury, Petitioner earned $88,900.00; the average weekly wage was $1,710.00.

On the date of accident, Petitioner was 66 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 $**18,240.00** for TTD, $**0**for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**18,240.00**.

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

ORDER

Pursuant to stipulation 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 the **right leg** pursuant to §**8(e)** of the Act.

Because the parties did not request a decision with findings of fact and conclusions of law, the Arbitrator is issuing a short decision form, pursuant to Section 19(b) 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

October 19, 2015
Date

OCT 19 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SUICO, GUALBERTA Case# **11WC004022**

Employee/Petitioner

VILLA SCALABRINI NURSING & REHAB CENTER

Employer/Respondent

On 10/19/2015, 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 0.08% 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:

2333 WOODRUFF JOHNSON & PALERMO
LEE ALHAMBRA
4234 MERIDIAN PKWY SUITE 134
AURORA, IL 60504

2965 KEEFE CAMPBELL BIERY & ASSOC
PANKHURI PARTI
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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

Gualberta Sujco
Employee/Petitioner
v.
Villa ScalabriniNursing & Rehab. Center
Employer/Respondent

Case # **11WC 04022**

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 **March 11, 2015**. 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. 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 **January 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 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 **$56,680.00**; the average weekly wage was **$1,090.00.**

On the date of accident, Petitioner was **59** 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 **$38,914.00** 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 3, 2011 and failed to prove a causal connection between her work activities for Respondent and the current condition of ill-being regarding her right shoulder.

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 16, 2015
Date

OCT 19 2015

FINDINGS OF FACT

On the claimed accident date of January 3, 2011, Petitioner was employed by Respondent as a Licensed Practical Nurse (LPN). She had worked for Respondent as an LPN for 10 years. Petitioner is right handed.

Petitioner worked the night shift from 11pm to 7am. When she started her shift, she would receive a report from outgoing nurse, check the medications for the night shift, and then make rounds to ensure all patients were safe in bed. In order to make the patient comfortable, she and the accompanying CNA would grab the blue pad under the patient with both their hands and pull the patient towards herself and then towards the CNA. As part of her duties, Petitioner testified she was responsible for 28 patients and the night shift staff was made up of one LPN and one CNA. Petitioner stated she made two rounds during her night shift and in every round they assisted and moved 3-4 patients. Petitioner also testified most of the patients weighed between 120-180 lbs.

According to Petitioner, both the LPN and the CNA on duty got one 45 minute break. She testified if the CNA was on break and a patient requested assistance, she would have to answer. Petitioner further testified if at this time the patient requested to go to the bathroom, she would have to pull the patient up and take him from the bed to the wheelchair. Petitioner would then need to wheel the wheelchair to the toilet, shift the patient onto the toilet and then bring them back to the bed. Petitioner testified she did this by making sure the patient was sitting on the edge of the bed and then put her two hands under the armpits of the patient to lift him into the wheelchair. Petitioner testified on an average she assisted patients from the bed to the toilet and back at least two times per shift.

Petitioner testified her duties for the ten years she worked for Respondent had been similar to those described in her testimony at hearing. She testified in the middle of 2010 – June, 2010 – she started experiencing pain in her right shoulder whenever she pulled herself. Petitioner testified she continued to work until December of 2010 despite the pain. Petitioner tried taking Aleve, but it was ineffective. She eventually sought treatment in December 2010.

Petitioner testified she first saw Dr. Kim on December 17, 2010 because she was unable to lift her shoulder anymore and needed to see a doctor. Petitioner noted Dr. Kim was not her primary care physician and that she sought treatment from Dr. Kim because her primary physician was on vacation. Petitioner stated when she saw Dr. Kim she was suffering from terrible pain and was crying because of the pain. The Arbitrator notes that while Petitioner testified the severity of her pain was such that it left her in tears, the medical records from Dr. Kim explicitly states Petitioner was "in no acute distress" at the time of the appointment. (PetEx. 2)

Petitioner testified Dr. Kim ordered an MRI for her shoulder and it was performed on December 22, 2010. The MRI scan revealed a large full-thickness tear of the supraspinatus tendon. (ResEx. 1) Petitioner was then seen by Dr. Pantano on January 4, 2011 at which time Dr. Pantano went over the report and referred her to an orthopedic specialist. Petitioner was also taken off work on that day. Petitioner was then seen by Dr. Dairyko on January 11, 2011. During the visit Dr. Dairyko noted Petitioner used the strength of her shoulders a lot in her job and that she had pain since December 2010. The chart says that Petitioner's pain began in December 2010 and in another section states Petitioner has had this shoulder pain for some time, but it increased significantly in December 2010. Petitioner denied any trauma of any kind. Dr. Dairyko diagnosed Petitioner with a right rotator cuff tear and recommended surgical intervention. Surgery was performed on February 15, 2011. The procedure was a right shoulder arthroscopy with limited debridement, subacromial decompression and rotator cuff repair. (Pet. Ex. 2).

Petitioner testified she continued to be off work after her surgery and had several post-operative follow up appointments with Dr. Dairyko. On February 18, 2011, Petitioner was also started on physical therapy which was undertaken at Athletico from March 2011 until June 2011. On June 10, 2011, Dr. Dairyko released her to light work with restrictions of no pushing, pulling, or lifting greater than ten pounds. Petitioner testified she presented those restrictions to her work and to Leila Biteng, the Assistant Director of Nursing. Petitioner testified she continued to be off work because Respondent was unable to accommodate those restrictions. Petitioner last saw Dr. Dairyko on August 16, 2011, at which time she was released to full duty work without

any restrictions. According to Petitioner, she was unable to return to work with Respondent, as they did not have a position available for her.

There was inconsistent testimony by Petitioner and Leila Biteng (Respondent's Assistant Director of Nursing) regarding Petitioner's advising that she would be off work do to her shoulder condition. In the final version by Petitioner, she testified she had notified Respondent by calling Leila about the results of her MRI on January 4, 2011, the day that Dr. Pantano had taken her off work. Biteng testified that Petitioner had called her on January 3, 2011 (the day that Biteng created a memo that was Respondent's Exhibit 5) and that Petitioner had hurt her shoulder with a patient, was going on medical leave and was awaiting an MRI. Petitioner denied telling Biteng that she hurt her arm in an incident with a patient, Lorraine Perry. Perry is mentioned on Respondent's Exhibit 5. Ms. Perry died in August of 2010. (ResEx. 6) These inconsistencies, while troubling, have no consequence to the Arbitrator's findings regarding accident and causation, which are based on the medical evidence and expert opinion.

Petitioner testified she had been diagnosed with a frozen right shoulder back in 2006 for which she underwent an injection and physical therapy two times a week for three weeks. She saw a doctor 2 times for this condition. Petitioner noted she did not miss any work because of this and she had had no treatment on her right shoulder between 2006 and 2010. There is no mention of this prior history in the medical records. At various points, Petitioner confirmed that her shoulder complaints began in June of 2010 and gradually worsened. She did not relate her shoulder complaints to a specific event or injury.

Petitioner testified she received short term disability benefits from Respondent during the time she was off work from January 4, 2011 until August 16, 2011. Petitioner's claimed bills were contained in Exhibit 5. She paid $55.42 out of pocket.

Petitioner testified that since the injury, she experiences shoulder pain whenever she overuses it and that the pain is deep and aching. The pain occurs when she reached overhead and while doing housework. Petitioner testified her shoulder pain occurred 2-3 times per week and she usually takes over the counter medication for the pain. Petitioner is working as a visiting nurse now and usually sees two patients a week.

Upon cross-examination, Petitioner testified she did not seek treatment for her allegedly gradually increasing pain between June 2010 and December 2010. Petitioner testified that she understood the importance of informing a doctor about an injury as soon as possible and to tell the doctor the exact manner in which the injury occurred. Petitioner agreed that she gave a full and accurate account of her injury to Dr. Kim on December 17, 2010, and while she did not return to Dr. Kim, she did receive a phone call from Dr. Kim about the results of the MRI.

Petitioner testified she did not work for the time period between December 17, 2010 and January 4, 2011. Petitioner testified she reported the injury to Respondent as soon as she received a report from Dr. Kim.

Upon questioning, Petitioner first stated she could not remember when she called Leila to report her injury, but later claimed it was after the appointment with Dr. Pantano and thus would have been on January 4, 2011. Petitioner testified she called Leila and told her about the MRI result and upon questioning stated she did not remember stating she was actually going for an MRI. Petitioner was adamant she told Leila about the results of the MRI during the phone call and also denied ever stating she had hurt herself lifting Lorraine Perry. Petitioner further testified she never mentioned a patient's name but later claimed she did tell Leila she was lifting a patient when she was injured.

Petitioner testified she informed Dr. Pantano of her shoulder symptoms and the aches and pain in her shoulder during the appointment of January 4, 2011. Petitioner also stated she gave Dr. Dairyko a true and accurate account of her symptoms on January 11, 2011 and that she described her duties as an LPN to him. The medical records from that appointment do not include any description about the work duties of Petitioner as an LPN.

Petitioner testified she did not report the pain to Leila when it started in June 2010. She also testified she did not seek treatment until December 2010 because the pain was manageable. Petitioner testified she was a diabetic and had been one for the past 10 years. Petitioner agreed that while her responsibilities included repositioning patients, there was no overhead lifting involved in her work as an LPN.

Petitioner submitted the evidence deposition of Dr. Gregory Dairyko. Dr. Diaryko is a board certified orthopedic surgeon. He testified that Petitioner's rotator cuff tear was possibly as a result of a cumulative work-related injury secondary to lifting heavy patients on a regular basis. Petitioner's job could have contributed to her rotator cuff problem. The condition could have been aggravated by Petitioner's job duties. Petitioner had a good recovery from surgery, with full range of motion and strength. Petitioner was released to full duty work, PRN, as of August 16, 2011. (PetEx. 1)

Respondent submitted the evidence deposition of Dr. Mark Levin. Dr. Levin is a board certified orthopedic surgeon and has a certification in disability evaluation/impairment rating (no need for an impairment rating regarding an accident date of January 3, 2011). Dr. Levin testified that Petitioner's rotator cuff tear condition was not caused or aggravated by Petitioner's work activities as an LPN at a nursing home. Petitioner's DM condition could have increased her risk for a rotator cuff tear and her condition was common to her age group. He could state with medical certainty that Petitioner's job did not contribute to her condition. Significantly, Petitioner's job activities did not involve heavy over shoulder level lifting. Dr. Levin considered the letter from Petitioner's attorney requesting a narrative report from Dr. Dairyko. Petitioner did not give a history of a specific work related event and her job does not establish a repetitive trauma injury. (ResEx. 4)

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 AND 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 failed to prove that she sustained accidental injuries which arose out of and in the course of her employment by Respondent on January 3, 2011 and failed to prove a causal connection between her right torn rotator cuff condition and her work activities for Respondent.

Petitioner obviously performed heavy lifting activities while working as a LPN for Respondent. The Arbitrator is not persuaded that these activities were sufficiently repetitive and of the type (overhead and forceful) to have contributed in any way to the rotator cuff tear condition (did not cause, aggravate or accelerate). Dr. Levin's testimony on causation is credible, persuasive and most comports with the evidence adduced. Dr. Dairyko's opinions are not persuasive.

Finally, the Arbitrator is concerned that Petitioner (with obvious medical experience and insight as a 10 year LPN) did not give any of the physicians a history of the 2006 frozen shoulder condition. If you have a frozen shoulder condition for a month, with physician visits and therapy to resolve it, you will remember it and tell your treating physicians about it when you begin to experience significant shoulder pain 4 to 5 years later.

Petitioner was not being forthright with her physicians, but did tell the truth about this past condition when she was under oath at trial.

Accordingly, for the above stated reasons, Petitioner's claim for compensation is denied.

WITH RESPECT TO ISSUE (E), WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO THE RESPONDENT, THE ARBITRATOR FINDS AS FOLLOWS:

The testimony of Petitioner and of Ms. Biteng establish that Petitioner gave Respondent timely notice, as required by §6 of the Act.

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:

Given the Arbitrator's findings regarding the issues of Accident and Causal Connection above, these issues need not be decided.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MOLENDA, ANTHONY
Employee/Petitioner

Case# **14WC004876**

13WC022024

CENTRAL GROCERS
Employer/Respondent

On 10/21/2015, 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:

0293 KATZ FRIEDMAN EAGLE ET AL
DAVID M BARISH
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

3998 ROSARIO CIBELLA LTD
BENJAMIN BRESLAU
116 N CHICAGO ST SUITE 600
JOLIET, IL 60432

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

- [ ] 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

Anthony Molenda
Employee/Petitioner

v.

Central Grocers
Employer/Respondent

Case # **14** WC **4876**

Consolidated cases: **13 WC 22024**

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 5, 2015**. 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 **February 27, 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 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 $**45,570.66**; the average weekly wage was $**876.35**.

On the date of accident, Petitioner was **46** 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 $**0.00** for TTD, $**0.00** for TPD, $**0.00** for maintenance, and $**268.00 for payment of medical bills** or other benefits, for a total credit of $**268.00**.

Respondent is entitled to a credit of $**162.00** under Section 8(j) of the Act.

ORDER

Petitioner failed to meet his burden of proof on the issue of accident. 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.

Signature of Arbitrator

10/16/15
Date

OCT 2 1 2015

FINDINGS OF FACT

Petitioner filed two claims that have been consolidated: 13 WC 22024 for an alleged date of accident of March 6, 2013; and 14 WC 4876 for an alleged date of accident of February 27, 2013. This decision is for the claim filed under 14 WC 4876, in which Petitioner is alleging injury to his right foot due to a direct trauma. The issues in dispute in this case are: 1) accident, 2) causation, 3) medical expenses, 4) TTD, and 5) nature and extent.

Petitioner testified that he began working for the Respondent approximately six years prior to his alleged injury on February 27, 2013. Over these six years, the Petitioner described a number of different job duties and titles ranging from being an "order picker" to a "forklift driver." He alleged that he has worked in similar jobs for the past 27 years. At the time of his alleged injury, the Petitioner was working, driving what he called a "jeep". This jeep was similar to a standup forklift. He would stand on the forklift for approximately two hours at a time and then would receive a customary 15 minute break. He would also receive longer breaks for a meal. The Petitioner alleged that he typically worked either five shifts a week at eight hours a shift or four shifts a week at ten hours a shift.

The Petitioner alleged that on the date of injury he started his shift at approximately 7:30 p.m. on February 27, 2013 and ended his shift at approximately 4:00 a.m. on February 28, 2013. The Petitioner testified that at some time during this shift, thousands of cans of corn were spilled by a fellow employee. The Petitioner testified that he was told by his supervisor to help clean up this spill. While doing so, the Petitioner testified that another employee dropped a pallet on his right foot and ankle, causing injury.

The Petitioner testified that he continued to work three more shifts before seeking medical attention. Despite this alleged injury, the Petitioner was able to perform all of his job duties during those three shifts. The Petitioner testified that he was already experiencing some soreness in his right foot due to having received new boots from the Respondent. These boots were issued approximately one month prior to the alleged date of injury (Px. #1) and is they are the subject of Petitioner's companion case 13 WC 22024.

The Petitioner first sought medical treatment on March 6, 2013 at Rochelle Community Hospital. (Px. #2) He presented to the emergency room complaining of right foot pain for "a couple of weeks." The Petitioner complained that the pain was mostly located in the sole of his foot. He stated that he had been breaking in a new pair of boots at work. The record notes that the Petitioner specifically denied any recent trauma, but noted tripping at work approximately two weeks prior to this encounter. X rays were taken and were inconclusive, but an avulsion fracture was suspected. The final diagnosis at this emergency room was plantar fasciitis and a possible mid-foot fracture.

On March 8, 2013, the Petitioner presented to Dr. Liakos at Midwest Orthopedic Institute stating that he had an accident. (Px. #3). He alleged that the onset of pain was February 27 or February 28. He was complaining of right foot pain. According to the note from Dr. Liakos that same date, the Petitioner alleged a fall either on February 27 or February 28. He reported to the doctor that fell over a pallet and suffered some sort of twisting injury to his right foot. A similar history is indicated on the intake form completed and signed by the petitioner on that same date stating that he fell at work and that his boots were also making his feet hurt. (Px. #3).

The Petitioner continued to treat at Midwest Orthopedic Institute with Dr. Liakos. (Px. #3). The Petitioner continued to complain of pain in both feet. Throughout his treatment with Dr. Liakos, the records note a fall at work as well. The records do not mention a pallet striking the Petitioner's foot. Initially, the doctor stated that

he could not explain why the Petitioner was having difficulty weight-bearing since he was already six weeks out from the alleged injury. The doctor specifically noted that most patients with plantar fasciitis were weight bearing at this point and were able to tolerate work. Therefore, the doctor ordered an MRI of the right ankle.

The Petitioner presented to Midwest Orthopedic Institute on April 23, 2013 for an MRI of his right ankle. (Px. #3). This MRI a muscle strain and edema, but no tears or fractures were seen. Another MRI was ordered so the doctor could see the rest of the Petitioner's right foot. Again, this MRI revealed only a muscle strain. (Px. #3). No fractures were seen to support the suspicion of an avulsion fracture as diagnosed in the ER and by Dr. Liakos.

After returning to Dr. Liakos following the MRIs, the petitioner was prescribed physical therapy due to his continued complaints. (Px. #3). The doctor also recommended the Petitioner obtain a larger size boot to see if that would relieve his symptoms. Ultimately, when the Petitioner returned on August 6, 2013 to Dr. Liakos, it was recommended that the Petitioner finish his physical therapy and return to work the following week. (Px. #4). The last time the Petitioner was seen by Dr. Liakos was August 26, 2013, when the Petitioner was advised to continue working full duty.

On December 20, 2013, Dr. Liakos prepared a letter at the request of the Petitioner. (Px. #4). The doctor stated that he did not believe that the Petitioner's fall from February 27 or February 28 was likely the cause of his bilateral foot condition and was not caused, aggravated, or accelerated due to his boots. Again, the doctor noted that the Petitioner fell at work. This letter did not mention at any point a pallet striking the Petitioner's right foot. The doctor noted the Petitioner's pain was fairly symmetric, but slightly more on the right. He also noted the Petitioner showed some inflammation and edema on the center aspect of the muscles on the MRI which could be related to pressure and shoe wear. The doctor felt that the Petitioner's ill-fitting boots could have contributed to this pain and noted that the Petitioner had significant improvement after he switched to other boots and utilize orthotics. There was no mention as to where the orthotics came from, but there is no indication that they were custom, prescribed orthotics.

The Petitioner also requested a report from Dr. Jeffrey Coe at Occupational Medicine Associates of Chicago. (Px. #5). Dr. Coe reviewed the Petitioner's records and evaluated the Petitioner for the purposes of an impairment rating. In his history and summary, the doctor noted the Petitioner suffered a twisting injury to his right ankle after a trip at work while working for the Respondent on February 27, 2013. The doctor felt that there was a causal relationship between both injuries suffered by the Petitioner and his work duties for the Respondent. He felt that injuries did cause permanent disability to both feet and that the Petitioner had reached maximum medical improvement. The doctor calculated the Petitioner's impairment by using the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition. The diagnosis was bilateral plantar fasciitis with residual symptoms. The doctor felt that the final right foot impairment rating was 2 percent and the final left foot impairment rating was 1 percent.

The Respondent obtained a Section 12 Independent Medical Evaluation report from Dr. Simon Lee dated April 9, 2015. Dr. Lee examined the Petitioner. The Petitioner told Dr. Lee that his symptoms essentially began on March 6, 2013. Although, the Petitioner noted that his symptoms began prior to that date when he obtained a new pair of work boots. The Petitioner told Dr. Lee that he was not able to return to work until he was able to obtain a new pair of work boots in a larger size as well as receive orthotics. The Petitioner was still complaining of residual symptoms at this appointment, which was approximately two years after the alleged date of injury. Dr. Lee diagnosed the Petitioner with right foot and heel pain. In his opinion, Dr. Lee found no causal relationship of any alleged work injury to the condition originating or causing the Petitioner's symptoms

or complaints. Dr. Lee stated there was no evidence based on the Petitioner's statements that there was any specific trauma to his foot. Dr. Lee opined that there was no repetitive injury. The doctor noted that the Petitioner had complaints of ill-fitting shoe wear, however, he found no reason why the Petitioner did not report this ill-fitting shoe wear issue immediately rather than attempt to continue to wear the shoes on a prolonged basis. Dr. Lee also took issue with the fact that the original documentation and report appeared to indicate right-sided symptoms and complaints, but at the evaluation, the Petitioner was complaining of diffuse and relatively atypical bilateral lower extremity symptoms and complaints that would not be substantiated by any work related injury or the original injury to the right lower extremity. The doctor also did not feel that plantar fasciitis was an accurate diagnosis. The Petitioner's symptoms showed some tenderness over the medial plantar fascia region but that the Petitioner had more diffuse pain in all other areas that were also symmetric and did not have discrete anatomical diagnoses or basis. The doctor opined that the Petitioner had some diffuse and non-specific edema with the plantar musculature and subcortical bone but there was no evidence substantiating the cause of these symptoms. The doctor agreed that the Petitioner was at maximum medical improvement and that he could continue working his full and previous work duties with no restrictions.

The Petitioner testified that on February 27th or 28th, he did not fall, but rather had a pallet hit him on his right foot and ankle. Petitioner stated that there was a fall at some other point prior to the alleged date of injury, however, at trial he testified on a number of occasions that he suffered no injury to his ankle from any fall at work. , The Respondent presented a recorded statement from the Petitioner taken on March 8, 2013, the same date as his first visit with Dr. Liakos, and the same day he filled out the above-referenced intake form Dr. Liakos. (Rx. #5). In this recorded statement, the Petitioner told the claims adjuster at Sentry Insurance that he had fallen somewhere between February 17 and February 26. This recorded statement makes no mention of a pallet hitting or being dropped on his foot on February 27 or February 28. Furthermore, at the end of this recorded statement, the Petitioner stated that he felt that he had definitely gotten hurt at work, but did not know exactly when the injury had happened.

The parties stipulated to the admissibility of two documents relating to Section 8(e)(17) prior award credits. The first was an Illinois Workers' Compensation Commission database printout from Case # 88WC12841. (Rx. # 2). In this case, which related to an accident date of January 31, 1988 while Petitioner was employed at Dominicks Finer Foods Inc., the Petitioner received a settlement of 2.5 percent loss of use of the right foot. Further, an Illinois Workers' Compensation Commission database printout was presented for Case # 93 WC 45285. (Rx. #3). In this case, which related to an accident date of May 17, 1993 while Petitioner was employed at Certified Grocers, the Petitioner received a settlement Award of 20 percent loss of use of the left foot.

In cross-examination, the Petitioner was confronted with this prior inconsistent statement. In the recorded statement referenced above, the Petitioner told the claims adjuster that he had only one prior workers' compensation injury. (Rx. #5). The Petitioner on cross examination admitted that this was not true and that he in fact had not one but five workers' compensation cases. The Petitioner was able to recall these prior cases, some of them in specific details.

CONCLUSIONS OF LAW

1. With regard to the issue of accident, the Arbitrator finds that the Petitioner failed to meet his burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's testimony and the medical evidence. In particular, the Arbitrator notes that the Petitioner's testimony regarding his accident from February 27, 2013 is not supported by the medical evidence. He testified that a pallet struck his right ankle after a co-workers spilled 1000's of cans of product. The medical records indicate the Petitioner providing a history of tripping, falling or

twisting. There is no mention of the Petitioner's leg being struck by a pallet in the medical records. There is also a lack of consistency in the evidence as to when this alleged accident occurred. Given the conflicting and inconsistent evidence, the Arbitrator concludes that the Petitioner's claim lacks credibility and therefore fails to establish that he sustained an accident on February 27, 2013.

2. Based on the Arbitrator's findings with regard to the issue of accident, all other issues are rendered moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SHARKEY, DAVID Case# **13WC023931**

Employee/Petitioner

CITY OF CHICAGO

Employer/Respondent

On 10/16/2015, 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 0.08% 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:

0494 JOSEPH J SPINGOLA
1314 KESINGTON
SUITE 3843
OAK BROOK, IL 60522

1596 MEACHUM STARCK BOYLE & TRAFMAN
JAMES W JANNISCH
225 W WASHINGTON ST SUITE 500
CHICAGO, IL 60606

STATE OF ILLINOIS)

)

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
DECISION

David Sharkey
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **13 WC 23931**

The petitioner's attorney filed a petition for attorneys' fees on November 6, 2014 and properly served all parties. The respondent filed a motion to dismiss on March 25, 2015 and properly served all parties. The matter came before me on July 22, 2015 in the City of Chicago. After hearing the parties' arguments and conducting due deliberations, I hereby deny the petition for attorneys' fees without prejudice, and I hereby grant the motion to dismiss the Arbitration proceedings.

A record of the hearing was made.

PROCEDURAL HISTORY

On July 25, 2013, Joseph Spingola, the attorney for petitioner David Sharkey, filed an Application for Adjustment of Claim naming the City of Chicago as respondent (case number 13 WC 23931). While that case was pending David Sharkey and Steven Haug, an adjuster for the Liberty Mutual Insurance Company, communicated with each other regarding settlement of the claim. Joseph Spingola was unaware of the communications. On February 13, 2014, a Pro Se Lump Sum Settlement Contract, naming the same parties and stating the same accident date, was filed by Nicole McNair, an attorney with the Law Offices of Meachum, Starck, Boyle, and Trafman (case number 14 WC 4654). The settlement amount was $32,100.00, Nicole McNair's signature was dated January 28, 2014, and David Sharkey's signature was dated February 13, 2014. That Pro Se Lump Sum Settlement Contract was presented to and approved by Arbitrator Mason on February 13, 2014. Arbitrator Mason was not told

that case number 14 WC 4654 was a duplicate filing. Joseph Spingola alleges that on October 8, 2014 Steven Haug confirmed with him that a settlement had been approved.

On November 16, 2014, Joseph Spingola filed a petition for attorneys' fees in the pending case, 13 WC 23931. On March 25, 2015, the Law Offices of Meachum, Starck, Boyle, and Trafman filed a motion to dismiss on the grounds of res judicata. Joseph Spingola and Law Offices of Meachum, Starck, Boyle, and Trafman filed briefs. David Sharkey was given notice of the proceedings and was given the opportunity to participate in the proceedings. During the oral arguments Joseph Spingola represented that Steven Haug contacted David Sharkey. David Sharkey was present at the oral arguments and was not called as a witness. However, David Sharkey did state that the adjuster contacted him (T8).

ANALYSIS

The issue presented is whether or not an attorney is entitled to petition for fees and expenses when the injured employee client and the employer's representative, without notice to the attorney or to the Commission, settle the claim by the use of a duplicate and pro se settlement contract while the initial case remains pending. Central to that issue is whether the matter should be heard by the Arbitrator or by the Commission, and in which filed case. None of the submitted cases and citations fit this fact pattern. However, *Alvarado v. Industrial Commission*, 216 Ill. 2d 547 provides guidance.

The Alvarado majority held that the *Commission* may have jurisdiction to consider an attorney's fee petition after an approved settlement or award has become final, "as long as those disputes are *collateral* to the final award in the worker's compensation claim", Alvarado at 559 (emphasis added). The special concurrence characterized a hearing on an attorneys' fees petition to be in the nature of a "*supplemental proceeding*", Alvarado at 563 (emphasis added). What is clear is that the Supreme Court has mandated that the overriding purpose of the Act is to compensate the injured worker as early and as thoroughly as possible and to consider the attorney fee issue in a subsequent proceeding after a final award or settlement, Alvarado at 560.

Proceedings subsequent to a final settlement or a final award are heard by the Commission, not by an Arbitrator. There is no statutory provision for an Arbitrator to adjudicate disputes which are collateral to a final award or final settlement, with the exception of a Section 19(f) clerical or computational correction.

Because Joseph Spingola's fee petition is collateral to and subsequent to a final settlement, the jurisdiction to hear the fee petition vests with the Commission, not with the Arbitrator. Accordingly, this Arbitrator renders no opinion regarding the merits of the fee petition. Furthermore, this Arbitrator renders no opinion regarding whether the fee petition should be filed under the initial case or under the pro se case.

Because all compensability issues between David Sharkey and the City of Chicago have been resolved in the pro se settlement, the motion to dismiss case number 13 WC 23931 is granted. The dismissal is without prejudice to the right of Joseph Spingola to file an attorney fee petition, as a collateral matter before the Illinois Worker's Compensation Commission, should he choose to do so.

Unless a *Petition for Review* is filed within 30 days from the date of receipt of this order, and a review perfected in accordance with the Act and the Rules, this order will be entered as the decision of the Workers' Compensation Commission.

Milton Black

Signature of arbitrator

October 15, 2015
Date

OCT 16 2015

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

GILL, JAMES Case# **10WC015607**

Employee/Petitioner

ABF FREIGHT SYSTEMS INC

Employer/Respondent

On 10/9/2015, 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 0.06% 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:

0274 HORWITZ HORWITZ & ASSOC
MARK WEISSBURG
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

2965 KEEFE CAMPBELL BIERY & ASSOC
TIMOTHY J O'GORMAN
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

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
19(b)

James Gill
Employee/Petitioner

Case # **10** WC **15607**

v.

ABF Freight System 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 **David A. Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **8/26/15 & 9/24/15**. 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 [x] Maintenance [x] TTD

M. [x] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [x] Other **Vocational Rehabilitation**

FINDINGS

On the date of accident, **10/1/09**, 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 $**93,251.08**; the average weekly wage was $**1,793.29**.

On the date of accident, Petitioner was **57** 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 $**33,304.50** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**33,304.50**.

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 $1,195.53/week for 233 3/7 weeks, commencing 10/2/09 through 4/14/10 (27-6/7 weeks) and4/19/10 through 3/27/14 (205-4/7) , as provided in Section 8(b) of the Act.

Maintenance

Respondent shall pay Petitioner maintenance benefits of $1,195.53/week for 78 weeks, commencing 3/28/14 through 9/24/15, as provided in Section 8(a) of the Act

, as forth below in the attached.

Vocational Rehabilitation

Respondent shall pay for Vocational Rehabilitation through the provider of Petitioner's choice

Medical benefits

Respondent shall pay reasonable and necessary medical services of $206,771.29, as provided in Section 8(a) of the Act, pursuant to the medical fee schedule.

All benefits awarded above are to be paid to petitioner through his attorney. Payment to any other entity will not be considered payment of this award and will create no credit.

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.

Respondent has failed to pay TTD since 8/2/10 through 9/24/15, a period of 1879 days. The Arbitrator therefore finds, pursuant to section19(l) of the Act, that Respondent shall pay the maximum sum of **$10,000**.

Pursuant to §16 of the Act, the Arbitrator finds that Respondent shall pay attorneys' fees calculated upon twenty percent of the unpaid TTD to date; twenty percent of the unpaid medical expenses to date; twenty percent of the unpaid maintenance to date; and twenty percent of the §19(k) award. Accordingly, Respondent shall pay the sum of **$163,890.36** in attorneys' fees to petitioner's attorneys, with the remainder of Petitioner's attorneys' fees, if any, to be paid by Petitioner to his attorneys.

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

October 9, 2015
Date

ICArbDec19(b)

OCT - 9 2015

STATEMENT OF FACTS

10/1/09

Petitioner was driving a semi-truck with a loaded trailer when he came into a construction area with no signs stating there was uneven pavement. His truck fell off a three to four inch drop-off which made him jolt causing neck and back pain. He released off his seat approximately four inches and landed back onto the seat in a flexion-extension position. The air ride seat bottomed out as he went forward. He initially felt a stinging sensation in his back but it went away. As he continued to drive however, he had increasing complaints of neck pain, as well as low back pain. When he reached Illinois he had to stop driving, he pulled over and called 911. Medics went to get him and he was transported to the hospital via ambulance.

He was treated at Union County Hospital emergency department. The physician record states that Petitioner presented with acute onset of lower back pain while driving after he hit a bump in the road. It was noted that his injury happened while working.

CT of the lumbar spine revealed possibility of an early/minimal broad-based disc bulge at L2/L3. Examination otherwise within normal limits.

Clinical impression: acute right low back pain, acute sciatica right leg.
Diagnosis: Cervical and lumbar muscular strain.

Petitioner was treated with Toradol and Dilaudid.

10/2/09

MRI cervical lumbar

Petitioner underwent MRI cervical spine at Radiologic Associates of Northwest Indiana.
Impression: Moderate osteoarthritic and discogenic degenerative change. There is mild effacement of the thecal sac and there is bilateral neural foraminal stenosis at multiple levels.

Petitioner underwent MRI lumbar spine.
Impression: Very minor osteoarthritic and discogenic

degenerative change without evidence of significant central canal or neural foraminal stenosis.

Petitioner was admitted to Pinnacle Hospital.
Discharge diagnosis: Inflammation of the spinal cord secondary to trauma from motor vehicle accident.
Dr. John Brown treated Petitioner with prednisone and placed him off work until further evaluation. He recommended that Petitioner be fit with braces for the affected areas.

10/3/09 Dr. Gene Feder examined Petitioner reviewed MRIs taken the previous day. He recommended physical therapy and cervical pain injection.

11/18/09 Petitioner was examined by Dr. Nitin Khanna at Orthopaedic Specialists of Northwest Indiana. Dr. Khanna noted Petitioner's work injury on October 1, 2009.

Dr. Khanna noted that Petitioner's MRI of the cervical spine demonstrated C3-C4 disk bulge/herniation. No evidence of significant neural compression was noted. Lumbar spine MRI was completely normal.
Petitioner was taking Vicodin, Cyclobenzaprine, Voltaren, and Acetaminophen.

Assessment: Patient with a C3-C4 disk herniation likely causing some of his symptoms.

Dr. Khanna recommended cervical traction and a physical therapy program for the neck and shoulders. He also recommended a thoracic spine MRI, and an anti-inflammatory.

Dr. Khanna placed Petitioner off work.

12/1/09 MRI Petitioner underwent MRI of the dorsal spine at Advanced Medical Imaging Center. The study revealed minimal degenerative change near the thoracolumbar junction.

12/14/09 Petitioner was examined for a second opinion by Dr. Kern

Singh, a spine surgeon at Rush University Medical Center.

Assessment:
Cervical degenerative disc disease, L3-4, L4-5.
Lumbar muscular strain.

Dr. Singh restricted Petitioner to light duty with no lifting greater than ten pounds; no pushing or pulling greater than ten pounds; no bending, kneeling, stooping, squatting, or twisting; alternate sitting and standing every thirty minutes.

Dr. Singh recommended physical therapy to treat the cervical and lumbar spine, with cervical traction, three times a week for four weeks.

Dr. Singh recommended anti-inflammatory medication including Celebrex 200mg daily.

12/15/09 Dr. Khanna ordered cervical spine X-rays and physical therapy to treat neck and back pain two to three times a week for four weeks.

12/17/09 **P.T.** Petitioner started physical therapy at Accelerated Rehabilitation Centers to treat lumbago, cervicalgia. He was to attend therapy two to three times a week for four weeks.

His dates of attendance were: December 17, 21, 23, 29, and 31 of 2009. He continued to attend in 2010 on January 6, 13, 14, 18, 20, and 22, and February 2, 4, 5, 8, 10, 12, 15, 17, and 22. He attended a total of twenty sessions of physical therapy according to the progress reports.

1/13/10 Petitioner underwent cervical spine X-rays at Sisters of Saint Anthony Health Services.
Impression: Multilevel early disc degeneration between C3-C7. There is slightly limited range of motion during extension.

1/13/10 Dr. Nitin Khanna at Orthopaedic Specialists of Northwest Indiana continued Petitioner off work and prescribed Celebrex and Neurontin.

Diagnosis: Patient with severe cervical neck strain and possible occipital neuralgia.
Dr. Khanna continued physical therapy to treat the cervical spine, and ordered a cervical traction machine for home use.

1/27/10 Dr. Khanna continued Petitioner off work. In physical therapy, he was to work on neck range of motion and strengthening.
Assessment: Patient with axial neck pain after a work related injury.

2/24/10 Dr. Khanna put Petitioner's physical therapy on hold until he could recover from his flu virus, and continued him off work.

3/10/10 Dr. Khanna referred Petitioner to Dr. Kanuru for consideration of a facet injection, and continued him off work.

3/16/10 Petitioner was seen by Dr. Ramesh Kanuru at Kanuru Interventional Spine and Pain Institute.
Diagnosis:
1. Cervical facet joint syndrome.
2. Cervical degenerative disc disease.
3. Bilateral cervical foraminal stenosis.
4. Lumbar degenerative disc disease.
5. Right lumbar radiculopathy at the L5 distribution.

Dr. Kamesh prescribed Zanaflex.

3/19/10 At Pinnacle Hospital, Dr. Kamesh performed a diagnostic blockade of the medial branch of the dorsal ramus facet joint injection at the level of C3, C4, C5, C6 and third occipital nerve bilaterally.

3/29/10 Dr. Khanna assessed persistent axial neck pain after a work related injury. Petitioner did not report any benefit from the recent cervical facet joint injections.

Dr. Khanna recommended a functional capacity evaluation and continued Petitioner off work.

4/5/10	Petitioner followed up with Dr. Kanuru. Dr. Kanuru noted that Petitioner stated that he did not get any relief from the recent cervical facet joint injections. However, Dr. Kanuru felt that, based on Petitioner's pain diagram, the drawing did show significant improvement in the pain pattern. Dr. Kanuru recommended a cervical epidural steroid injection. Diagnosis: 1. Cervical facet joint syndrome. 2. Cervical degenerative disc disease. 3. Bilateral cervical foraminal stenosis. 4. Lumbar degenerative disc disease. 5. Right lumbar radiculopathy at the L5 distribution.
4/9/10 FCE	Petitioner attempted to undergo a functional capacity evaluation at Accelerated Rehabilitation Centers. Petitioner testified that he had to stop due to pain.
4/14/10 MMI RTW full duty	Dr. Khanna released Petitioner to work with no restrictions. He believed Petitioner was at maximum medical improvement because there was nothing further he could do for him. He noted that Petitioner's Functional Capacity Evaluation was considered invalid due to inconsistencies and because Petitioner left early. Dr. Khanna wrote, "Unfortunately the patient still persists with significant neck pain." Petitioner testified that the employer's nurse case manager was present and convinced Dr. Khanna to issue the full duty release, and that this was not his original plan. The respondent failed to call any witness to rebut this testimony.
4/22/10 MRI	Petitioner underwent MRI of the cervical spine at Advanced Imaging Medical Center. Impression: 1. Multilevel degenerative disc disease and facet arthropathy, with associated central spinal canal stenosis,

neural foraminal narrowing, and mass effect upon the spinal cord, as described. Please see above comments for full details.
2. Minimal degenerative reversal of mid/upper cervical curvature in the sagittal plane.
3. Marrow signal reflects a combination of degenerative discogenic endplate change, and a background of patchy yellow marrow conversion, likely physiologic.

5/14/10 Petitioner was seen at i-Spine Institute by Dr. Jamie Gottlieb.
Assessment: Cervical and lumbar spondylosis with cervical and lumbar strain-type syndrome.
Dr. Gottlieb recommended a course of Neurontin to help with neuropathic pain, and one-on-one therapy for myofascial release and possible traction.

6/2/10 Dr. Gottlieb released Petitioner to sedentary duty with restrictions to lift no greater than ten pounds, and limited over the shoulder activity.

6/11/10 Dr. Gottlieb continued to restrict Petitioner to lifting no greater than ten pounds, and also restricted him to no bending or twisting, and to change position every thirty to forty-five minutes.

Dr. Gottlieb continued Petitioner on Neurontin and recommended physical therapy. If physical therapy did not help, he would recommend injections.

6/14/10 Petitioner started physical therapy at Premier Physical Therapy to treat cervical and lumbar spondylosis.
He attended on June 14, 16, 18, 21, 22, 24, and 28 of 2010.

7/9/10 Dr. Gottlieb prescribed Norco for severe pain and recommended injections, specifically an epidural at the C6-6 level as well as selective nerve root injections at L3-4, L4-5 bilaterally.
The physical therapy was causing pain to flare up in Petitioner's right thigh.

9/16/10 Dr. Gottlieb referred Petitioner to pain management.

9/22/10 Petitioner had an initial consultation with Dr. Irina Dudar at Health Benefits Pain Management Services.
Dr. Dudar noted Petitioner's work injury, writing, "The patient relates the beginning of his neck and back pain to accident at work when he hit drop-off on the road while driving a truck. He tried to return to work, but was not able to perform his regular job duties secondary to severe exacerbation of his pain."

Assessment:
1. Chronic low back pain with history of work-related injury.
2. Lumbar degenerative joint disease and degenerative disc disease rule out lumbar radiculopathy.
3. Chronic neck pain, history of degenerative disc disease, disc bulge, and disc osteophyte complex with mild spinal stenosis.
4. Myofascial pain syndrome/muscle spasm of neck.

Dr. Dudar scheduled a cervical epidural steroid injection and started the Petitioner on Flexeril. She was considering diagnostic branch blocks, EMG, and lumbar injections.

Dr. Dudar placed Petitioner off work.

9/24/10 Petitioner underwent a cervical epidural steroid injection at Health Benefits Pain Management Services, with good results.

10/13/10 Dr. Irina Dudar at Health Benefits Pain Management Services continued Petitioner off work. She did check off on the Work Status Report that Petitioner's injury was work related.

In her treatment report, she addressed causation writing, "The patient is a 57-year-old Caucasian male who presents with his chronic neck and back pain status post accident at work."

Assessment:
1. Chronic low back pain with history of work-related injury.
2. Lumbar degenerative joint disease and degenerative disc disease of lumbar spine.
3. Neuropathic pain of right lower extremity.
4. Chronic neck pain, degenerative disc disease, degenerative joint disease, disc bulge, and disc osteophyte complex with mild spinal canal stenosis - improved.
5. Myofascial pain syndrome/muscle spasm of neck and low back.

Dr. Dudar scheduled the patient for transforaminal epidural steroid injection at L3-L4, L4-L5 on the right side under fluoroscopy with sedation based on clinical picture of pain presentation.

Dr. Dudar continued Flexeril and prescribed Lyrica. She recommended EMG/Nerve conduction and a lumbar diagnostic block and possible cervical diagnostic block.

10/22/10 Dr. Dudar continued Petitioner off work.
She performed a transforaminal epidural steroid injection at L3-L4, L4-L5 on the right side under fluoroscopic guidance.

11/2/10 EMG NCS

Petitioner underwent EMG/NCS at Electrodiagnostics Lab. Petitioner's work injury on October 1, 2009 was noted. Dr. Rosania wrote, "The patient has been reporting low back pain with right lower extremity referral status post a work related injury10/01/09."

Dr. David Rosania interpreted:
1. There is electrodiagnostic evidence for a bilateral tibial motor mononeuropathy with axonal degeneration at the left ankle but without any conduction slowing bilaterally.
2.There is no electrodiagnostic evidence for a right lumbosacral radiculopathy.

Dr. Rosania continued Petitioner off work.

11/10/10 Dr. Dudar continued Petitioner off work and prescribed physical therapy. She checked off on the Work Status

Report that the injury was **work related**.

Assessment:
1. Chronic low back pain/history of work-related injury.
2. Degenerative joint disease and degenerative disc disease of lumbar spine.
3. Neuropathic pain of right leg.
4. Chronic neck pain/degenerative disc disease, degenerative joint disease, disc bulge, and disc osteophyte complex with mild spinal stenosis - improving.
5. Myofascial pain syndrome/muscle spasm of low back.

Plan:
1. I will schedule the patient for diagnostic medial branch block of lumbar facet joints on the right side to see if facet joint pain contributes to his usual low back pain. If the patient responds with 50% relief of muscle spasm and pain, he might be a candidate for radiofrequency ablation of facet joints on the right side of lumbar spine.
2. I will refer the patient for physical therapy for low back pain.
3. Increase Lyrica to 50 mg b.i.d. for his neuropathic pain. I instructed to continue the patient take Flexeril 10 mg b.i.d. and the patient may do with just diclofenac for exacerbation of low back pain on p.r.n. basis.
4. I encouraged the patient to increase his physical activity at home with restriction no heavy lifting and no pulling or pushing. Follow up in two to three weeks after the procedure.

11/17/10 Petitioner started a new course of physical therapy at Premier Physical Therapy to treat low back pain and right leg pain.
He was to attend three times a week for four weeks.

11/19/10 Dr. Dudar performed diagnostic medial branch block of facet joints of lumbar spine at L3, L4, L5, at L5 at ala on the right side under fluoroscopic guidance.
She continued Petitioner off work and checked on the Work Status Report that the injury was work related.

11/21/10 Petitioner presented to the Dyer Campus Emergency Department with sciatica. He complained of sever right hip pain.

He was treated with Toradol, Norflex, Motrin, Flexeril and Norco and discharged.

11/24/10 Petitioner was examined by Dr. Dudar.
Assessment:
1. Exacerbation of chronic low back pain/history of work-related injury.
2. Right leg neuropathic pain.
3. Degenerative disc disease, degenerative joint disease with disc osteophyte complex at L5-S1 level, facet arthropathy L4-L5 and L3-L4 level.
4. Chronic neck pain, improved.

Plan:
1. Since the patient did not have any improvement with epidural steroid injection performed transforaminal on the right side and diagnostic medial branch of lumbar facet joints on the right side did not give any pain relief after the procedure, I will need to rule out discogenic pain.
2. I will schedule the patient for discography at Mount Prospect with sedation with post discography CT scan after the procedure.
3. I encouraged the patient to continue to take Lyrica 50 mg b.Ld. for neuropathic pain, Flexeril 10 mg b.Ld. for muscle spasm, restart diclofenac 75 mg b.i.d. and prescription for Vicodin 5/500 mg up to three times a day was given today to the patient.
4. Follow up in two weeks after the procedure.
5. If discography is truly positive for disc tear, we will need to get neurosurgical consult for possible fusion in the future.

She continued Petitioner off work and checked on the Work Status Report that the injury was work related.

2/11/11 Petitioner underwent lumbar provocative discogram L3-L4, L4-L5, and L5-S1 under fluoroscopy.

Dr. Dudar concluded that the provocative discogram was negative.

2/16/11 Dr. Dudar assessed:

1. Chronic low back pain/history of work-related injury.
2. Right leg neuropathic pain.
3. Degenerative disc disease, degenerative joint disease with disc osteophyte complex at L5-S1, facet arthropathy L4-L5, and L3-L4 level.
4. Chronic neck pain, improved.

Dr. Dudar recommended a trial of spinal cord stimulation. She recommended a surgical consultation for ongoing low back pain but did not believe that he was a likely candidate for surgery at that time.

Dr. Dudar continued Petitioner off work and checked on the Work Status Report that the injury was **work related**.

3/9/11 Dr. Dudar referred Petitioner for a surgical evaluation.

3/18/11 Petitioner was examined by Dr. Thomas McNally at Suburban Orthopaedics for a surgical consultation. Petitioner's work injury on October 1, 2009 was described. Dr. McNally addressed causation, writing, "Fifty-eight year old male who was **injured at work on October 1, 2009**. He had significant neck and back pain that has improved with interventional pain management. However, after returning to work for one day in April 2010, he has had right buttock and thigh pain that has not improved with medications, injections or physical therapy."

Dr. McNally ordered a new MRI of the lumbar spine.

3/18/11 Petitioner underwent MRI of the lumbar spine at Louis A. Weiss Hospital. The report was read by Dr. Stephanie Rosania.

MRI lumbar Impression:

Tiny a focal right lateral disc protrusion at L3-4 results in very slight narrowing of the inferior aspect of the neural foramen on the right at this level. There is mild lateral recess and foraminal narrowing at L4-5 that is consistent with his right thigh complaints.

3/25/11 Petitioner was examined by Dr. Thomas McNally at Suburban Orthopaedics for a surgical consultation. Diagnosis: Lumbar disc displacement.

Dr. McNally addressed causation. He wrote, "58 year old male who was **injured at work on 10/1/2009**. He had significant neck and back pain that improved with interventional pain management.
After returning to work for one day in April 2010, he has had right buttock and thigh pain (burning, tingling and numbness) that has not improved with medications, injections or physical therapy.
The work related injury of 10/1/2009 did not cause the degenerative changes in the patient's lumbar spine. To a reasonable degree of medical and surgical certainty, the work related injury of 10/1/2009 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions, caused them to become symptomatic and require treatment."

Dr. McNally was waiting to obtain past medical records and images, and an EMG of bilateral lower extremities. He discussed with Petitioner the risks of surgical and nonsurgical interventions.

Dr. McNally continued Petitioner off work and stated that his current condition was related to work. He ordered an EMG.

4/15/11 NCV EMG Dr. Ranjeet Singh performed NCV and EMG of bilateral lower extremities at Health Benefits Pain Management.

Impression:
Abnormal exam. Results show evidence for mild slowing of the right lateral femoral cutaneous nerve (i.e. meralgia paresthetica). It is of importance to know, that the lateral

femoral cutaneous nerve is a technically difficult nerve to analyze via nerve conduction studies, therefore any abnormalities to it should be compared to the clinical exam, and in this patient's case, the distribution of numbness is along the dermatome covered by this nerve. Furthermore, there was an incidental finding of a right chronic L5 radiculopathy.

Recommendations:
Can use anti-inflamrnatories ro reduce any swelling of the LFC nerve. Suggest wearing looser fitting clothing and avoid wearing tight belts/pants. L5 radiculopathy can cause parasthesias down the leg, however, pt has no symptoms below the knee. The radiculopathy symptoms may be well controlled pain-wise from his last set of ESI s, but pt still has residual denervation from it to the motor branch of the nerve root and therefore can repeat ESI' s if radicular symptoms ever return.

4/22/11 Dr. McNally diagnosed:
Lumbar disc displacement
Radiculopathy
Meralgia paresthetica

Dr. McNally recommended that Petitioner continue with Dr. Dudar for pain management, and that he continue with physical therapy and injections.
Dr. McNally addressed causation, explaining again, "The work related injury of 10/1/2009 did not cause the degenerative changes in the patient's lumbar spine. To a reasonable degree of medical and surgical certainty, **the work related injury of 10/1/2009 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions, caused them to become symptomatic and require treatment**."

5/26/11 Petitioner was examined by Dr. Ranjeet Singh at Health Benefits Pain Management Services. Causation was addressed. Dr. Singh wrote, "The patient in the past suffered a **work-related injury** back in October 2009, as he was driving a truck and came up on a step off upon which the

patient felt acute low back pain and
eventually was diagnosed later as having lumbago, facet arthropathy, and lumbar radiculopathy. The patient also at the same time suffered neck injury and the patient eventually underwent a series of cervical epidural steroid injections that actually gave him great improvement in terms of his pain in his neck."

Assessment:
1. Meralgia paresthetica.
2. Lumbago.
3. Chronic pain due to trauma/work-related injury.
4. Facet arthropathy.
5. Neuralgia/neuritis.

Plan:
1. I have given the patient a prescription for physical therapy upon which time the patient will complete a six-week course in hopes of improving his symptoms of his burning and sensory loss in his right lower extremity. The patient will follow up with me accordingly in one month's time to further evaluate his progress regarding his therapy.
2. I have given the patient a script for naproxen 550 mg pox. q.12h. p.r.n., Lyrica 150 mg pox. q.12h., as well as Medrol Deepak dispensed one pack. Risks and benefits of all medications described in detail to the patient with the patient fully understanding what they are.
3. If the patient does not benefit from the current PT and conservative management and medications, we will consider continued epidural steroid injections and/or nerve blocks to further evaluate what is causing his pain for diagnostic and therapeutic benefit.
4. The patient to follow up in approximately one month's time.

Dr. Singh continued Petitioner off work and checked on the Work Status Report that the injury was work related. He ordered physical therapy to treat Petitioner's condition three times a week for six weeks.

6/8/11 Petitioner started physical therapy to treat thoracic and

P.T.	lumbosacral radiculopathy, and injury to cutaneous sensory nerve, lower limb at Maximum Rehabilitation Services. He attended therapy on June 8, 9, 10, 14, 16, 17, 20, 22, 27, 30 and July 1, 6, 7, 11, 13. He was discharged on September 12, 2011 due to a long-term hold put on his physical therapy. Further therapy was not recommended at that time.
6/23/11	Petitioner was examined in follow-up by Dr. Singh. Petitioner continued to complain of burning, numbness and tingling into his right lower extremity. Dr. Singh continued Petitioner off work and checked on the Work Status Report that the injury was work related.
7/29/11	Dr. McNally released Petitioner to light duty. He wrote that Petitioner's lumbar disc displacement was related to work. He recommended a functional capacity evaluation to assess permanent restrictions.
12/7/11 FCE Light-Medium	Petitioner underwent a valid KEY functional capacity assessment at A.T.I. He demonstrated his functional capabilities at the LIGHT-MEDIUM Physical Demand Level during the assessment. He had subjective lower back pain reports as well as right thigh radicular symptoms. Petitioner's capabilities did not meet the medium physical demand level needed for his former employment as truck driver.

Above Shoulders Lift- Bilateral	36.8 occasional	25.8 frequent
Desk/Chair Lift· Bilateral	45.6 occasional	32.4 frequent
Chair/Floor Lift· Bilateral	32.4 occasional	19.2 frequent
Push	106.3 occasional	
Pull	106.3 occasional	
Carry· Right	32.0 occasional	17.0

	frequent		
	Carry· Left	32.0 occasional	12.0
	frequent		

Petitioner was only capable on an occasional basis of the following activities: Balance, bend/stoop, stair climb, crouch, head/neck flexion, head/neck rotation, kneel and squat.

12/16/11 Dr. McNally restricted Petitioner to **light duty** status, prescribed Nortriptyline 10mg, and ordered a lumbar MRI and EMG and nerve conduction study.
Diagnosis: Lumbar disc displacement.
Dr. McNally stated that Petitioner's condition was work-related.

12/28/11 Petitioner underwent a bilateral lower extremity EMG and nerve conduction study conducted by Dr. Olga Brazil.

EMG NCS Impression: This is a minimally abnormal EMG/nerve conduction study of both lower extremities consistent with:
1. Chronic moderate degree bilateral L5-S1 radiculopathy.
2. There was no electrophysiological evidence of generalized polyneuropathy, entrapment mononeuropathy, or active lumbosacral radiculopathy at any level.

1/20/12 Dr. McNally assessed:
Lumbar disc displacement,
Meralgia paresthetica.

Dr. McNally ordered a closed MRI of the lumbar spine and standing AP, lateral, flexion and extension x-rays of the lumbar spine.
Dr. McNally discussed possible decompressive surgical intervention.

Dr. McNally assessed that Petitioner "[...] was **injured at work on October 1, 2009**. He had significant neck and back pain that has fortunately improved with interventional pain management. After returning to work for one day in April 2010, he has had right buttock and thigh pain (burning, tingling and numbness) that has not improved with medications, injections or physical therapy."

Dr. McNally explained causation, "To a reasonable degree of medical and surgical certainty, the work related injury of October 1, 2009 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions, caused them to become symptomatic and require treatment."

1/30/12 Respondent's choice of rehabilitation counselor at Encore Unlimited prepared a Labor Market Survey report.
The Counselor Allah Masqat wrote, "Based on Mr. Gill's work history he would qualify for numerous occupations which will utilize his transferable skills as well as entry level opportunities available to persons with his background. Mr. Gill should be able to obtain alternate employment within his restrictions."

Allah Masqat listed job openings earning about $10 to $17 per hour in such categories as dispatcher, security desk clerk, delivery driver lifting up to twenty pounds, customer service, security guard, valet and parking lot attendant, call center representative, telephone sales. These jobs were within a fifty mile radius of where Petitioner lived.

2/2/12 "MRI of the lumbar spine was performed on February 2, 2012 at MRI of River North and read by Dr. Catherine Kim-Gavin.

Lumbar MRI

Impression:
1. Very small right foraminal disk protrusion at L3-4 that appears to approach but does not impinge the exiting right L3 nerve root within the foramen or contribute to significant spinal canal stenosis.
2. Very small central disk protrusion at L1-2 without central canal stenosis or nerve root impingement.
3. Small left paracentral annular fissure at L2-3 without focal disc herniation.
4. Facet arthrosis at L5-S1 without disk herniation or stenosis at this level.

Dr. McNally wrote, "My independent reading differs from the official radiologist report, in that there is neuroforaminal

	stenosis at L4-5 and L5-S1. Sagital T2 image number 5 illustrates the foraminal narrowing at L4-5 and L5-S1 on the right compared to the normal levels above."}}
2/3/12	Dr. McNally recommended that Petitioner proceed with Lumbar surgery (Right L5-S1 Laminotomy, possible L5-S1 laminectomy).
3/21/12 Lumbar **surgery**	Petitioner underwent lumbar surgery performed by Dr. McNally at Alexian Brothers Medical Center. Preoperative diagnoses: 1. Lumbar disk displacement. 2. Lumbar spinal stenosis. Postoperative diagnoses: 1. Lumbar disk displacement. 2. Lumbar spinal stenosis. Title of operation: 1. Right L5-S1 laminotomy, partial facetectomy and foraminotomy with decompression of the neural elements. 2. Fluoroscopy for use of iO-Flex rasp and associated devices from Baxano (similar to fluoroscopy for vertebroplasty or kyphoplasty).
4/26/12	Dr. McNally ordered physical therapy to evaluate and treat status post right L5-S1 laminotomy. He refilled Petitioner's prescription for Norco.
5/10/12 **PT**	Petitioner started physical therapy at A.T.I. to treat his lumbar condition and lumbar radiculopathy. He was to attend three times a week for four weeks. Petitioner attended twenty sessions on May 10, 14, 16, 17, 23, 24, 29, 30, 31, and June 4, 7, 18, 25, 28, and July 2, 5, 17, 18, 20, 23, 25, 26 and 30, and August 1, 2, 6, 9, 10, 13, 16, and 21. He was discharged on September 9, 2012.
8/23/12	Petitioner complained of low back and right leg pain. He

reported that he had a relapse in therapy when he strained his back doing a weightlifting exercise called 'chopping wood".
Dr. McNally continued Petitioner off work and stated his condition was related to work.
Diagnosis: Lumbar disc displacement, lumbar strain.
Dr. McNally ordered a lumbar MRI. He recommended that Petitioner continue with physical therapy, use a Medrol Deepak, take Meloxicam 15mg daily, and follow up to review MRI images.

9/12/12
MRI
Lumbar

Petitioner underwent a lumbar spine MRI at Suburban MRI.
Impression:
New right foraminal disk protrusion at L5/S1 likely resulting in new right L5 radicular symptoms.

10/16/12

Petitioner complained of some "catching" in his lower back.
Diagnosis: Lumbar disc displacement.
Dr. McNally referred Petitioner to Dr. Novoseletsky for interventional pain management evaluation and treatment including possible injection.

Dr. McNally ordered a restart of physical therapy to progress to work conditioning.
Petitioner was continued off work.

11/7/12

Petitioner was examined by Dr. Dmitry Novoseletsky at Suburban Orthopaedics.

Dr. Novoseletsky noted Petitioner's **work injury**. He wrote, "Patient presents to the office with low back and right leg pain from a **work related injury**. The patient reports he was driving his truck at night into an area of road construction with a 6 inch drop-off that was not marked. When he drove over the drop-off, the bottom of his seat dropped as well, and he felt jolted back and forth. As he kept driving, his pain gradually increased until he had to pull off the road after a few hours and call 911 for an ambulance to take him to the hospital because of severe back pain radiating up to his neck."

	Impression: Low back pain with pain and paresthesias radiating to right lower extremity Differential Diagnosis: Lumbar radiculopathy/radiculitis Lumbar disc displacement Lumbar spondylosis/facet syndrome. Petitioner was prescribed Neurontin 300mg and a lumbar support. Dr. Novoseletsky ordered a right L2, L3, L4, L5 lumbar medial branch block.
11/19/12 Branch block	Dr. Novoseletsky administered a L2, L3, L4, L5 prognostic medial branch block, right side.
11/20/12	Petitioner reported improvement in his symptoms after the medial branch block the day before. Dr. Novoseletsky recommended another L2, L3, L4, L5 prognostic medial branch block, right side.
12/5/12	Dr. Novoseletsky administered a L2, L3, L4, L5 prognostic medial branch block, right side.
12/7/12	Dr. Novoseletsky restarted physical therapy, continued neurontin and considered Right L2, L3, L4, L5 MB Radiofrequency. Impression: Low back pain with pain and paresthesias radiating to right lower extremity. Differential Diagnosis: Lumbar radiculopathy/radiculitis Lumbar disc displacement Lumbar spondylosislfacet syndrome.
12/18/12	Petitioner started therapy again at A.T.I. to treat Petitioner's low back pain and lumbar condition. He was to attend therapy two to three times a week for six weeks.

He attended twelve sessions by January 15, 2013. He attended December 18, 20, 21, 26, 31, and January 2, 4, 7, 9 and 10.

12/19/12 Dr. Novoseletsky ordered physical therapy to treat lumbar disc displacement and lumbar facet syndrome, two to three times a week for four to six weeks.

1/15/13 **MMI** Dr. Novoseletsky wrote, "Patient states he is still doing physical therapy with ATI Physical therapy. Patient states he is only having pain and numbness on the right side lower back and part of the right thigh goes numb if he is sitting down and walking for a period of time. Patient states he is back to doing regular activities at home and it rarely bothers him. Patient is retired."

Dr. Novoseletsky considered Petitioner to be at maximum medical improvement, and advised him to follow up as needed.

7/23/13 Dr. McNally continued Petitioner **off work**. He stated Petitioner was medically unable to work and that his condition was related to work. Petitioner reported some numbness in his lower back and some tingling in the right leg.

Diagnosis: Lumbar disc displacement.

Dr. McNally recommended:

1. Referal to Dr. Novoseletsky for interventional pain management evaluation and treatment.
2. Refill Meloxicam (don't take until "ok" with Dr. Novoseletsky, the time off NSAID will help determine how much it helps and will also prepare for possible injection.)
3. Restart physical therapy as directed by Dr. Novoseletsky

9/20/13 Petitioner followed up with Dr. Dmitry Novoseletsky. He was examined by Matthew Barnes, PA-C. Petitioner reported his lower back pain had gotten worse.

	Impression: Low back pain with pain and paresthesias radiating to right lower extremity. Differential Diagnosis: Lumbar spondylosis/facet syndrome. History lumbar laminotomy/laminectomy surgery. Lumbar radiculopathy/radiculitis. Lumbar disc displacement. It was recommended that Petitioner take Norco and undergo a lumbar radiofrequency procedure.
10/2/13 ER and Hospital Admit	Petitioner presented to the emergency department of Adventist Bolingbrook Hospital with intractable back pain and lumbar radiculopathy. He was admitted to hospital and treated with Dilaudid and Valium.
X-rays	X-rays of the lumbar spine were performed. Impression: There are mild degenerative changes with tiny anterolateral osteophytes. Vertebral body heights and disc spaces are preserved. There is no evidence for fracture or bony destructive lesion.
10/3/13 MRI L-spine	During his stay Adventist Bolingbrook Hospital, he was seen in consultation by orthopedist Dr. Rebecca Kuo and pain specialist Dr. Nitin Malhotra. Dr. Kuo diagnosed: Right leg radiculopathy, possible sacroiliitis. She started a Medrol Deepak and ordered an MRI. MRI of the lumbar spine was performed at Adventist Bolingbrook Hospital. Impression: 1. No evidence of acute skeletal injury or destructive lesions involving the lumbar spine. 2. Mild foraminal narrowing on the right at the L5-S1 level, with synovitis of the right L5-S1 facets.
10/4/13 Discharge	Dr. Nitin Malhotra, a pain management specialist, administered an epidural steroid injection at L5-S1 and S1.

Petitioner was discharged from Adventist Bolingbrook Hospital.
Final Diagnoses:
1. Intractable back pain and lumbar radiculitis.
2. Diabetes.
3. Elevated blood pressure. No history of hypertension.

Petitioner was to follow up with his primary doctor as well as pain management.

11/24/13 Dr. McNally completed a narrative report.

narrative He addressed causation, writing, "As stated in my office notes, the work related injuries of October 1, 2009 and April 18, 2010 did not cause the degenerative changes in the patient's lumbar spine. To a reasonable degree of medical and surgical certainty, the work related injury of October 1, 2009 aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions, and caused them to become symptomatic and require treatment. While in physical therapy after lumbar decompressive surgery, he sustained a lumbar disc herniation."

Dr. McNally anticipated Petitioner would need **future treatment** relative to the work-related condition. He explained, "Possible treatment options would be non-operative care in the form of interventional pain management, medications and physical therapy versus operative care which could include revision decompression or revision decompression and fusion."

The surveillance footage did not change Dr. McNally's opinion. He noted that Petitioner was doing very light house hold duties on the surveillance footage. He wrote, "There is nothing on the video that is beyond the restrictions of the FCE. FCE (Functional Capacity Evaluation) was performed on December 7, 2011. Results: "The patient is capable of working a light-medium demand job. His current job requirements are at a medium demand level. He is unable to return to his current job at this time."

In order to determine permanent restrictions, Dr. McNally recommended that Petitioner undergo an updated functional capacity evaluation. He noted that the functional capacity evaluation of December 7, 2011 was performed prior to Petitioner's decompressive surgery and prior to the lumbar disc herniation sustained while in work conditioning. Dr. McNally did not think that the updated functional capacity evaluation results would be substantially different than the December 7, 2011 findings.

12/3/13

Petitioner followed up with Dr. McNally. Petitioner reported that he went to the Adventist Bolingbrook Hospital emergency department about two months earlier due to back pain.
Petitioner's medications included: Hydrocodone-Acetaminophen 2.5- 325 MG;
Meloxicam 15 MG; Neurontin 300 MG.

Diagnosis: Lumbar disc displacement.

They discussed that because Petitioner's symptoms had not improved with time, they were likely permanent and he would likely require lifelong pain management.

Recommendations:
1. Functional Capacity Evaluation (FCE) to determine permanent work restrictions.
2. Over-the-counter NSAIDs as needed.
3. Referral to Dr. John Lee, orthopaedic surgeon in Bolingbrook, IL or to Dr. Chhadia or Dr. Freedberg here at Suburban Orthopaedics for evaluation and treatment of knee
pain.
4. Follow-up to review Functional Capacity Evaluation results.

1/29/14

FCE
Light to Medium

Petitioner completed a functional capacity evaluation at ATI physical therapy. Petitioner demonstrated his functional capabilities at the LIGHT to MEDIUM physical demand level.

This means he is capable of occasionally lifting from chair to

floor twenty-eight pounds; bilateral above shoulder lifting twenty-eight pounds; desk to chair thirty pounds.

The therapist noted that Petitioner's employment as a Truck Driver was considered a MEDIUM Physical Demand Level (occasional lifting fifty pounds) according to the U.S. Department of Labors Dictionary of Occupational Titles. His capabilities appeared to fall below that level.

Petitioner reported difficulties with standing and sitting during his assessment. He ended all bilateral lifting components with reports of low back pain.

2/3/14
IME

Petitioner underwent another Section 12 examination with Dr. Zelby.
Impression:
Problem 1: Lumbosacral spondylosis.
Problem 2: History of lumbar foraminotomy.

Despite substantial evidence to the contrary, Dr. Zelby believed Petitioner could work without restrictions. He opined, "Mr. Gill remains easily qualified to safely pursue all of his usual vocational and avocational activities without restrictions."

Dr. Zelby denied that Petitioner required ongoing treatment for his spine irrespective of cause.

3/27/14

Petitioner had follow up appointment with Dr. McNally to talk about the functional capacity evaluation.

Perm restrict per FCE

Dr. McNally wrote, "He states he continues with discomfort in his lumbar spine. He states his pain level is 2/10 at this time. He states when sitting down he needs to extend his left knee to relief the pressure on the left side of lumbar spine. He states he has numbness and tingling in the lateral aspect of right knee. He states he continues to have discomfort at bed time. He states he is constantly waking up with pain."

Assessment: Sixty-one year old male who injured at work on

October 1, 2009. His symptoms have waxed and waned over the years. The work related injuries aggravated and accelerated the patient's pre-existing, asymptomatic right L5-S1 foraminal stenosis and caused it to become symptomatic and require treatment. He had objective EMG/NCS evidence of his L5 radiculopathy and the radiculopathy responded to decompression until he experienced a re-aggravation in physical therapy.

Dr. McNally discussed at length that because his symptoms have not improved with time, they are likely permanent and he may require lifelong pain management.

Recommendations: Permanent work restrictions per VALID functional capacity exam on January 29, 2014.

3/15/15 **Voc** An Initial Vocational Assessment Report was prepared by vocational rehabilitation counselors Kathleen Mueller, MA, CRC, LCPC and David Patsavas, MA, CRC.

Ms. Mueller noted, "Per the results of the Functional Capacity Evaluation as well as permanent restrictions placed on Mr. Gill by his treating physician, he is unable to return to employment with ABF Freight Systems as a Truck Driver."

It was their professional opinion as Certified Rehabilitation Consultants that given Mr. Gill's current physical restrictions as well as a singular work history, that a limited Labor Market may be available to him. It was also their opinion Mr. Gill would be exposed to a significant loss of earning capacities. His potential earnings would most likely be limited to minimum wage ($8.25) to $15 per hour, with additional training.

They recommended vocational training and labor market research.

7/8/15 **Voc** Petitioner completed employer contact sheets from July 8, 2015 to August 3, 2015 seeking positions such as patient transporter, forklift operator, Target employee, grocery clerk,

bowling alley manager, employee of roofing company.

ON THE ISSUE OF CAUSAL CONNECTION, (F), THE ARBITRATOR FINDS THE FOLLOWING:

There is no question that this traumatic injury caused petitioner's condition of ill being and the need for subsequent treatment. Dr. Zelby's opinion is contrary to that of every treating doctor, and is unsupported by the substantial evidence and the medical records that show a condition of good health followed by a significant traumatic injury and the need for treatment.

Based on all the opinions of the treating doctors and the obvious sequence of events, the Arbitrator therefore finds that a causal connection has been proven.

ON THE ISSUE OF MEDICAL SERVICES, (J), THE ARBITRATOR FINDS THE FOLLOWING:

The arbitrator finds that the respondent is liable under Section 8(a) for all medical bills incurred as stated in petitioner's exhibit x. Petitioner has requested payment for the following bills:

Provider	Beginning	Ending	Total Charges	WC Paid	Balance
Adventist Bolingbrook Hospital	10/2/2013	10/4/2013	$17,411.31	$0.00	$17,411.31
Alexian Brothers Medical Center	3/21/2012	3/22/2012	$50,042.00	$0.00	$50,042.00
ATI Physical Therapy	12/7/2011	1/29/2014	$23,746.74	$0.00	$23,746.74
Dr. John Brown	10/28/2009	5/10/2010	$1,766.00	$0.00	$1,766.00
Dupage Pathology Associates	7/7/2012	7/7/2012	$5.00	$0.00	$5.00
Emergency Healthcare Physicians	10/2/2013	10/2/2013	$882.00	$0.00	$882.00
Health Benefits	9/24/2010	7/14/2011	$46,252.86	$0.00	$46,252.86
IPM	9/22/2010	11/24/2010	$3,807.97	$0.00	$3,807.97
I- Spine	5/14/2010	7/9/2010	$566.00	$0.00	$566.00
IWP	5/10/2010	6/17/2011	$3,614.72	$0.00	$3,614.72
Maximum Rehabilitation	6/8/2011	2/2/2012	$10,617.38	$0.00	$10,617.38
Neurodiagnostic Associates	12/28/2011	12/28/2011	$2,828.00	$0.00	$2,828.00

Physicians Anesthesia	3/21/2012	3/21/2012	$1,870.00	$0.00	$1,870.00
Premier Physical Therapy	6/14/2010	11/17/2010	$7,400.09	$0.00	$7,400.09
Prescription Partners	10/16/2012	9/20/2013	$669.08	$0.00	$669.08
St. Margaret Mercy ER Physician	11/21/2010	11/21/2010	$448.00	$0.00	$448.00
St. Margaret Mercy Healthcare	11/21/2010	11/21/2010	$894.92	$0.00	$894.92
Suburban Orthopaedics	3/25/2011	3/27/2014	$26,942.00	$0.00	$26,942.00
Synergy RX, Inc.	8/23/2012	8/23/2012	$232.31	$0.00	$232.31
Triad Radiology	2/11/2011	2/11/2011	$424.56	$0.00	$424.56
University of Chicago Physicians Group	3/18/2011	3/18/2011	$676.50	$0.00	$676.50
Weiss Memorial Hospital	3/18/2011	3/18/2011	$5,065.85	$0.00	$5,065.85
Yates Emergency Physicians	10/1/2009	10/1/2009	$608.00	$0.00	$608.00
Total			$206,771.29	$0.00	$206,771.29

The arbitrator adopts Dr. McNally's opinion and the opinions of the other treating doctors all of whom find causation, and further finds based upon the treatment records that all treatment was reasonable and necessary to cure petitioner of his condition of ill being. (PX20).

ON THE ISSUE OF TEMPORARY TOTAL DISABILITY AND MAINTENANCE, (L), AND VOCATIONAL REHABILITATION (O), THE ARBITRATOR FINDS THE FOLLOWING:

A review of the medical records indicates petitioner was kept off work from 10/2/09 through 4/14/10, and 4/19/10 through 3/27/14 when he reached MMI, a period of 233 3/7 weeks, and awards this period of temporary total disability.

Further, maintenance is due for the period 3/28/14 through 9/24/15, the date proofs were closed in this matter. Respondent is ordered to pay for vocational efforts with Independent Rehab Services pursuant to the recommended plan.

ON THE ISSUE OF PENALTIES, (M), THE ARBITRATOR FINDS THE FOLLOWING:

The opinions of Dr. Zelby establish that there was a reasonable dispute as to ongoing causal relationship after the close of proofs in the earlier 19(b) trial. Therefore, all penalties and attorney's fees are hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MEYER, MARGARET
Employee/Petitioner

Case# **09WC007081**

08WC042329

DRURY INN
Employer/Respondent

On 10/21/2015, 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:

1157 DELANO LAW OFFICES LLC
PATRICK JAMES SMITH
1 S E OLD STATE CAPITAL PLZ
SPRINGFIELD, IL 62701

2396 KNAPP, OHL & GREEN
L DAVID GREEN
6100 CENTER GROVE RD
EDWARDSVILLE, IL 62025

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

Margaret Meyer
Employee/Petitioner

v.

Drury Inn
Employer/Respondent

Case # 09 WC 07081

Consolidated cases: 08 WC 42329

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 21, 2015. 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 December 31, 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 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 $17,131.40; the average weekly wage was $329.45.

On the date of accident, Petitioner was 34 years of age, married with 4 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 $2,080.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $2,080.00.

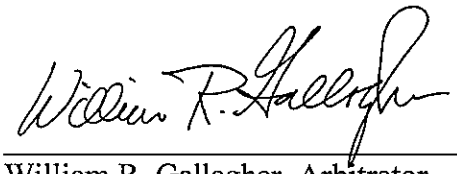
Respondent is entitled to a credit of $417.60 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's conclusions of law attached hereto, 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

October 16, 2015
Date

OCT 2 1 2015

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 case number 08 WC 42329, the Application alleged Petitioner sustained an injury to her left shoulder on September 9, 2008. According to the Application, Petitioner was on the floor cleaning and, when she came up she hit a door knob which caused her to be thrown back down to the floor. In case number 09 WC 07081, the Application alleged Petitioner sustained an injury to her "Left shoulder, cervical, lumbar back and head" on December 31, 2008. According to the Application, Petitioner was walking out of the employees' restroom, slipped and fell hitting her head, back and shoulders (Petitioner's Exhibit 1). Respondent disputed liability in both cases on the basis of accident and causal relationship (Arbitrator's Exhibits 1 and 2). The two cases were previously consolidated for trial.

Petitioner began working for Respondent in March, 2008, as a housekeeper. At trial, Petitioner testified that she sustained a prior injury to her left shoulder; however, she stated that she had not received any medical treatment for that prior left shoulder injury since 1996. Petitioner testified that she had full use of her left shoulder when she began working for Respondent. Petitioner also stated that she had no prior neck or low back symptoms.

In regard to Petitioner's prior left shoulder injury, this was also a workers' compensation case which was settled for 67.5% loss of use of the left arm (Respondent's Exhibit 3). Petitioner testified that she had three surgical procedures performed in connection with that prior injury. When questioned whether she had multiple dislocations of her left shoulder prior to September, 2008, Petitioner stated that she could not remember.

Petitioner testified that she injured her left shoulder on September 9, 2008, [in the transcript the question was asked using the incorrect date of September 8, 2008] when her left shoulder struck a door knob as she was getting up after cleaning a floor. Following the accident, Petitioner was seen in the ER of St. John's Hospital. According to the ER records, Petitioner's left shoulder struck a "drawer" and was dislocated. The record also noted that Petitioner had a history of dislocated shoulders in the past and had undergone several surgeries. X-rays were obtained which revealed no evidence of a dislocation. The diagnostic impression was stated as "Dislocated left shoulder with spontaneous reduction." (Petitioner's Exhibit 6).

On September 15, 2008, Petitioner was seen by Dr. Mark Greatting, an orthopedic surgeon, who previously treated Petitioner for left shoulder dislocations. Dr. Greatting's record of that date noted that he performed left shoulder surgery on Petitioner in 1993 and Petitioner subsequently had two more left shoulder surgeries performed in 1996 by Dr. Post in Chicago. Petitioner informed Dr. Greatting that it had been many years since her shoulder had become dislocated. On examination, Dr. Greatting noted that the shoulder was stable and that it was unknown for sure if and when the shoulder actually dislocated. He authorized Petitioner to be off work and ordered physical therapy (Petitioner's Exhibit 6).

On September 23, 2008, Petitioner went to the ER of St. John's Hospital because of left shoulder pain. The ER record stated that Petitioner was sitting at a desk and her left shoulder "seemed to

dislocate." The record also noted that Petitioner had undergone surgery and had been there in the past when the shoulder was dislocated and spontaneously reduced. Again, the diagnostic impression was "Dislocated left shoulder with spontaneous reduction." (Petitioner's Exhibit 6).

Petitioner began physical therapy on October 1, 2008. At that time, Petitioner informed the therapist of the work-related injury of September 9, 2008, as well as the three prior left shoulder surgeries. In that regard, Petitioner advised that the three surgeries were performed because of her having dislocations of her left shoulder (Petitioner's Exhibit 4).

In the physical therapy record of October 16, 2008, it stated that Petitioner was at a restaurant the night before and when she attempted to empty her plate into a to-go box, the left shoulder went out of its socket and back in. The record also stated that Petitioner was going to see her family doctor about her neck and back because she had sustained a fall at IHOP on a wet floor and injured herself (Petitioner's Exhibit 4).

In the physical therapy record of October 23, 2008, the record stated that Petitioner's left shoulder symptoms had been getting worse since "falling at IHOP on 9/23/08." (Petitioner's Exhibit 4). Petitioner was subsequently evaluated by Dr. Jay Riseman, her family physician, on October 27, 2008, for left shoulder and low back pain. This record noted that Petitioner fell at IHOP on October 23, 2008 (Respondent's Exhibit 12).

At trial, when Petitioner was questioned about the fall she sustained at IHOP, she was uncertain as to exactly when it occurred but that it was sometime after September 9, 2008, but before December 31, 2008. Petitioner testified she was going into the bathroom and slipped and fell on her butt. When questioned if she dislocated her left shoulder as a result of this fall, Petitioner stated that she could not recall.

Petitioner had a CT/arthrogram of the left shoulder performed on November 3, 2008. Dr. Greatting saw Petitioner on November 10, 2008, and reviewed the diagnostic study. He opined that it revealed a partial thickness rotator cuff tear and that one of the suture anchors from her previous surgical procedures was out of the bone in the area of the greater tuberosity. He recommended arthroscopic surgery with possible rotator cuff repair and removal of the suture anchor or possible anterior labral repair/stabilization. Dr. Greatting released Petitioner to return to work with restrictions effective December 23, 2008 (Petitioner's Exhibit 4).

In regard to the accident of December 31, 2008, Petitioner testified that she was working light duty and was walking out of an employee bathroom which was adjacent to the laundry room. Petitioner testified that she sustained a slip and fall at that time.

Following the accident of December 31, 2008, Petitioner was taken to the ER of Memorial Medical Center. According to the ER record, Petitioner stated that she was unsure whether she passed out and may have "slipped on detergent." Petitioner was diagnosed with neck and back pain and instructed to see her family physician (Petitioner's Exhibit 2).

At trial, Petitioner said nothing about slipping and falling because of detergent or any other foreign material being on the floor. In regard to the accident of December 31, 2008, three

witnesses testified on behalf of the Respondent. Two of the witnesses testified live at trial and the other was deposed and said deposition was received into evidence at trial.

Flora Coffey was deposed on March 14, 2013, and her deposition testimony was received into evidence at trial. Coffey is retired but was a housekeeper for Respondent during the time Petitioner was employed there. On December 31, 2008, Coffey was folding laundry when Petitioner went to the bathroom. She found Petitioner on the bathroom floor lying on her back. Coffey testified that there was nothing on the floor where Petitioner fell including Tide or any other detergent. She stated that Petitioner complained of left shoulder pain at that time (Respondent's Exhibit 8; pp 9-17).

Ellie Lansing testified at trial. At the time of the accident of December 31, 2008, Lansing was the Assistant Manager. Lansing no longer works for Respondent because she returned to school to become an RN. Lansing testified that she received a telephone call about the accident and went to the location shortly afterward. She stated that she did not see any foreign material including Tide or detergent on the floor where Petitioner fell.

Bobbie Haley testified at trial. Haley has worked for Respondent for 25 years and is the Maintenance Engineer. He also received a call that there had been an accident in the laundry room on December 31, 2008. When he arrived at the scene of the accident, Haley observed Petitioner lying on the floor and stated that there was nothing on the floor where Petitioner fell, nor did he observe anything on Petitioner's clothing or shoes which could have caused her to fall. He also testified that it was not necessary for him to clean the floor afterwards.

Petitioner was seen by Dr. Greatting on January 13, 2009. According to his record of that date, on December 31, Petitioner went to the bathroom, washed her hands and was unaware that Tide had been spilled on the floor. Petitioner slipped on the Tide and remembered waking up on the floor and people over her asking if she was okay. Dr. Greatting's record of that date also noted that "She does not remember actually falling at work which is concerning to me." Dr. Greatting opined Petitioner sustained a bruise of the left shoulder and elbow. He authorized Petitioner to be off work and ordered physical therapy (Petitioner's Exhibit 4).

On January 16, 2009, Petitioner was evaluated by Dr. Cecile Becker, for recurrent falls/blackouts. According to Dr. Becker's record of that date, Petitioner informed her that she fell on December 31, 2008. Petitioner stated that "...she was coming out of the bathroom and the next thing she remembers she was laying on the floor looking upwards." Dr. Becker suspected that Petitioner may have had a seizure so she ordered an EEG. This was performed on January 21, 2009, and was normal (Respondent's Exhibit 13).

Petitioner received physical therapy and, when seen by Dr. Greatting on January 28, 2009, he released Petitioner to return to work without restrictions effective February 9, 2009. When Dr. Greatting saw Petitioner on March 3, 2009, he noted that Petitioner was scheduled for arthroscopic surgery on March 20, 2009 (Petitioner's Exhibit 4).

Petitioner began working for Springfield Clinic on March 5, 2009, as a Medical Assistant. At that time, Petitioner was still receiving temporary total disability benefits. At trial, Petitioner

testified that she did not believe that her continued receipt of temporary total disability benefits was improper.

Dr. Greatting performed arthroscopic surgery on Petitioner's left shoulder on March 20, 2009. The procedure consisted of removal of an intra-articular loose body, subacromial decompression and mini rotator cuff repair (Petitioner's Exhibit 4).

Subsequent to the surgery, Petitioner returned to work for Springfield Clinic on March 26, 2009, and worked 61.75 hours between that date and April 8, 2009 (Respondent's Exhibit 6). Petitioner was continuing to draw temporary total disability benefits during that period of time.

Petitioner was evaluated Midwest Occupational Health Associates (MOHA) on April 30, 2009, for an injury she sustained at Springfield Clinic on April 28, 2009. Petitioner stated that she slipped on some urine on the bathroom floor and fell striking her left elbow on a toilet paper holder and landed on her buttock. Petitioner was diagnosed with a left elbow contusion and lumbar spine contusion. Petitioner was authorized to continue to work full duty (Respondent's Exhibit 13).

On August 12, 2009, Petitioner was evaluated by Dr. William Payne, an orthopedic surgeon, for neck and low back pain. He diagnosed lumbago and cervicalgia and ordered physical therapy. Petitioner received physical therapy for her low back and neck from September 8 through September 29, 2009 (Petitioner's Exhibits 8 and 10).

On September 4, 2009, Petitioner was evaluated by Dr. Kotswara Narla, a neurologist, for her low back and neck pain. In regard to the accident of December 31, 2008, Petitioner informed Dr. Narla she fell at work and remembered waking up on the floor and that they thought she fell on a wet floor. Petitioner also advised Dr. Narla that she had not worked since the fall. Dr. Narla opined that Petitioner had cervical pain with bilateral shoulder radiation and lumbar back pain with bilateral leg radiation. He recommended further diagnostic studies (Petitioner's Exhibit 11).

Dr. Greatting saw Petitioner on September 17, 2009, and he imposed permanent work/activity restrictions in regard to Petitioner's left shoulder. Specifically, Dr. Greatting opined that Petitioner was not to lift more than 10 pounds with her left arm, not to lift more than 10 pounds at waist level, not to lift more than five pounds above the waist to the shoulder level and not to lift more than two pounds above shoulder level (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Frank Petkovich, an orthopedic surgeon, on March 24, 2010. Dr. Petkovich was deposed on September 30, 2010, and his deposition testimony was received into evidence at trial. Dr. Petkovich testified that he examined Petitioner in regard to both accidents and he reviewed medical records and diagnostic studies that were provided to him. In regard to the accident of September 9, 2008, Dr. Petkovich opined that Petitioner sustained a left shoulder contusion as a result of that accident. Dr. Petkovich further opined that the left shoulder surgery of March 20, 2009, was not related to the September 9, 2008, work injury because all of the operative findings were for chronic changes inconsistent with an acute injury. Further, Dr. Petkovich opined that Petitioner could perform the same work that she was performing prior to September 9, 2008, but that she should have had some

restrictions at that time because she had previously undergone three surgical procedures (Respondent's Exhibit 7; pp 12-29).

In regard to the accident of December 31, 2008, Dr. Petkovich opined that Petitioner sustained a spinal contusion, primarily to the lumbar spine. He opined that Petitioner was at MMI and not in need of any further medical treatment for that injury (Respondent's Exhibit 7; pp 29-30).

Petitioner was seen by Dr. Joseph Bilyeu on July 16, 2010, for right leg and low back symptoms. He ordered physical therapy which Petitioner received from August 5, through August 24, 2010. In the physical therapy record of August 5, 2010, Petitioner stated that she injured herself at work in December, 2008, when she slipped and fell. That record noted that Petitioner did not remember falling but was found lying flat on her back (Petitioner's Exhibit 22).

Petitioner was seen by Dr. Joseph Williams, an orthopedic surgeon, on May 10, 2011, for her low back pain. At that time, Petitioner completed an intake sheet which stated that she remembered coming out of the bathroom and then waking up laying on her back in liquid Tide with the maintenance man over her asking if she was okay. She also indicated on the form that the accident occurred on December 31, 2009 (not December 31, 2008) and that this was the last date that she had worked (Petitioner's Exhibit 13).

Dr. Williams opined that Petitioner had chronic low back pain, mild lumbar degenerative disc disease, moderate L5-S1 left sided foraminal stenosis and right lower extremity pain. He reviewed an MRI that was performed on March 24, 2011, and opined that surgery was not indicated. He recommended conservative treatment including epidural steroid injections and physical therapy. He initially treated Petitioner from May through September, 2011.

On October 28, 2011, Dr. Williams wrote a letter to Petitioner's counsel wherein he commented on the issue of causality stating: "With regard to the question of causality, is difficult, if not impossible to say whether or not the symptoms that she is currently complaining of are the result of the fall she sustained on December 31, 2008. Ms. Meyer has degenerative disc disease that easily explains her current symptoms. Whether or not she had an exacerbation of her condition secondary to the fall would be difficult to determine from a medical standpoint. If she did in fact have an exacerbation, one would think it would be self-limited." (Petitioner's Exhibit 15).

At trial, Petitioner testified that she was involved in a motor vehicle accident on November 19, 2011, when she was rear-ended by another vehicle. She testified that she sustained injuries to her right knee and neck as result of this accident; however, she also stated that she sustained no injuries to either her low back or left shoulder as a result of that accident.

Following the accident of November 19, 2011, Petitioner was seen at the ER of St. John's Hospital. According to the ER record, Petitioner complained of pain in the right knee, neck, left shoulder and head (Respondent's Exhibit 11).

Petitioner was subsequently seen by Dr. Bilyeu on November 23, 2011. At that time, Petitioner complained of back, shoulder and right knee pain. Dr. Bilyeu ordered an MRI of the right knee (Respondent's Exhibit 14).

On December 15, 2011, Petitioner was evaluated by Dr. Greatting in regard to her left shoulder. According to Dr. Greatting's record of that date, Petitioner informed him that she was not having any problem with her left shoulder except for some occasional discomfort until she sustained the accident of November 19, 2011. Dr. Greatting's impression was "Left shoulder injury due to motor vehicle accident." He ordered a CT arthrogram of the left shoulder (Respondent's Exhibit 13).

On February 21, 2012, Petitioner was again seen by Dr. Williams for both her low back and left shoulder symptoms. Dr. Williams recommended that Petitioner have an MRI of her left shoulder (Petitioner's Exhibit 15).

Dr. Williams subsequently saw Petitioner on March 12, 2012, primarily because of Petitioner's left shoulder pain. His record of that date stated that Petitioner was doing "rather well" until she sustained the motor vehicle accident on November 19, 2011. He described this as being a "new injury" to the left shoulder that occurred as result of the motor vehicle accident of November 19, 2011 (Petitioner's Exhibit 15).

An MRI/arthrogram was performed on Petitioner's left shoulder on March 29, 2012. It revealed that the rotator cuff was intact, that there were post-surgical changes about the shoulder and that there was a slight irregularity or small tear of the labrum (Petitioner's Exhibit 15).

Dr. Williams saw Petitioner on April 20, 2012, primarily for her neck and left shoulder symptoms. He opined that Petitioner had a C3-C4 central disc protrusion and ordered physical therapy. In regard to the left shoulder, he referred Petitioner to Dr. Christopher Maender, an orthopedic surgeon (Petitioner's Exhibit 15).

Dr. Maender evaluated Petitioner on May 9, 2012, and he noted that Petitioner had a 20 year history of left shoulder pain. At that time, Petitioner informed Dr. Maender that prior to the motor vehicle accident, her pain was "tolerable" but that the motor vehicle accident caused her to sustain a rotator cuff tear and shoulder dislocation. Dr. Maender deferred making any treatment recommendations until he reviewed all of the medical records and diagnostic studies (Petitioner's Exhibit 15).

Dr. Maender subsequently saw Petitioner on May 23, 2012. At that time, Dr. Maender opined that further left shoulder surgery was not indicated. He did suggest Petitioner seek another opinion either in St. Louis or Chicago (Petitioner's Exhibit 15).

Petitioner was evaluated by Dr. Leesa Galatz, an orthopedic surgeon, on August 28, 2012. Dr. Galatz examined Petitioner in regard to both her neck and left shoulder symptoms. In regard to the left shoulder, she opined that further left shoulder surgery was not indicated (Petitioner's Exhibit 21).

Dr. Williams was deposed on October 2, 2012, and his deposition testimony was received into evidence at trial. When Dr. Williams was questioned about whether there was a causal relationship between the accident of December 31, 2008, and Petitioner's low back condition he

testified that "It would be nearly impossible for me to state for sure whether or not, with any certainty that fall caused her back pain based on what she said and based on what we see on the MRI. The only thing we could do is show that she had, according to her own history no pain before the fall, and then the pain started after the fall. However, I cannot find any medical evidence on the MRI or the studies that would suggest an acute injury had occurred." Dr. Williams agreed that the fall could have exacerbated the symptoms; however, he opined that this would have been a "temporary exacerbation." In regard to the motor vehicle accident of November 19, 2011, Dr. Williams testified that Petitioner's low back symptoms worsened afterward (Petitioner's Exhibit 16; pp 10-13).

Dr. Maender was deposed on October 19, 2012, and his deposition testimony was received into evidence at trial. In regard to Petitioner's left shoulder condition, Dr. Maender testified that the motor vehicle accident did not have any effect on Petitioner's left shoulder condition. This was based on the history that Petitioner gave to him wherein she informed him that her left shoulder pain was significant both before and after the accident (Petitioner's Exhibit 18; p 10).

On cross-examination, Dr. Maender acknowledged that when Dr. Williams had evaluated Petitioner's left shoulder on March 12, 2012, Petitioner informed Dr. Williams that her left shoulder was doing well prior to the motor vehicle accident of November 19, 2011 (Petitioner's Exhibit 18; pp 21-22).

Petitioner continued to receive medical treatment for her low back symptoms from several medical providers from February, 2013, through January, 2015. This included Dr. Williams, Dr. Per Freitag, Dr. Ferdinand Salvacion and Dr. Windie McKay (Petitioner's Exhibits 15, 20, 24, 25 and 54).

As previously noted herein, Petitioner began working for Springfield Clinic on March 5, 2009, as a Medical Assistant and, even though Petitioner was working, she continued to draw temporary total disability benefits. At trial, Petitioner testified that her job duties included cleaning/stocking examination rooms, preparing patients for doctor visits, organizing the nursing station, etc.

At trial, Petitioner testified that she was a probationary employee for Springfield Clinic and was let go at the end of her probationary period. Petitioner's employment records were received into evidence at trial and they revealed that Petitioner's employment was terminated on June 5, 2009. The records noted that Petitioner had been disciplined for poor job performance; however, the specific reason given for her termination was that she attended a physician's appointment during her scheduled work time and did not seek prior approval or clock out for the appointment. This was considered as theft of time which resulted in her termination (Respondent's Exhibit 6).

When questioned about her termination, Petitioner acknowledged her signature on the document that informed her of her termination. However, Petitioner still stated that she was not advised that the basis for her termination was theft of time.

Petitioner is a Social Security disability recipient and the Deciding awarding benefits was received into evidence at trial. According to the Decision, Petitioner worked until May 30, 2009, because of a second injury. At the time of her Social Security hearing, Petitioner also testified

that she was in a car accident in November, 2011, and she sustained injuries to the left shoulder, back and knee (Respondent's Exhibit 19).

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 her employment for Respondent on December 31, 2008.

In support of this conclusion the Arbitrator notes the following:

At trial, Petitioner initially testified that she sustained a slip and fall while walking out of the bathroom which was adjacent to the laundry room. She said nothing about slipping and falling on detergent on the floor although that statement was made in some of the medical records.

Three witnesses testified on behalf of the Respondent, Flora Coffey, Ellie Lansing and Bobbie Haley. All three of these witnesses testified that there was no detergent or any foreign material on the floor where Petitioner sustained the fall. Two of the three witnesses, Coffey and Lansing, are no longer employed by Respondent. The Arbitrator finds their testimony to be credible.

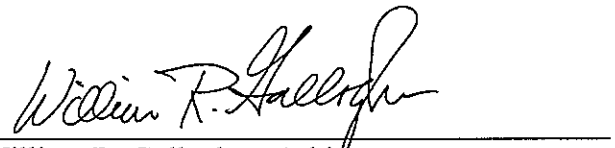
When Petitioner was seen by Dr. Greatting, Dr. Becker and Dr. Bilyeu you, she said nothing about slipping and falling because of detergent or some foreign matter being on the floor. She informed them that she was coming out of the bathroom and was subsequently lying on the floor without any specific recollection as to how the fall occurred.

When Petitioner was subsequently seen by Dr. Williams, she gave a slightly different history in that she remembered coming out the bathroom and then waking up laying on her back in liquid Tide; however, even then she did not specifically state that the liquid detergent caused her to fall.

Petitioner returned to work on March 5, 2009, and continued to draw temporary total disability benefits. At trial, Petitioner testified that she did not believe that this was improper. Further, Petitioner's employment was terminated on June 5, 2009, because of theft of time. While Petitioner acknowledged her signature on the termination document, she still testified that she did not know that this was the basis for her termination.

Based on the preceding, the Arbitrator finds Petitioner's credibility to be highly suspect.

In regard to disputed issues (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

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MESSINA, GARY Case# **10WC021956**

Employee/Petitioner

EDWARD LUCAS ROOFING ALAN JACKSON CONSTRUCTION ALAN JACKSON ROOFING CO AND STATE TREASURER AS EX-OFFICIO OF THE INJURED WORKERS' BENEFIT FUND

Employer/Respondent

On 10/22/2015, 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.

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100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

G Messina v Edward Lucas Roofing, et al, 10 WC 021956

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

Gary Messina
Employee/Petitioner
v.
Edward Lucas Roofing, Alan Jackson Construction, Alan Jackson Roofing Co. and State Treasurer, as ex-officio custodian of the Injured Workers' Benefit Fund
Employer/Respondent

Case # 10 WC 021956

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 13, 2015**. 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 **Liability of the Injured Workers' Benefit Fund**

FINDINGS

On **April 17, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

ORDER

Claim for compensation denied. Petitioner failed to prove an employee/employer relationship existed between any of the named Respondents and him.

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 21, 2015
Date

ICArbDec p. 2

OCT 2 2 2015

FINDINGS OF FACT

Petitioner pursued this action under the Workers' Compensation Act and sought relief from the Respondent-employers Edward Lucas Roofing, Alan Jackson Construction, Alan Jackson Roofing Co. and the Injured Workers' Benefit Fund because the employers did not maintain workers' compensation insurance. (3rd Amended Application, Petitioner's Exhibit 4) On April 13, 2015, the Parties appeared at a hearing before Arbitrator Jeffrey Huebsch. Patrick E. Dwyer III appeared on behalf of Petitioner. No one appeared on behalf of any of the claimed employers. Assistant Attorney General Megan Murphy of the Illinois Attorney General's office appeared on behalf of the Illinois State Treasurer, as *ex-officio* custodian of the Injured Workers' Benefit Fund.

A. Petitioner's Testimony

Petitioner testified that he was born on November 8, 1953. On April 17, 2010, Petitioner was 56 years old and single with no dependants. His occupation is roofing and construction. His duties include tearing off roofs and carrying ladders, plywood, and shingles.

In 2008 and 2009, Petitioner performed work for three different roofing companies: Chandler Roofing, O'Malley Roofing, and Jackson Roofing. He was paid approximately $150 to $160 per day. He was not issued a 1099 or W-2. He did not file income taxes for 2009 or 2010 since he did not have 1099s or W-2s. In 2009, he worked 30-35 weeks, which constituted the roofing season. Roofing is a seasonal job, and the exact season depends on the weather. Petitioner testified that the company he worked for on the date of accident was called Alan Jackson Construction and Roofing. He knew that was the name of the business because he saw it on Mr. Jackson's business card.

Mr. Jackson would schedule the jobs and would call Petitioner to tell him about them. Petitioner was paid by the day, regardless of hours worked, but he worked no more than 8 hours per day. He was a "mechanic" as opposed to a "laborer," so no one told him how to do his work. He has 46 years of knowledge of the roofing

trade. Mr. Jackson would tell him generally what needed to be done – such as tearing off a roof – and Petitioner would do it without any specific direction. He was not issued W-2s and taxes were not withheld from his pay. On the job, Petitioner used Mr. Jackson's large tools and equipment, but used his own hand tools. A laborer that worked for Mr. Jackson would maintain the equipment. Petitioner did not have a specific time schedule and did not wear any clothing connecting him to Alan Jackson Roofing and Construction. Petitioner was allowed to work for other individuals, and he did. He also worked for two other roofing companies, and would work about 10 weeks per year for each of the three companies, including Alan Jackson Roofing and Construction, depending how busy each company was. He was always working, and would work a few days for each company at a time. He could refuse a job if he wanted to, but he never refused.

Alan Jackson contacted Petitioner by phone 4-5 days before a job that was to start on April 16, 2010. Petitioner testified that Alan Jackson Construction and Alan Jackson Roofing are the same company. He also testified that Edward Lucas was the foreman on the job. He has never seen corporate documents for the companies. Alan Jackson ran his business out of his house at 11801 S. Wallace in Chicago. Jackson lived there and his trucks were parked there. Petitioner would pick up and load trucks there. When. Jackson called he identified himself as the owner of the business. Jackson's business involved tearing off roofs, rebuilding, or whatever needed to be done. Jackson would demolish structures, erect structures, do masonry, etc.

When Petitioner spoke on the phone with Jackson regarding the job starting on April 16, 2010, Jackson told him he had a tear-off near 115th and State Street in Chicago. A tear-off means that the job involved tearing off and re-shingling the roof. Petitioner testified that he agreed to do the job, and his pay would be $160 per day. Jackson wanted Petitioner to work about 3 days for this job, and he had other jobs for Petitioner to do after that.

April 16, 2010 was the first day that Petitioner worked in 2010. On that day, he tore off the front of the house's roof and re-shingled it. He was paid $160 in cash by Jackson at the end of the day. Both of

Petitioner's wrists and his back were fine that day. The job involved lifting 80 pound bundles of shingles up to the roof. There were two guys shingling the roof, and they lifted about 15 bundles.

On April 17, 2010, Petitioner went back to the job site to start work at 7 a.m. Jackson had asked if Petitioner was coming back for a second day of work and he said yes. Jackson picked him up in a plain white truck to take him to the job site because Petitioner does not drive. They went to the same house and he was supposed to be paid the same amount. All the same workers were there again: Edward Lucas, Mr. Jackson, a couple of other laborers, and two roofers. That day they worked on the back of the house's roof. Petitioner tore off the shingles and replaced wood.

The property was a frame structured house, about 1.5 stories, with two floors. There were no harnesses, scaffolding, toe boards, or any other safety devices. The wood was in bad shape – cracked and brittle. At about 10 a.m., while he was on the roof, a joist cracked under Petitioner and he fell off the roof. He landed on his back and his hand was behind him. His left wrist snapped. Petitioner testified that his hand "was just flapping" and he had no control over it. He could not see the bone, but he had a lot of pain. His back also hurt, and it was fractured. His wrist and back pain were both 10/10 on the pain scale.

Mr. Jackson saw Petitioner on the ground and Petitioner told him he was in pain. Mr. Lucas tried to pick Petitioner up to help him, but Petitioner said not to touch him; to leave him alone. Jackson called 911. Mr. Jackson told Petitioner he was calling 911, but Petitioner did not actually see him make the phone call. A fire truck and EMT arrived, then an ambulance. All the workers on the job were still there when they came. Petitioner was put on a board, and his wrist was also on a board. He was taken by ambulance to Christ Hospital. He was there for a week. He had to have surgery on his wrist and hand, but his back healed by itself.

Petitioner spoke to Mr. Jackson on the phone from the hospital about 3 days after the accident to let him know that he had a back fracture and a broken hand. Petitioner told Jackson that he needed surgery and asked Jackson if he could take care of it, but Jackson did not respond. Petitioner has not heard from Mr. Jackson since.

Petitioner testified that he never received an off work slip for his injury. His doctors never really addressed work status. No one specifically told him that he could or could not work. After the wrist surgery, Petitioner only returned to the doctor one more time to have the stitches taken out. He does not remember if the doctor recommended any further treatment. Petitioner testified that despite what is noted in his April 17, 2010 medical record, he did not have health insurance on the date of accident. However, he did not stop treating because of an inability to pay. He testified that he could have used a medical card. He testified that he did not return to the doctor because he was limited in getting around and he was taking care of his mother.

Petitioner displayed in court that his left hand is longer than the right hand by about a half inch. He also has a slightly raised, thin scar on the inside of his left wrist, down the center, about 3.5 inches long. He also has a lump/calcification on his back. The Arbitrator viewed Petitioner's back and the lump was noted to be bigger than a ping-pong ball at about the L1 level. Petitioner testified that that his back is still painful and it hinders his roofing duties. His hand impedes how he grabs and uses things. Now he is less mobile than before the accident, and he has to get help carrying things. He cannot carry a bundle of shingles. Bending to pick up shingles puts pressure on his back and is a problem. He still works as a roofer, but he does not carry anything. He just installs the shingles and felts the roof. After the work injury, he was out of work for about 4 years. He did not return to work until December of 2014.

Petitioner testified that he has problems with his wrist. When it is cold out, it freezes quickly, and it is hard to bend. He also cannot close his fist completely, and he drops things. Once every so often, he gets pain in his left wrist if he overuses it. Petitioner testified that his back is fine as long he is not straining. He can only sit for so long before it becomes irritated. He does not take any prescription pain medication.

B. Medical Records

According the medical records, Petitioner was taken to Advocate Christ Medical Center on April 17, 2010. He was diagnosed with an L1 compression fracture and a left forearm deformity with distal radius fracture and scaphoid fracture. Dr. Amine recommended that Petitioner ambulate and that way they would find out how much pain he has. If he had minimal pain, he could be assisted with a lumbosacral corset and be followed as an outpatient. Petitioner was discharged from the hospital on April 19, 2010, after several attempts at closed reduction of the wrist fracture were made. On May 3, 2010, Dr. Psaradellis performed an open reduction/internal fixation of Petitioner's left wrist. This included placement of a plate transversing a comminuted fracture of the distal radius and a screw was placed within the navicular. (Petitioner's Exhibit 10)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below.

a. Was Respondent operating under and subject to the Illinois Workers' Compensation Act?

Petitioner was engaged in roof repair/shingling at the time that he sustained accidental injuries when he fell off a roof in Chicago. There is automatic coverage under the Illinois Workers Compensation Act under §3(1).

b. Was there an employee-employer relationship?

The law in Illinois provides no specific litmus test for determining whether an employer-employee relationship exists. Rather, such a relationship, if one exists, must be inferred from the conduct of the parties, the right to control work being the primary factor in determining an employment relationship. There are multiple factors to consider in assessing the nature of the relationship between the parties. Ware v. Indus. Comm'n., 318 Ill. App. 3d 1117, 1122, (1st Dist. 2000). Among these are: (1) whether the employer may control the manner in which the person performs the work; (2) whether the employer dictates the person's schedule; (3) whether the employer pays the person hourly; (4) whether the employer withholds income and

social security taxes from the person's compensation; (5) whether the employer may discharge the person at will; (6) whether the employer supplies the person with the needed instrumentalities; and (7) whether the employer's general business encompasses the person's work. Roberson v. Indus. Comm'n, 225 Ill. 2d 159, 175 (2000). Other relevant factors include: (8) the label the parties place on their relationship; and (9) whether the parties' relationship was "long, continuous, and exclusive." Ware, 318 Ill. App. 3d at 1122, 1126. "The single most important factor determining whether a party is an employee or an independent contractor is the right to control the manner in which one's work is done ... an independent contractor is one who undertakes to produce a given result, without being controlled as to the method by which he attains the result." Bryant v. Fox, 162 Ill. App. 3d 46 (1st Dist. 1987). "No single factor is determinative, and the significance of these factors will change depending on the work involved." The determination rests on the totality of the circumstances. Roberson, 225 Ill. 2d at 175.

Petitioner testified that no one told him how to do his work. He was told what needed to be done but he controlled the manner in which the work was done. He also did not have a time schedule, he was paid by the day instead of hourly, and taxes were not withheld from his pay. The work relationship between the parties was not exclusive. Petitioner testified that he worked about an equal amount of time for two other roofing companies during the same time he worked for Alan Jackson. He was able to refuse any job Mr. Jackson offered to him. Rather than reporting to work each day for Mr. Jackson, Petitioner worked job to job. Mr. Jackson would call him when he had a job for Petitioner to work on for a few days, and Petitioner had the same arrangement with two other companies. Petitioner had been working for all three companies equally for the two years prior to the injury. Thus, factors 1, 2, 3, 4, and 9 all weigh heavily in favor of an independent contractor relationship. There was no evidence presented regarding factors 5 and 8. Only factors 6 and 7 weigh in favor of the existence of an employee-employer relationship. Given the totality of the circumstances regarding Petitioner's work on April 16 and April 17, 2010, no employee/employer relationship was proven.

In any event, Petitioner testified that he worked for "Alan Jackson Construction and Roofing", the entity that was on Jackson's business card. This entity is not a named party in the case (Petitioner's Exhibit 4). There is not sufficient evidence to support a finding of an employee/employer relationship with any of the named Respondents (Edward Lucas Roofing, Alan Jackson Construction, Alan Jackson Roofing Co.) or that the said entities are a legal entity to which liability could attach.

As Petitioner has failed to prove an employee/employer relationship existed with any of the named Respondents, the claim for compensation is denied. The Injured Workers' Benefit Fund has no liability based upon this finding. Further, the Arbitrator needs not decide the remaining issues, which are rendered moot by the denial of the claim for compensation.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

McKENDRY, ROBERT Case# **11WC030975**

Employee/Petitioner

THELEN SAND & GRAVEL INC

Employer/Respondent

On 10/22/2015, 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:

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2461 NYHAN BAMBRICK KINZIE & LOWRY
CHRISTINE JAGODZINSKI
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

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

- [ ] 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

Robert McKendry
Employee/Petitioner

v.

Thelan Sand & Gravel, Inc.
Employer/Respondent

Case # **11** WC **30975**

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 **Stephen J. Friedman**, Arbitrator of the Commission, in the city of **Waukegan**, on **June 24, 2015; June 30, 2015; September 15, 2015**. 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 [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **March 22, 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.

In the year preceding the injury, Petitioner earned $**62,629.32**; the average weekly wage was $**1,204.41**.

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*** 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 made payment of $**14,465.68** under a policy covered by Section 8(j) of the Act.

ORDER

BECAUSE PETITIONER HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE SUSTAINED ACCIDENTAL INJURIES ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH RESPONDENT, THE 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

October 22, 2015
Date

OCT 2 2 2015

Statement of Facts

Petitioner Robert McKendry testified that in the summer of 2010 he had been employed by Respondent Thelan Sand and Gravel for 14 years. He was a welder/fabricator. His job duties were to repair and build equipment. He did not drive trucks for the company. He testified that on August 2, 2010 at about 10:30 a.m., he was building a triple-mix screen, a large piece of equipment with three hoppers. The project probably took three months. He testified that he was putting together the tail pulley. He took a shaft weighing about 150 pounds from the shelf and placed it on his shoulder. As he was carrying it across the building, it slipped off shoulder and he caught it in the crease of his elbow and snapped his shoulder. He felt a large pain in his shoulder.

On cross examination, he testified he was not certain of the exact date of the accident. He checked his timecards that he had filled out. It was within July 26, 2010 to August 10, 2010. Petitioner identified Respondent's Exhibit 2 as the report he completed which stated the accident date was between July 26, 2010 and August 10, 2010. He identified Respondent's Exhibit 3 as the work orders he referred to. The exhibit lists his work as working on the new feeder or the feed hopper. He testified that he was either carrying the shaft for the head pulley or the tail pulley. Head pulleys are usually larger. He testified that the shaft was 2 15/16 inches in diameter. It was about 56 inches long. Petitioner identified Respondent's Exhibit 13 as a photograph of the triple blend machine.

Dan McMillan testified that he is familiar with the triple blend hopper. It is not the same as a feeder hopper. The machine was running in March or April, 2010. He is not aware of parts of that machine being built in July or August, 2010. The triple blend hoper would have been built during the winter. Petitioner may have been involved in the building.

Petitioner testified that before this incident he was in good health. He had diabetes, but it was under control. Petitioner testified that he told his supervisor Dan McMillan that he had injured his shoulder the afternoon of the injury. He testified he told him exactly what caused his pain. Petitioner testified that he told him, "I'll just see how things go." No paperwork was filled out. Petitioner testified that Dan McMillan approached him with him a few days later to find out if his shoulder was better. He testified he told him it was feeling better.

Petitioner testified that his arm tightened up and was sore, but he could do his work. He continued to work for a year. During that time he would have lack of motion and pain. It just kept getting worse. He would seek help to perform his job duties. This gradually increased.

There was a layoff in the fall and winter of 2010. Petitioner returned to work after the layoff and worked until July 5, 2011. Petitioner testified that on that date he told his manager Dan that he needed to have something done with his shoulder. He also spoke with Tim Krum. Petitioner was told to leave until he was released by the doctor. Petitioner testified he met with Marybeth when she returned from vacation. Petitioner testified that she told him that it did not happen at work. She told him that he could tell the insurance company it happened at home.

Dan McMillan testified that he was fleet manager for Respondent. He was Petitioner's supervisor. He testified he was first aware that Petitioner was claiming a work accident on July 5, 2011. He was aware Petitioner's shoulder was sore in 2010, but testified that Petitioner did not tell him that he injured his shoulder carrying a shaft. He testified that within a week he followed up with Petitioner. He asked Petitioner how things were going

with his shoulder and Petitioner said he thought things would be okay. On July 5, 2011, he referred Petitioner to Marybeth in HR. She was on vacation so he contacted Tim Krum. He observed Petitioner from July, 2010 through July, 2011. Petitioner did not report any difficulties performing his job duties. He did not seek medical treatment. The Mr. McMillan testified that he did not observe Petitioner exhibiting any pain mannerisms.

Marybeth Varek testified that she is the corporate secretary for Respondent. Her duties include human resources and insurance administration. She testified that she was first aware of Petitioner's claim of injury in July, 2011. She returned from vacation on July 11, 2011 and met with Petitioner. Petitioner told her of the accident with the pulley shaft and told her it occurred between July 26, 2010 and August 10, 2010. She had Petitioner complete an injury form (RX 2). She prepared the Form 45 (RX 4) from what Petitioner told her. She testified she questioned the relationship to the injury based upon the time from when he claimed to have been hurt and the time he reported it. She testified she did not tell Petitioner to lie to the insurance company. She testified her investigation included speaking to Dan McMillan, who told her he recalled Petitioner saying his shoulder was sore. She also spoke with Eric Ludlow. He told her the shaft Petitioner said he was carrying was not the shaft that matched the work listed on the work order.

Eric Ludlow testified that he is the maintenance manager and safety director for Respondent. He is familiar with the Petitioner and the welding shop. He identified Respondent's Exhibit 12 as a photo of the shelf where the head pulley shafts are stored. These are precisely cut and machined shafts. The shafts are machined by outside locations. The shafts are normally spares for machines in case something was to happen to the shaft on a particular machine. The type of shaft varies by machine.

Mr. Ludlow is aware of Petitioner's claim of injury between July 26 and August 10, 2010. He became aware of his claim in July, 2011 after a conversation with Marybeth. Mr. Ludlow identified Respondent's Exhibit 3 as the Petitioner's timecard. He checked the company COINS system which provided a more detailed description of the work performed. Mr. Ludlow identified Respondent's Exhibit 5 as the COINS system information including his handwritten detail added from the system to the computer printout. Based upon the records, Mr. Ludlow testified that Petitioner was working on a new 17 foot feed hopper during this period. It was sent to the Peterson Pit. Mr. Ludlow identified Respondent's Exhibit 15 as a photo of this hopper and Respondent's Exhibit 16 as the tail pulley of the feed hopper. The head pulley shaft on this machine was 3 15/16 inches by 74 inches long. He testified it would weigh about 250 pounds.

The feed hopper is different that the triple blend hopper. Mr. Ludlow testified that the machines were designed by him and built in Respondent's shop. The triple blend hopper has four head pulley shafts and four tail pulley shafts. The tail pulleys are 2 15/16 inches by 70 inches long and weigh about 150 pounds. The head pulley shaft is 14 inches longer and would weigh more.

Mr. Ludlow testified that there was nothing in the investigation to indicate that Petitioner did any work on the triple blend hopper during the period from July 26 through August 10, 2010. The triple blend hopper was put into operation in May, 2010. Petitioner did work on the triple blend hopper. He testified that Respondent's Exhibit 17 shows that Petitioner worked on the triple blend hopper from March 1 through April 9, 2010. He also worked on June 18, 2010 taking off angles on this machine. Mr. Ludlow testified that based upon the work orders and information it was not possible that Petitioner injured his shoulder between July 26, 2010 and August 10, 2010 carrying a head pulley shaft or tail pulley shaft for the triple blend hopper. The machine was already in production. Based upon the work forms there is no shaft he may have carried that was 2 15/16 in diameter and 56 to 60 inches in length.

Petitioner testified on rebuttal that he could not have lifted the head pulley shaft on the feed hopper. He believes he was injured a few months earlier that what he claimed while he was working on the triple blend hopper. Petitioner testified that he does not know on what day of the week he was injured. He would be speculating to give a specific date. Following a recess, Petitioner testified that the injury occurred on a Monday. His best estimate based upon the progression of the project is that he was injured on March 22, 2010. He testified that he was not 100% sure the shaft was a head or tail pulley shaft for the triple blend hopper. He testified that shaft he was carrying was 56 inches long. He is not aware of the exact measurements for the head pulley shaft for the triple blend hopper. He is not exactly sure when he was hurt, but he knows how he was hurt.

Petitioner motion to amend the Application for Adjustment of Claim to change the date of accident to March 22, 2010 was granted at this time.

Eric Ludlow testified on rebuttal that there was an occasion to create the head and tail pulley shafts for the triple blend hopper. The pulley shafts for the triple blend hopper would be cut from 20 foot stock. The shafts were all 2 15/16 inches in diameter. The head pulley shafts were 84 inches long. The tail pulley shafts were 70 inches long. The shafts were purchased from Liebovich Steel Company. Mr. Ludlow identified Respondent's Exhibit 18 as the billing and bill of lading for the steel for the triple blend hopper pulley shafts. The 20 foot long shafts were ordered on March 24, 2010 and received on March 25, 2010. He testified that when they were received, they would have been cut to length and transported to Richfield Machine Shop to have the keyways cut into them.

Mr. Ludlow identified Respondent's Exhibit 19 as the bill from Richfield Machine Shop. It showed four 70 inch tail pulley shafts and four 84 inch head pulley shafts had keyways cut. The shafts were picked up on March 31, 2010. He testified that the shafts would then be installed in the conveyer system. They would be on pallets on the floor. They would not be placed on the shelf in the welding shop.

Petitioner first sought medical attention from Dr. Chams on July 14, 2011. Petitioner testified he had no movement above his chest. He needed help to put on a shirt or belt. Dr. Chams' records were admitted as Petitioner's Exhibit 2. The medical history form completed by Petitioner indicates shoulder pain from a work accident on July 29, 2010. The July 14, 2011 office note records a history of accident between July 26 and August 10, 2010. The description is as testified to by Petitioner. Petitioner complained of his shoulder progressively getting worse. Dr. Chams diagnosed right shoulder adhesive capsulitis. He recommended a manipulation under anesthesia. The procedure was performed on August 31, 2011. Petitioner received a cortisone injection postoperatively on September 8, 2011. Petitioner was released to return to full duty on October 3, 2011. Petitioner returned to Dr. Chams on November 7, 2011, reporting he was doing well. Petitioner was to continue with the protocol and physical therapy.

Petitioner returned to work at full duty on October 11, 2010, after the release to return to work from Dr. Chams and the fitness for duty examination by Dr. Jablonowski (PX 5). He was told of the layoff scheduled for November 18, 2011 by Dan McMillan and Tim Krum. He may have showed them his range of motion and told them he planned to go hunting. He hunts with bow and muzzle loader. He hunted in the 2010-2011 season. He testified he did not hunt during the 2011-2012 season. He testified he may have returned to Respondent on December 2, 2011 to ask about practicing welding to work for a gas pipe company.

Dan McMillan testified that he and Tim Krum advised Petitioner of the layoff on November 18, 2011. Petitioner planned to go deer hunting. Tim asked Petitioner how his shoulder was feeling and he told Mr. Krum it was getting better.

Petitioner returned to Dr. Chams on December 5, 2011. He advised the doctor that he was laid off and is continuing to have right shoulder pain. Dr. Chams recommended an MRI and took Petitioner off work (PX 2). The MRI was performed on December 12, 2011. Dr. Chams testified at his deposition that the MRI showed no rotator cuff tear. There was some bursitis and there may be a SLAP tear. Dr. Chams recommended Petitioner undergo an arthroscopic procedure for a capsular resection and debridement of scar tissue (PX 4, p 17-18). The surgery was performed on December 23, 2011, consisting of a capsular resection, major bursectomy and manipulation under anesthesia (PX 2, p 46-47).

Petitioner testified that the subject in the video (RX 8) is him. He testified he volunteered to help his uncle move some branches and timber on December 16, 2011. Respondent admitted a surveillance report and video (RX 7, RX 8). The Petitioner is observed spending over three hours working to fell a tree and cut up and remove the branches and trunk. He was observed using his right arm to start a chainsaw and he uses both arms to wrap a chain around various limbs and to pick up branches to load into the bucket of the tractor being operated by his uncle. The Arbitrator notes Petitioner does use his right arm above shoulder level to throw some small branches and wrap the chain around limbs. He does seem to use primarily his left arm.

Petitioner was seen postoperatively and underwent physical therapy at Athletico (PX 3). The therapist sent an email to Dr. Chams on March 5, 2012, stating Petitioner is eager to return to work, but that his job includes a lot of heavy lifting at waist level. Petitioner had been able to do lifting to waist level of 100 pounds. No overhead testing had been done, but Petitioner reports no job tasks require lifting overhead. The therapist notes flexion and internal rotation deficits. Petitioner was released to regular work on March 6, 2012 (PX 2).

Petitioner testified that, after the release to return to regular duty, he returned to Respondent, but was advised there was no position for him. He testified he was told that if he got a CDL license, they would think about it. He testified he believed he was not able to obtain a CDL license because he was an insulin dependent diabetic. He testified that he had later determined that he was mistaken. He has since obtained a CDL license. He did not return to work for Respondent.

Marybeth Varek testified that Respondent has downsized since 2009. There has been a significant reduction in the workforce. Two welders were let go. Petitioner filed a grievance for not being recalled when some workers with less seniority were called back. Those employees had CDL licenses. Eric Ludlow testified that all of Respondent's employees have CDL licenses. Petitioner not having a CDL license presented an issue with him getting some vehicles to a jobsite. The welders currently employed with Respondent have CDL licenses. All union employees were asked to get one as the business was shrinking.

Petitioner saw Dr. Chams on November 5, 2013. He reported doing well with no pain. Dr. Chams' impression was resolving adhesive capsulitis. Petitioner was to continue his home exercise program and was to follow up on an as needed basis (PX 2). Dr. Chams testified by evidence deposition on October 14, 2014 (PX 4). In response to a hypothetical question concerning the accident described by Petitioner occurring in July, 2010, he opined that the accident is the cause of his frozen shoulder. His opinion is based upon his history he received. If the facts were to change, his opinion could change. If Petitioner had appeared in his office with a

history of diabetes and no history of a work injury, his opinion would change. He testified that diabetes is a risk factor for frozen shoulder. Activities such as archery and hunting can aggravate adhesive capsulitis.

Dr. Nikhil Verma performed a Section 12 examination at Respondent's request on December 23, 2013. He testified by evidence deposition taken January 14, 2015 (RX 1). He testified that there is no scientifically driven association between trauma and adhesive capsulitis. He opined that Petitioner's condition was not causally related to the work accident described as occurring in July or August, 2010. He testified that Petitioner did not need any work restrictions.

Petitioner is currently working for Landmark Services Co-op as a chemical applicator. He started in December, 2013. He is currently earning $16.35 per hour. Petitioner testified that at the present time, that he has no issues with work below shoulder level. Above chest height, he has slight pain once in a while. His shoulder does not currently affect his ability to use a bow. When he drives his shoulder starts to hurt. He has soreness in his shoulder when he sleeps. He takes Tylenol on occasion for his pain.

Conclusions of Law

In support of the Arbitrator's decision with respect to (C) Accident and (D) Date of Accident, the Arbitrator finds as follows:

To obtain compensation under the Act, a claimant must show, by a preponderance of the evidence, that he suffered a disabling injury that arose out of and in the course of the claimant's employment. To sustain his burden of proof of an accident arising out of and in the course of his employment, Petitioner must prove an accident that is traceable to a definite time, place and cause. While Petitioner testified in detail to a definite event, the attempt to lift the pulley shaft for the triple blend hopper and the dropping of the shaft from his shoulder to the crease of his elbow, the evidence not only demonstrates that Petitioner is not able to determine the date of this event occurring, but also demonstrates that, based upon the production records and testimony as to the construction of the triple blend hopper, that it is not likely that the events as testified to by Petitioner could have occurred at all.

Petitioner did not formally report the accident until July, 2011, a year after the alleged occurrence. The evidence demonstrates that Petitioner determined the date of the alleged occurrence by reference to his work records rather that any actual memory. The initial medical histories and the accident report did not specify a date of accident but rather a range from July 26, 2010 through August 10, 2010 based upon his review of his timesheets. Thereafter, Petitioner provided a history of a July 29, 2010 date of accident. Petitioner's Application for Adjustment of claim and his direct examination claimed an accident date on August 2, 2010, but on cross examination, he admitted he was not sure of the date on which the injury occurred.

Respondent's witnesses and exhibits confirm that the triple blend hopper was constructed in March and April, 2010, four months before the Petitioner testified he was injured. The new hopper, on which he was working in July and August, 2010, used a pulley shaft that was much too heavy for Petitioner to lift. Petitioner admitted this. The event to which Petitioner testified, lifting a pulley shaft, could not have taken place during the timeframe to which he originally testified.

In the face of this evidence, Petitioner changed his testimony to a date of accident on March 22, 2010. Petitioner initially testified that he does not know on what day of the week he was injured. He would be

speculating to give a specific date. Following a recess, Petitioner testified that the injury occurred on a Monday. His best estimate based upon the progression of the project is that he was injured on March 22, 2010. He testified that he was not 100% sure the shaft was a head or tail pulley shaft for the triple blend hopper. He testified that shaft he was carrying was 56 inches long. He is not aware of the exact measurements for the head pulley shaft for the triple blend hopper. He is not exactly sure when he was hurt but he knows how he was hurt.

Even this revised testimony is contradicted by Respondent's witnesses and documents. Eric Ludlow testified on rebuttal the pulley shafts for the triple blend hopper would be cut from 20 foot stock. The shafts were all 2 15/16 inches in diameter. The head pulley shafts were 84 inches long. The tail pulley shafts were 70 inches long. Mr. Ludlow identified Respondent's Exhibit 18 as the billing and bill of lading for the steel for the triple blend hopper pulley shafts. The 20 foot long shafts were ordered on March 24, 2010 and received on March 25, 2010. Mr. Ludlow identified Respondent's Exhibit 19 as the bill from Richfield Machine Shop. It showed four 70 foot tail pulley shafts and four 84 inch head pulley shafts had keyways cut. The shafts were picked up on March 31, 2010. He testified that the shafts would then be installed in the conveyer system. They would be on pallets on the floor. They would not be placed on the shelf in the welding shop.

The Arbitrator had the opportunity to observe the testimony and, based upon his observation and review of the exhibits, the Arbitrator does not find Petitioner's testimony credible. Petitioner's failed to report the accident in a timely manner and was unable to testify persuasively as to the date of the occurrence. His testimony of the event, attempt to lift the pulley shaft for the triple blend hopper and the dropping of the shaft from his shoulder to the crease of his elbow, is contradicted by both the testimony of Respondent's witnesses and the records documenting the fabrication and delivery of the pulley shafts for the triple blend hopper. The Arbitrator finds that, based upon the evidence submitted, the Petitioner has failed to establish by a preponderance of the evidence that the event which he described, attempting to lift the pulley shaft for the triple blend hopper and the dropping of the shaft from his shoulder to the crease of his elbow, occurred on March 22, 2010, August 2, 2010, or at any time at all.

Based upon the record as a whole, the Arbitrator finds that Petitioner has failed to prove by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment with Respondent.

In support of the Arbitrator's decision with respect to (E) Notice, (F) Causal Connection, (J) Medical, (N) Credit, (K) Temporary Compensation, and (L) Nature and Extent, the Arbitrator finds as follows:

Based upon the Arbitrator's finding with respect to Accident, the issues of Notice, Causal Connection, Medical, Credit, Temporary Compensation and Nature and Extent are moot.

Petitioner's claim for compensation is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DIAZ-ROSAS, ENRIQUE Case# **12WC001676**

Employee/Petitioner

MOST VALUABLE PERSONNEL LOANING EMPLOYER AND GOLD STANDARD BAKING INC BORROWING EMPLOYER

Employer/Respondent

On 10/26/2015, 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:

1922 SALK, STEVEN B & ASSOC LTD
DAMIAN R FLORES
150 N WACKER DR SUITE 2570
CHICAGO, IL 60606

4944 KOREY RICHARDSON LLC
AMY HOFFMAN
20 S CLARK ST SUITE 500
CHICAGO, IL 60603

0532 HOLECEK & ASSOCIATES
MONOCA DEMBNY
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

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

ENRIQUE DIAZ-ROSAS
Employee/Petitioner

Case # **12** WC **01676**

v.

Most Valuable Personnel, loaning employer and Gold Standard Baking, Inc., borrowing employer
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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **April 9, 2015**. 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. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other

FINDINGS

On **12/21/15**, 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 **$6,708.64**; the average weekly wage was **$419.29**.

On the date of accident, Petitioner was **21** 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 **$2,200.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$2,200.00**.
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 **$279.53/week** for **23-5/7 weeks**, commencing on **12/28/11 through 3/13/12 & 3/20/12 through 6/17/12**, pursuant to **Section 8(b)** of the Act.

Respondent shall pay Petitioner **permanent partial disability benefits** of **$251.57/ week** for a further period of **10 weeks**, as provided in **Section 8(d)2** of the Act, because the injuries sustained caused **the 2% loss of use of a person as a whole**.

Respondent shall pay **$8,270.86 in reasonable and necessary medical services** for treatment rendered as provided in **Sections 8(a) and 8.2** of the Act.

Respondent shall pay to Petitioner attorneys fees of **$0**, as provided in **Section 16** of the Act; **$0**, as provided in **Section 19(k)** of the Act; and **$10,000.00**, as provided in **Section 19(l)** of the Act.

Respondent shall pay Petitioner all compensation benefits that have accrued from 12/21/2011 through 4/9/2015 and shall pay the reminder 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 26, 2015
Date

OCT 2 6 2015

FINDINGS OF FACT

Petitioner testified via a Spanish interpreter. Petitioner understands English, but wanted to use an interpreter.

At the beginning of the trial, Respondents, Most Valuable Personnel, Inc. ("MVP") and Gold Standard Baking, Inc. ("Gold Std") stipulated on the record that Most Valuable Personnel was the loaning employer and Gold Standard Baking was the borrowing employer. It was agreed that between the two employers, Most Valuable Personnel would be responsible for the payment of compensation benefits and had already paid benefits to Petitioner regarding this claim. MVP and Gold Std will collectively be referred to as "Respondent" in the remainder of this decision.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on December 21, 2011. He was an employee of MVP, working at Gold Std (a large bakery) as a machine operator. In this position, Petitioner would make dough and would be required to lift and carry a plastic container of dough, weighing 60 to 80 pounds, about every 15 minutes. Petitioner lifted up a container to place it on a cart and he felt pain in his low back. He rated the pain as being 4 or 5 out of 10.

Petitioner reported the injury to his supervisor, Gerard. Gerard instructed Petitioner to report the injury to Janet. Janet was not there, so Petitioner finished his shift. His back hurt him as he worked out his 11 hour shift. He went home and went to bed. The next day, Petitioner went back to work and reported the injury to Janet. He was referred by Janet to Physicians Immediate Care ("PIC"). He went to Physicians Immediate Care and they were closed.

Petitioner did receive treatment at PIC on December 23, 2011. The history was of a lifting injury at work. The physical exam was largely benign. The lower extremity exam was unremarkable. Decreased lumbar range of motion was noted. There was slight tenderness to palpation, L2-L4. Positive straight leg raising was noted on the left. A lumbar x-ray showed a mild levoscoliosis at L3-L4. The assessment was Lumbar Strain. Petitioner was given a back support, biofreeze, Naproxen and Tylenol ES. He was released to work at full duty, without restrictions, and was advised to follow up on December 29, 2011. (PetEx. 1)

Petitioner worked that Saturday, Monday and Tuesday. His back pain did not go away. He had pain in his buttocks and down his leg.

Thereafter, on December 28, 2011, Petitioner sought treatment at Marque Medicos with Dr. Phillip Gattas, a chiropractor. Petitioner had complaints of low back pain that moved from side to side. It would radiate to the right buttock. Dr. Gattas diagnosed low back pain and recommended a lumber MRI and PT. Petitioner was taken off work. Petitioner's pain drawing documents low back pain only. The initial PT evaluation of December 30, 2011 reveals no complaints of numbness and tingling and notes that the pain radiates down the left buttock. The MRI was read by the radiologist to show minimal disc bulging at L4/5. Dr. Gattas referred Petitioner to Dr. Andrew Engel, a pain management physician. Dr. Engel prescribed PT and medication. Petitioner said that the PT helped. Dr. Engel prescribed an EMG/NCV study that was performed on January 27, 2012. The study was said to show "acute denervation of the left L5/S1 nerve roots. Dr. Engel reviewed the MRI and thought that it showed a left paracentral contained disc herniation which caused left lateral recess stenosis. Petitioner was released back to work with restrictions on February 6, 2012. (PetExs. 2 & 3)

Petitioner called MVP and went to their office in an effort to return to work. He was told that they had no modified duty. Eventually, MVP contacted Petitioner regarding return to work. Petitioner worked at MVP on March 14 and March 15, 2012. His back pain increased and he returned to see Dr. Engel.

Dr. Engel took Petitioner off work as of March 20, 2012. Petitioner continued on a course of care by Dr. Engel, including 3 injections (TESI procedures on 3/2/2012, 5/23/2012 and 9/5/2012). Petitioner was referred to Dr. Robert Erickson, a neurosurgeon, who saw Petitioner on April 13, 2012. Dr. thought that the MRI showed a small bulge at L4-L5 on the left. The EMG was said to show an abnormality at L5-S1 on the left. Dr. Erickson ordered a SSEP test, which he thought showed moderate delays. The diagnosis was symptomatic lumbar disc disease. Dr. Erickson thought that therapy was in order and surgery was not recommended. As of November 6, 2012, Dr. Erickson thought that discography might be appropriate if the patient improve with more therapy. The radicular pain was said to be of minor concern. Dr. Engel thought that a HEP and work with restrictions was appropriate. The discogram was not performed. The last chart from Dr. Erickson of January 15, 2013 states that Petitioner was not taking pain medication. It was hoped that surgery would be avoided. Petitioner was to continue PT to progress to work conditioning. (Pet Exs. 2,3, &4)

Petitioner had work conditioning at Elite Physical Therapy from January 21, 2013 through January 25, 2013. (PetEx. 5) There was no further treatment.

Petitioner was seen by Dr. Alexander Ghanayem for a §12 examination at Respondent's request on June 18, 2012. Dr. Ghanayem testified via evidence deposition on July 19, 2014. Dr. Ghanayem is a board certified orthopedic surgeon and he concentrates in spinal surgery. The physical examination was benign. The neurologic examination was negative. Dr. Ghanayem reviewed the MRI film and thought that it was completely normal; there was nothing pathological about the study. The EMG was said to be positive, but because the MRI showed no encroachment, it was thought by Dr. Ghanayem to be a false positive. The diagnosis was: back sprain, secondary to work activities. Petitioner was at MMI. He could return to work at full duty. There was no herniated disc. The MRI did not show a pinched nerve, so the patient could not have radiculopathy. The ESI could help radiculopathy and could mask radicular symptoms, but not in this patient, as he did not have anything that could be causing radiculopathy. Therapy appeared to be helping the patient. The ESIs were not reasonable and necessary. (ResEx. 1)

Dr. Engel's chart of July 30, 2012 criticizes Dr. Ghanayem's opinions. Petitioner did not have radiculopathy because of the recent ESI (May 23?). It was not likely that 3 doctors could overread the MRI. (PetEx. 2)

Petitioner obtained work as a stocker in a warehouse, lifting 100 30# boxes in a day. He worked full time. He felt pain every day. Petitioner now works as a machine operator, lifting containers. He does not perform heavy lifting. He received improvement with the treatment that he received from Dr. Engel. He improved his physical condition so that he could be able to work. He is not 100% improved. His back pain is about 3 or 4 without physical activity. If he has physical activity, his pain can be an 8. He takes Tylenol and Aspirin every day. He is not as active as before the injury. He used to dance and play soccer and he no longer does.

Petitioner denied prior low back injuries.

Petitioner could not remember exactly when he started work for MVP. His date of hire was September 20, 2011. His pay dates shown on his wage stubs were: 11/18/11, 12/9/11 and 12/16/11. He agreed that the first pain drawing that he did circled the low back only. The pain was in his low back and bottom when he was first seen at Marque. Later, it went into to his legs and alternated (one leg one day, the other the next). Petitioner testified that he was never prescribed a HEP. The therapist told him to do exercises at the clinic.

Petitioner claimed medical bills of $16,623.49. (Pet Exs. 6-13) Petitioner claimed TTD from 12/28/2011 through 1/15/2013. (ArbExs. 1&2) Respondent paid Petitioner TTD benefits of $2,200.00, via a check date of March 23, 2012 (10 weeks at $220.00?)

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. The Arbitrator finds the opinions of Dr. Ghanayem to be credible and persuasive in this case.

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's current condition of ill-being, as stated by Dr. Ghanayem in his deposition (status post back sprain related to work activity, resolved at MMI as of June 18, 2012, with normal lumber MRI findings), is causally related to the injury. Petitioner does not have a herniated disc.

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:

Respondent apparently relies on the opinion of Dr. Ghanayem to dispute the payment of medical bills (ESIs not reasonable and necessary, MMI as of 6/18/2012). Dr. Ghanayem did not testify that the lumbar x-ray and MRI studies were not reasonable and necessary and did rely on the "normal" MRI study to support his opinions.

Respondent did not provide any UR studies, as is required by §8.7(i)(3) of the Act, in order to dispute the reasonableness and necessity (extent and scope excessive and unnecessary) of the claimed bills. Respondent does not have a legal basis to dispute the bills incurred before Petitioner reached MMI (June 18, 2012). Therefore, the bills incurred before June 17, 2012 are awarded, with the exception of travel expenses, which are not awarded to this Petitioner, who lives at 5524 S. Sacramento Avenue and chose to seek treatment with a provider located at 4176 W. Montrose Street, all in the city of Chicago. (PetEx. 2&14) The bills incurred after June 18, 2012 are denied, based upon Dr. Ghanayem's opinion that Petitioner is at MMI.

Accordingly, the Arbitrator awards the following bills, subject to §8(a) and 8.2 of the Act. Respondent is entitled to a credit for all bills paid.

- Marque Medicos: $3,655.05
- Archer Open MRI: $1,132.43
- Specialized Radiological Consultants: $ 39.95
- Ambulatory Surgical Care Facility: $3,443.43

TOTAL: $8,270.86

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:

The award for TTD is for 23-5/7 weeks for the time periods of 12/28/2011-3/13/2012 and 3/20/2012-6/17/2012 based upon Petitioner's testimony and the medical records. Petitioner's claim for TTD subsequent to 6/17/2012 is denied, based upon Dr. Ghanayem's opinion that Petitioner was at MMI and capable of full duty work as of that date.

Petitioner was taken off work by his various physicians beginning December 28, 2011. His unrebutted testimony was that he tried to go back to work at limited duty (as recommended by Dr. Engel) in February of 2012, but was told by MVP that there was no modified duty. He then returned to work on March 14, 2012 and also worked on March 15, 2012. He was excused from work again on March 20, 2012.

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 record.

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. Therefore, this factor is given no weight in determining PPD.

With regard to subsection (ii) of §8.1b(b), the Arbitrator notes that Petitioner was employed as a machine operator. He now works as a machine operator, but he does not do heavy lifting. Dr. Ghanayem opined that Petitioner could return to work at full duty, as of June 18, 2012. This factor is given some weight in determining PPD.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 21 years old at the time of the accident. The injury resulted in a back sprain, with no disc pathology, that has resolved. This factor is given some weight in determining PPD. Petitioner is a young man and he has recovered from his injury.

With regard to subsection (iv) of §8.1b(b), the Arbitrator notes that Petitioner has recovered from the back sprain injury. This factor is given no weight in determining PPD.

With regard to subsection (v) of §8.1b(b), the Arbitrator notes that the electrodiagnostic findings are found to be false positives or incidental findings and do not persuade the Arbitrator that petitioner's subjective complaints are supported by the treating medical records. Petitioner has residual complaints which can be related to the injury. This factor is given some weight in determining PPD.

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 2% loss of use of a person as a whole pursuant to §8(d)2 of the Act.

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

The Arbitrator does not find that Petitioner is entitled to §16 fees or §19(k) penalties. Respondent's disputes in this case and its non-payment of benefits are not found to be unreasonable or vexatious.

Petitioner is entitled to §19(l) penalties, due to the non-payment of the bills incurred prior to the Dr. Ghanayem exam (especially the MRI bill!) and the TTD underpayment. Certainly TTD was clearly owed until the June 18, 2012 opinion of Dr. Ghanayem was known and the TTD that was paid (albeit late and in violation of Rule 7110.70) was paid at the incorrect rate of $220.00. The §19(l) penalty rate is $30.00 per day and, obviously, more than 333 days have elapsed without payment of the bills or the correct amount of TTD owed, so the amount of penalties awarded is $10,000.00, in accordance with §19(l).

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

GATTAS, KENNETH Case# **12WC002584**

Employee/Petitioner

AMERICAN SECURITY

Employer/Respondent

On 10/21/2015, 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:

4069 JONATHAN SCHLACK
200 N LASALLE ST
SUITE 770
CHICAGO, IL 60601

0238 WOLFE & JACOBSON LTD
DAVID WOLFE
25 E WASHINGTON ST SUITE 700
CHICAGO, IL 60602

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

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

CORRECTED

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KENNETH GATTAS
Employee/Petitioner
v.
AMERICAN SECURITY
Employer/Respondent

Case # **12 WC 02584**

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 **January 9, 2015**. 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. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **January 18, 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 $**27,469.00**; the average weekly wage was $**528.25**.

On the date of accident, Petitioner was **36** years of age, ***married*** with **1** dependent child.

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 $**36,273.51** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**36,273.51**.

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

ORDER

Respondent shall pay reasonable and necessary **medical services** of **$1,119.44**, as provided in **Sections 8(a) and 8.2 of the Act.**

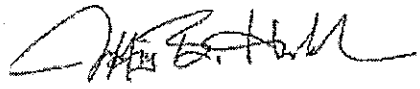
Respondent shall pay Petitioner **temporary total disability benefits of $352.17/week for 103 weeks, commencing 1/19/2012 through January 9, 2014,** as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner **permanent partial disability benefits** of **$316.95/week for 75 weeks**, because the injuries sustained caused the **15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.**

Respondent shall pay Petitioner the compensation benefits that have accrued from 1/18/2012 through 1/9/2015, 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 14, 2015
Date

OCT 2 1 2015

FINDINGS OF FACT

Petitioner was employed by Respondent as a lieutenant/field supervisor. He began his employment with Respondent in 2010. His work duties included driving to different work sites and checking on security guards to ensure that they are, in fact, performing their work duties properly. Petitioner's position is a supervisory position, and his shifts are night shifts, which meant he worked from 11:00 pm to 7:00 am. On certain occasions, Petitioner would be required to "pull shift" and work as a guard until another guard was able to fill an empty position.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on January 18, 2012. Petitioner was scheduled to work for Respondent during his usual night shift as a lieutenant. Petitioner testified he was working in the streets, going from site to site, as he usually does. On this night, Petitioner was at a site, Newport Condominiums, performing his ordinary supervisory job duties. Petitioner was leaving this site and was headed to the next site in his motor vehicle. During his commute to the next job site, Petitioner testified that he was involved in a motor vehicle collision. Petitioner does not remember the collision in detail, but does remember a pair of headlights heading directly towards him. After the head-on-collision, Petitioner lost consciousness. Petitioner testified that he had immediate pain to the left side of his head and on the left side of his body, and he had cuts on the left side of his body, as well. Petitioner regained consciousness for a brief period in the ambulance, which was transporting Petitioner to John H. Stroger Jr. Hospital of Cook County (hereafter referred to as "Stroger").

At Stroger, on January 18, 2012, Petitioner was diagnosed with blunt head trauma with loss of consciousness, cervical spine pain, and an elbow laceration and was given 800mg of ibuprofen for pain control with good resolution of his headache (Pet. Ex. 1, at 5). Petitioner testified and the medical records reflect that Petitioner stayed the night at Stroger and was taken home the next day by his family members (Id.). Petitioner testified that he was scheduled to return to work on the day of his release from Stroger, but was unable to do so as a result of the accident. Petitioner testified that he was unable to recall the events that transpired the

subsequent days following his stay at Stroger. Retrograde and anterograde amnesia is documented in other medical records.

On January 23, 3012, Petitioner was treated by Dr. John J. Hardek at Rush Hospital who noted that Petitioner was experiencing headaches, which continued to return after the temporary relief provided by medication (Pet. Ex. 2, at 10). Further, Dr. Hardek noted that Petitioner's thinking was fuzzy with difficulty concentrating and there was a "popping" in the left side of his jaw when he eats (Id.). Dr. Hardek noted that Petitioner's chest wall was tender and was painful with movement (Id.). Dr. Hardek assessed that Petitioner suffered from a concussion with continuous symptoms of headaches and foggy vision (Id., at 12). Petitioner was restricted from driving and was to remain off work (Id., at 13). Dr. Hardek removed the sutures that were placed on Petitioner's lacerated left elbow (Id.).

Petitioner had a follow-up appointment with Dr. Hardek on February 1, 2012, in which Petitioner stated the headaches were persistent but less intense (Id., at 24). Further, Petitioner continued to complain of left knee pain, and Dr. Hardek noted that Petitioner's chest wall was still tender (Id.). Petitioner was restricted from work completely by Dr. Hardek on this day (Id., at 27). Petitioner followed up with Dr. Hardek on February 8, 2012, in which Petitioner stated his headaches were getting worse and that his jaw was feeling sorer and still popping (Id., at 37). Dr. Hardek noted that Petitioner's left knee was still in pain and the chest wall was also still painful (Id., at 38). Petitioner was restricted from work completely by Dr. Hardek on this day (Id., at 40). Petitioner underwent an MRI of the Brain without and with IV Contrast on February 9, 2012 as ordered by Dr. Hardek, and the MRI revealed a normal study of the brain (Pet. Ex. 4, at 4).

On March 20, 2012, Petitioner began treatment with Dr. Wojcik, a neurologist, on a referral from Dr. Hardek (Pet. Ex. 6, at 7). Petitioner testified that at the time he saw Dr. Wojcik, he was experiencing frequent and constant headaches as well as stuttered speech, which was not present since he was a child but returned after the accident. Dr. Wojcik noted that Petitioner's headaches were severe and constant for all of January and February, but began to improve in March (Id.). Petitioner testified and Dr. Wojcik noted that Petitioner's

headaches would last for hours (Id.). Petitioner's complaints included a jabbing pain along the left side of his scalp, which occurred with severe headaches, and with these headaches, Petitioner had a "pins and needles sensation" with dizziness and fuzziness especially while moving (Id.). Dr. Wojcik diagnosed Petitioner with post-concussion syndrome with migraine-like headaches and anxiety (Id.). Dr. Wojcik noted that Petitioner remained off work up until his appointment and was to remain off work entirely until a follow-up appointment in five weeks because the type of work Petitioner did may "aggravate his headache and prolong the recovery phase" (Id., at 10). Dr. Wojcik prescribed Topamax for the severe migraines and referred Petitioner to a psychologist for an evaluation of his anxiety, which was caused by the motor vehicle accident (Id.).

On May 2, 2012, Petitioner was seen by Respondent's IME Dr. Lawrence Robbins, a neurology specialist (Resp. Ex. 1, at 1). Dr. Robbins' impression of Petitioner was posttraumatic headache syndrome with primarily migrainous type headaches and stated that the headache syndrome was "very legitimate and related to the work-related severe auto accident of January 18, 2012" (Id., at 2). Dr. Robbins went on to state that Petitioner was "very legitimate and honest and not malingering" (Id.). Dr. Robbins opined that Petitioner's work injury was the sole contributor to his condition, as Petitioner did not have any previous history of significant headaches and further opined that all of Petitioner treatment had been "very reasonable and necessary" (Id., at 3). Dr. Robbins stated that posttraumatic headaches are very difficult to treat and can be very refractory (Id.). Due to Petitioner's startle myoclonus and anxiety driving, Dr. Robbins deemed that a psychologist would be "very reasonable" (Id.). Further, due to Petitioner's headaches and anxiety driving and startle myoclonus, Dr. Robbins opined that it would be "very difficult" for Petitioner to return to work even on a part-time basis, particularly due to the headaches (Id.). Dr. Robbins stated that Petitioner had not yet reached maximum medical improvement and that he would wait at least nine to twelve months to determine permanency (Id.).

On May 8, 2012, Petitioner was treated by Dr. Wojcik who noted that Petitioner was unable to see a psychologist due to lack of authorization by the workers' compensation carrier (Pet. Ex. 1, at 12). Dr. Wojcik

noted that in the past month, Petitioner had some form of headache 85% of the time, and there was one event in particular in which Petitioner described a severe headache where he felt unsteady and may have lost consciousness because Petitioner found himself on the floor (Id.). Dr. Wojcik recommended Petitioner continue with the Topamax 50mg twice a day and to follow-up in one month (Id., at 14). Due to Petitioner's frequent headaches, Dr. Wojcik opined that Petitioner would not be able to return back to work (Id., at 14).

On June 26, 2012, Petitioner was treated by Dr. Wojcik who noted that within the last month, Petitioner's wife caught him on the couch unresponsive and hard to arouse or awaken (Pet. Ex. 6, at 17). Dr. Wojcik noted that it may be possible Petitioner was having seizures (Id.). Petitioner testified and complained to Dr. Wojcik of his poor memory and memory loss problems (Id.). Coupled with the previous diagnosis of post-concussion syndrome and anxiety, Dr. Wojcik diagnosed Petitioner for adjustment disorder with depressed mood as well as memory loss (Id., at 19). Dr. Wojcik recommended two sequential sleep deprived EEG studies (Id.). Dr. Wojcik noted that when Petitioner spoke, he spoke back to the doctor with his eyes closed, which was behavior that was not present prior to the motor vehicle accident (Id.). Petitioner testified and Dr. Wojcik noted that Petitioner complained of fatigue, which was contributed to Petitioner's migraines because sleep was a form of remedy for these migraines (Id.). Dr. Wojcik increased Petitioner's Topamax prescription from 50mg to 75mg (Id., at 20). Dr. Wojcik stated that Petitioner would need to remain off work entirely (Id.).

On July 6, 2012, Petitioner underwent the electroencephalography (EEG) recommended by Dr. Wojcik, which was performed by Dr. Susan Sicotte (Pet. Ex. 6, at 26). Petitioner testified that he underwent these studies for having headaches and blacking out. Petitioner further testified that when he would regain consciousness, he would not understand where he was or even what time it was. The EEG was within normal limits for wakefulness, drowsiness, and sleep (Id.). Dr. Sicotte stated that if seizures continue to be a consideration, a repeat study would be helpful and that a workup of the abnormal rhythm was recommended if clinically indicated (Id.). On July 18, 2012, Petitioner underwent a repeat EEG performed by Dr. Ligia Rioja, which was within normal limits for wakefulness only (Pet. Ex. 6, at 27). Drowsiness and sleep were not

identified (Id.). Dr. Rioja stated that if seizures continue to be a consideration, a repeat study would be helpful (Id.).

On July 30, 2012, Petitioner was treated by Dr. Wojcik who noted that the EEGs performed were normal (Pet. Ex. 6, at 30). Dr. Wojcik noted that Petitioner continued to experience headaches (Id.). Dr. Wojcik stated that Petitioner was to remain entirely off work due to his condition (Id.). Dr. Wojcik and Petitioner agreed that Petitioner would benefit from seeing a neuropsychologist (Id., at 28).

On August 17, 2012, Petitioner underwent a neuropsychological evaluation as recommended by Dr. Wojcik with Dr. Kyle Bonesteel, a neuropsychologist (Pet. Ex. 8, at 4). Dr. Bonesteel noted that the results of the evaluation revealed evidence of a selective degree of relative neurocognitive deficit, mostly ascribed to higher-order areas of cognition, including working memory and processing speed (Id., at 6). Dr. Bonesteel stated that it was conceivable that these selective cognitive deficits/weaknesses were related to Petitioner's history of head trauma and are amongst the most common areas of relative weakness in such cases (Id.). Dr. Bonesteel opined that Petitioner was making a "reasonable recovery from a significant head trauma that occurred in January," although he still manifested some selective symptoms that are common in such cases including working memory deficit, sensory sensitivity, and residual and intermittent headaches (Id. at 6-7). Dr. Bonesteel stated that Petitioner's overall cognitive endurance and functional level seemed to fluctuate significantly with his headaches and management of his headaches would likely be essential to Petitioner improving his overall level of functioning (Id., at 7). Dr. Bonesteel stated that Petitioner would benefit from a combined cognitive therapy and psychophysiological approach such as EEG neurofeedback if he continued to be symptomatic (Id.). Petitioner complained to Dr. Bonesteel that he had a remote history of stuttering and since the accident he has experienced a recurrence of verbal dysfluency, which was evident during the clinical examination process (Id.). Dr. Bonesteel stated that the presumed point of impact of the left frontal region somehow disrupted the left frontal network regulation, but the system would improve with time through a referral to a speech therapist if the condition continues to bother him (Id.). Dr. Bonesteel recommended that

Petitioner follow-up with Dr. Wojcik for ongoing neurological monitoring and care. (Id.). Further, Dr. Bonesteel opined that Petitioner's response bias profile was within normal limits suggesting that Petitioner's symptomology, as self-reported, "can be taken at face value" (Id.).

On September 7, 2012, Petitioner was treated by Dr. Wojcik who noted that Petitioner's headaches were better by 75% and that he gets two headaches per week, and the migraine abortive medication was affective within 1-2 hours (Pet. Ex. 6, at 32). Petitioner testified at trial and complained to Dr. Wojcik about his concern of his stuttering, poor memory and performance (Id.). Dr. Wojcik noted that Petitioner did have the neuropsychological exam completed but did not have the report, so he did not want to make any other judgment without reading the report (Id.). Dr. Wojcik increased Petitioner's prescription of Topamax to 100mg twice per day (Id., at 35). Dr. Wojcik stated that Petitioner was to remain entirely off work until he reassessed Petitioner and reviewed the neuropsychological report (Id.).

On October 6, 2012, Petitioner underwent an EEG performed by Dr. Bonesteel, which revealed evidence of rather selective power spectra deviation (Pet. Ex. 7, at 20). Dr. Bonesteel noted that clinical correlation with cognitive and neuropsychological tests results was recommended in this regard (Id.). Further, Dr. Bonesteel rated that depending on Petitioner's subjective symptoms, neuropathy-neurofeedback would likely be an appropriate methodology to consider (Id.).

On October 29, 2012, Petitioner was treated by Dr. Bonesteel who diagnosed Petitioner with post-concussive syndrome, cognitive disorder, and chronic headaches (Pet. Ex. 7, at 22). Dr. Bonesteel recommended that Petitioner undergo implementation of CBT and individual supportive therapy and that he be reevaluated every four weeks for progress and formal psychometric reassessment in eight weeks and then every four weeks thereafter (Id.).

On November 2, 2012, Petitioner was seen by Dr. Wojcik who saw Petitioner for his post-concussive syndrome symptoms of migraine headaches and poor memory (Pet. Ex. 6, at 36). Dr. Wojcik noted that Petitioner was seeing a neuropsychologist who was to perform biofeedback and neurocognitive therapies, which

would start November 7, 2012 for eight sessions over eight weeks (Id.). Petitioner complained to Dr. Wojcik that he continued to have two headaches every week, one of which was very severe (Id.). Petitioner stated to Dr. Wojcik that he looked forward to getting back to his usual behavior and normal self and that he would even like to return to school (Id.). Petitioner told Dr. Wojcik that he had episodes where he could not even recall events weeks to months before his head trauma (Id.). Dr. Wojcik stated that in Petitioner's condition, he was unable to return to work (Id., at 38).

From November 7, 2012 through December 17, 2012, Petitioner underwent neurocognitive therapies with Dr. Bonesteel (Pet. Ex. 7, at 23-30). On January 3, 2013, Petitioner was seen by Dr. Bonesteel for reevaluation (Id., at 31). Dr. Bonesteel noted that Petitioner's headaches were very problematic, his sleep was poor, his mood was tearful, his memory came and went, he did not feel capable of going back to work, and got very anxious when driving (Id.). Dr. Bonesteel opined that Petitioner's symptoms prohibited him from returning to work in any capacity (Id.). Dr. Bonesteel stated that Petitioner had 10-20% improvement and required 60-90 days of continuous recovery and treatment before returning to work can even be addressed (Id., at 32).

On January 9, 2013, Petitioner was treated by Dr. Wojcik who noted Petitioner was undergoing cognitive therapy (Pet. Ex. 6 at 41). Petitioner complained to Dr. Wojcik of continued headaches once to twice every week (Id.). Dr. Wojcik noted an episode suffered by Petitioner during Thanksgiving where Petitioner's headache was so severe that he did not even recall the whole day (Id.). Dr. Wojcik recommended that Petitioner remain entirely off work until Dr. Wojcik reevaluates Petitioner after the cognitive therapy sessions have ended (Id., at 43-44).

From January 23, 2013 through March 13, 2013, Petitioner underwent neurocognitive therapies with Dr. Bonesteel (Pet. Ex. 7, at 33-40). On March 18, 2013, Petitioner was reevaluated by Dr. Bonesteel who stated that Petitioner had been compliant with the treatment protocol but continued to be highly symptomatic and had

not sufficiently responded to the treatment (Id., at 42). Dr. Bonesteel stated that Petitioner was not ready to return to work (Id.).

From March 20, 2013 through July 17, 2013, Petitioner underwent neurocognitive therapies with Dr. Bonesteel (Pet. Ex. 7, at 44-53). On July 11, 2103, Petitioner was seen by Dr. Bonesteel who stated that Petitioner was making interval gains in neuropsychological symptoms and that Petitioner was "moving closer" to returning to work (Id., at 54). Dr. Bonesteel recommended six more weeks of treatment, at which time he anticipated that Petitioner would be ready to return to work, assuming successful interval treatment (Id., at 54-55). From July 24, 2013 through August 14, 2013, Petitioner underwent neurocognitive therapies with Dr. Bonesteel (Id., at 57-58).

On August 21, 2013, Petitioner was seen again by Respondent's IME Dr. Robbins (Resp. Ex. 2, at 1). Dr. Robbins diagnosed Petitioner with continued post-traumatic headache, and post-concussion syndrome with headaches, anxiety, decrease in memory, and stuttering, which were caused by the motor vehicle accident of January 18, 2012 (Id., at 2). Dr. Robbins opined that Petitioner did need additional treatment with respect to his headaches, stuttering and anxiety and that the treatment to date had been reasonable (Id.). Dr. Robbins went on to opine that Petitioner was unable to return to work because of the anxiety driving, which could be helped with medication or therapy (Id.). Dr. Robbins stated that Petitioner was not at MMI, but that he was improving (Id.).

On August 22, 2013, Petitioner was seen by Dr. Bonesteel who stated that Petitioner continued to have recurrent headaches and intermittent cognitive issues worthy of further treatment (Pet. Ex. 7, at 59). Dr. Bonesteel recommended seeing Petitioner in 90 days to be reevaluated for possible return to work or treatment (Id.).

From August 28, 2013 through October 12, 2013, Petitioner underwent neurocognitive therapies with Dr. Bonesteel (Pet. Ex. 7, at 61-66). On October 12, 2013, Petitioner was reevaluated by Dr. Bonesteel who stated that Petitioner continued to be markedly symptomatic with cognitive dysfunction remaining prominent

(Id., at 67). Dr. Bonesteel went on to state that this would prevent Petitioner from being functional enough to handle workplace demand, therefore, he remained off work entirely (Id.).

From October 16, 2013 through November 13, 2013, Petitioner underwent neurocognitive therapies with Dr. Bonesteel (Pet. Ex. 7, at 68-72). On November 25, 2013, Petitioner was reevaluated by Dr. Bonesteel who stated that Petitioner was not cleared to return to work (Id., at 73).

From December 3, 2013 through Janaury 22, 2014, Petitioner underwent neurocognitive therapies with Dr. Bonesteel (Pet. Ex. 7, at 75-80). On February 1, 2014, Petitioner was seen by Dr. Bonesteel who stated that Petitioner was stable enough symptomatically to return (to work?) and function reasonably well and that they would prepare for discharge within one month (Id. at 81). On February 24, 2014, Petitioner was seen by Dr. Bonesteel who stated that Petitioner met maximum neuropsychological improvement and that Petitioner was able to return to work (Id. at 85). On March 6, 2014, Petitioner was seen by Dr. Bonesteel who discharged Petitioner from treatment and stated that Petitioner could return to driving related responsibilities for work for a maximum of three hours with a gradual increase of one hour per month and permitted breaks if Petitioner were to feel fatigued (Id. at 87).

Petitioner applied to University of Illinois–Chicago in August of 2012 and enrolled as a full-time student in January of 2013. Petitioner claimed that he advised some of his doctors about going back to college, but this is not documented in the records that were submitted (there is one comment in Dr. Hardek's Chart of March 15, 2013). Petitioner had previously attended U-I-C in the mid 1990's, last attending in 1999. (Res. Ex. 3) Petitioner testified that he receives accommodations through the school's disability resource center, including taking tests by himself and getting longer to take tests. Petitioner apparently will graduate college soon and wishes to pursue a medical career. Petitioner has an active Twitter account and made several references to his school work (e.g.: 13 hours of math homework). (Res. Ex. 4) Petitioner is able to drive himself to school and to drive to do errands and drop off and pick up his daughter. Petitioner did not recall telling Respondent that he was going to college before his TTD benefits were stopped.

Respondent stopped paying TTD in January of 2014, apparently after discovering that Petitioner was attending college full time while collecting TTD.

Petitioner returned to work for Respondent after being released by his doctors. He took a job as a dispatcher on weekends. This job allows Petitioner to work and go to school and care for his daughter. There was contact between Petitioner and Respondent about returning to work, but respondent wanted Petitioner to drive and Petitioner felt that he was not able to do so.

Petitioner's wife, Daniella Gattas, testified that Petitioner has deficits that were not present before the injury. She has been married to Petitioner for 13 years. He has problems driving. He is nervous in the car. He has headaches and dizziness. He sleeps more and is more emotional.

Michael Williams testified for Respondent. He is an account manager for Respondent and has worked for Respondent for 19 years. Respondent tries to accommodate restrictions to return injured employees to work. He had many conversations with Petitioner where he advised Petitioner that Respondent wanted him back at work and would accommodate light duty. Every time that Williams spoke with Petitioner, he mention modified duty. The supervisor job required driving, but Respondent would try to change shifts for Petitioner to accommodate his restrictions. At the beginning of Petitioner's lost time, Respondent could not accommodate a no driving restriction. If Williams knew that Petitioner was going to college full time, he would have contacted him regarding return to work. Williams discovered that Petitioner was going to college by reading Petitioner's Twitter entries. Petitioner contacted Williams about return to work after his doctors had released him and they were able to place Petitioner in the weekend dispatcher position.

Petitioner testified that he followed the recommendation of his doctors and no doctor had released him to return to work before February of 2014.

Petitioner has not taken prescription medication for 6 months. He complains of stuttering, headaches and memory loss. He has to make lists to remember what to do. His memory affects his work. He gets emails

when he does not follow up correctly. He uses a GPS to drive to different places. He is able to play computer games. He is doing well at U-I-C.

Most of the medical bills were paid and the Parties stipulated that Respondent would satisfy the Aetna lien ($733.32) and bills from Dr. Bonesteel ($225.00) and Dr. Wojick ($161.12).

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

Petitioner's current condition of ill-being (post concussion syndrome with post traumatic migraine type headaches, memory deficits, anxiety and stuttering is causally related to the injury based upon the credible testimony of Petitioner and his wife and the medical records. Clearly, Petitioner suffered a significant blunt head trauma at a result of the head-on collision.

There is no evidence of prior head injury and it is significant that Dr. Robbins found Petitioner to be legitimate and honest in his complaints and did not feel that Petitioner was embellishing his complaints. Dr. Robbins felt that Petitioner's condition was causally related to the injury. Causal connection is also supported by the medical records of the treating physicians and Dr. Bonesteel

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 would satisfy the Aetna lien ($733.32) and the bills from Dr. Bonesteel ($225.00) and Dr. Wojick ($161.22). The same are found to be reasonable and necessary and are awarded, pursuant to §8(a) and §8.2 of the Act

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:

The Arbitrator finds that Petitioner is entitled to TTD benefits for the time period paid, January 19, 2012 to January 9, 2014. Petitioner was not found to be at MMI until the February of 2014, but a fair reading of the medical records supports January 9, 2014 as the last day that Petitioner should receive TTD. It is troubling that Petitioner entered college while being paid TTD (and was able to do well at college, also driving himself to school on the near west side of Chicago), but the medical evidence establishes his entitlement to TTD as he was under active treatment and had not reached MMI. This is not a case where Petitioner refused a bona fide offer of limited duty work, although it is also troubling that Drs. Robbins, Wojick and Bonesteel did not chart that Petitioner was enrolled in college. Regardless, the case law is such that an award of TTD is proper until Petitioner has reached MMI, or has refused an offer of light duty work. See: Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission, 236 Ill.2d 132 (2010)

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. Thus, this factor is given no weight in determining PPD.

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 lieutenant/field supervisor at the time of the accident and that it is not clear that he is or is not able to return to work in his prior capacity as a result of said injury. Perhaps petitioner should not be driving as much as he did at the time of the accident, but it is speculative as to whether this is so and Dr. Bonesteel's recommendation for a progressive increase in driving at work was not followed (so that Petitioner could take the weekend dispatch job which accommodates college and caring for his daughter). Accordingly, this factor is given no weight in determining PPD.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 36 years old at the time of the accident. This factor is given some weight in determining PPD, as Petitioner will likely live with the effects of the injury for a long time.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that Petitioner has returned to work for Respondent and there was no evidence of his current wage. He likely will be able to obtain his college degree and, perhaps be placed in a higher paying job. This factor is given no weight in determining PPD.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the records of Dr. Wojick and Dr. Bonesteel support a finding that Petitioner sustained a significant head injury as a result of the accident, with post traumatic headaches, stuttering, anxiety and memory deficits, which the providers feel are legitimate. It is also noted that Petitioner was able to take college courses at UIC and actually did better than when he attended there in the 1990's.

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 15% loss of use of the parson as a whole, pursuant to §8(d)2 of the Act.

WITH RESPECT TO ISSUE (N), IS THE RESPONDENT DUE ANY CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the Parties' stipulation, Respondent is due a credit of $36,273.51 (103 weeks of TTD), which shall be applied to the award of 103 weeks of TTD.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MORELL, RONALD
Employee/Petitioner

Case# **12WC029168**

09WC001822

ST OF IL-DEPT OF HUMAN SERVICES
Employer/Respondent

On 10/21/2015, 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:

2934 BOSHARDY LAW OFFICE PC
JOHN V BOSHARDY
1610 S 6TH ST
SPRINGFIELD, IL 62703

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

4993 ASSISTANT ATTORNEY GENERAL
AMY S OXLEY
500 S SECOND ST
SPRINGFIELD, IL 62706

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

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

OCT 21 2015

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

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

Ronald P. Morell
Employee/Petitioner

v.

State of Illinois - Department of Human Services
Employer/Respondent

Case # 12 WC 29168

Consolidated cases: 09 WC 01822

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 26, 2015. 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. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On March 5, 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 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 $80,543.84; the average weekly wage was $1,548.92.

On the date of accident, Petitioner was 40 years of age, married with 1 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.

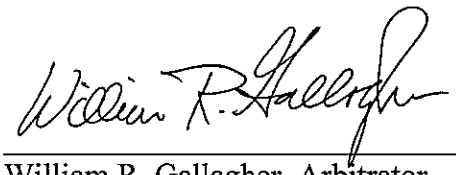
Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's conclusions of law attached hereto, 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

October 19, 2015
Date

OCT 21 2015

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim which alleged he sustained repetitive trauma injuries arising out of and in the course of his employment for Respondent. In case number 09 WC 01822, the Application alleged a date of accident (manifestation) of November 19, 2008, and that Petitioner sustained repetitive trauma to the bilateral upper extremities and that caused bilateral carpal tunnel syndrome/overuse syndrome. In case number 12 WC 29168, the Application alleged a date of accident (manifestation) of March 5, 2012, and that Petitioner sustained repetitive trauma to the bilateral upper extremities and that caused overuse syndrome (Petitioner's Exhibit 1). Respondent disputed liability on the basis of accident and causal relationship. Respondent also claimed a credit for compensation previously paid in workers' compensation case numbers 07 WC 43676 and 07 WC 52778 (Arbitrator's Exhibit 1).

In regard to Petitioner's settlement in case numbers 07 WC 43676 and 07 WC 52778, the settlement contract was received into evidence at trial. The contract indicated that Petitioner settled those cases for 17.5% loss of use of the right upper extremity and 17.5% loss of use of the left upper extremity. The settlement contract was approved on September 24, 2008 (Respondent's Exhibit 1).

Petitioner began working for Respondent as a caseworker in 2001. Petitioner was subsequently promoted to Management Operations Analyst I in July, 2007, and Management Operations Analyst II in February, 2009.

Petitioner testified that during the time he worked as a Management Operations Analyst I, he worked at a desk and performed data entry using a keyboard for approximately four to six hours per day. Petitioner would respond to inquiries from other employees via e-mail, telephone and fax. Petitioner is right hand dominant and he used his right hand to use the computer mouse and to write for approximately one and one-half hours per day.

While working as a Management Operations Analyst I, Petitioner began to experience symptoms of numbness/tingling in both of his hands. These were the same symptoms Petitioner had in connection with his prior workers' compensation cases.

On November 19, 2008 (the date of manifestation alleged in case number 09 WC 01822), Petitioner was seen by Dr. Christopher Wottowa, the physician who performed the carpal tunnel release surgeries in 2006. Dr. Wottowa noted that Petitioner had done well in regard to the prior surgeries, but that four to six weeks prior to the time he saw him, Petitioner woke up with constant tingling in the thumb and index finger of his left hand. Dr. Wottowa ordered and EMG/nerve conduction study (Petitioner's Exhibit 2).

The EMG/nerve conduction study was performed on November 28, 2008. The study was positive for moderately severe or recurrent left carpal tunnel syndrome. It was noted that the median distal latencies were less prolonged when compared to the study that was performed prior to Petitioner undergoing surgery in 2006 (Petitioner's Exhibit 2).

Dr. Wottowa saw Petitioner on December 8, 2008, and reviewed the EMG/nerve conduction study. He opined that Petitioner was having a recurrence of carpal tunnel or carpal tunnel induced by either hypertension, hyperlipidemia or even a problem Petitioner had with his kidneys. He recommended Petitioner wear wrist braces at night (Petitioner's Exhibit 2).

On January 12, 2009, Petitioner completed a "Workers' Compensation Employee's Notice of Injury" form which stated that he sustained tingling and numbness in his left hand because of repetitive motion of data entry. The date of diagnosis was stated as November 19, 2008, and described as an "on-going condition" (Respondent's Exhibit 3). At trial, Petitioner testified that his carpal tunnel syndrome symptoms had been an ongoing condition since 2006 and that his symptoms had improved following carpal tunnel surgery but that he had begun to experience the symptoms again.

In February, 2009, Petitioner was promoted to Management Operations Analyst II. At trial, Petitioner testified that the time he spent performing data entry increased to approximately six to seven hours per day. Petitioner also performed other tasks that involved the active use of both of his hands.

On May 13, 2009, Petitioner was again seen by Dr. Wottowa. At that time, Petitioner informed Dr. Wottowa that the numbness in his left hand and had improved; however, it had previously been constant, but now was intermittent. However, Petitioner also advised that he had been experiencing intermittent symptoms in his right hand as well. Dr. Wottowa prescribed medication and instructed Petitioner to wear splints at night (Petitioner's Exhibit 2).

Petitioner was seen by Dr. Wottowa on October 12, 2009, and complained that his symptoms in both hands were worse, but more so in regard to the left than right. Dr. Wottowa ordered an EMG and nerve conduction study (Petitioner's Exhibit 2).

The EMG/nerve conduction study was performed on October 15, 2009. It revealed Petitioner had mild to moderately severe bilateral carpal tunnel syndrome. Dr. Wottowa saw Petitioner on November 2, 2009, and reviewed the EMG/nerve conduction study. Dr. Wottowa noted that the study results revealed improvement in both hands when compared to the test performed in 2006 (prior to Petitioner's carpal tunnel syndrome surgeries) and the study performed in 2008 on Petitioner's left hand. Dr. Wottowa did not recommend any further surgeries at that time (Petitioner's Exhibit 2).

The next time Petitioner was seen by Dr. Wottowa was on March 20, 2012. At that time, Petitioner complained of numbness/tingling in both hands. Another EMG/nerve conduction study was recommended.

On August 8, 2012, Petitioner completed another "Workers' Compensation Employee's Notice of Injury" form. The date of the injury was stated as March 5, 2012 (the date of manifestation alleged in the Application) and that Petitioner sustained an injury to the left wrist, hand and fingers as a result of "Continuous repetitive motion while typing, sorting and filing." (Respondent's Exhibit 6).

Another EMG/nerve conduction study was performed on October 19, 2012, which revealed that Petitioner had moderately severe bilateral carpal tunnel syndrome which was worse on the left than right. Dr. Wottowa saw Petitioner on October 23, 2012, and reviewed the EMG/nerve conduction study. He noted that the left hand had worsened since the prior EMG/nerve conduction study, but that the right hand had improved. He recommended a revision left carpal tunnel surgical procedure be performed (Petitioner's Exhibit 2).

On November 27, 2012, Dr. Wottowa performed left carpal tunnel release surgery. When Dr. Wottowa saw Petitioner on December 10, 2012, Petitioner's left hand symptoms had improved. In regard to Petitioner's right hand, he still had some pain but no numbness/tingling. Dr. Wottowa subsequently released Petitioner from medical treatment on February 15, 2013.

William Branham, Petitioner's supervisor testified at trial. Branham was Petitioner's supervisor from July, 2007, to February, 2009. Branham completed and signed a "Demands of the Job" form on January 26, 2009. It stated that Petitioner used his hands/fingers for "fine manipulation" four to six hours per day. Branham reaffirmed this when he testified (Respondent's Exhibit 5).

At trial, Petitioner testified that he has a kidney condition which prevents his kidneys from filtering protein correctly. Petitioner was also diagnosed with high cholesterol and diabetes. Petitioner takes medications for these conditions. Petitioner was diagnosed with the kidney condition and high cholesterol approximately 11 years ago, and the diabetes approximately six to seven years ago.

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, an orthopedic surgeon, on June 25, 2013. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records and the "Demands of the Job" form provided to him by Respondent. Dr. Stewart also had a discussion with Petitioner wherein he obtained detailed information from Petitioner regarding his job duties. In regard to Petitioner's medical conditions, Dr. Stewart made note of the fact that Petitioner had diabetes and obesity (Respondent's Exhibit 8).

On examination, Dr. Stewart noted that Petitioner had continuing left hand symptoms of peripheral neuropathy of the left ulnar nerve of which he opined could be related to the diabetic condition. In regard to causality, Dr. Stewart opined that Petitioner's carpal tunnel syndrome was not caused or aggravated by his job duties and that the pre-existing conditions of diabetes and obesity were risk factors for the development of carpal tunnel syndrome (Respondent's Exhibit 8).

Dr. Wottowa was deposed on October 6, 2014, and his deposition testimony was received into evidence at trial. In regard to his diagnosis and treatment of Petitioner, Dr. Wottowa's testimony was consistent with his medical records. When questioned whether Petitioner's work activities caused the carpal tunnel syndrome, Dr. Wottowa testified that they did not, but that they were "...an aggravating factor to a certain degree." Dr. Wottowa did not review Petitioner's job description nor did he inquire of Petitioner how long he performed specific job activities. Specifically, Dr. Wottowa admitted to having no knowledge of how long Petitioner typed or the configuration of Petitioner's work station (Petitioner's Exhibit 5; pp 22-24).

Dr. Wottowa agreed that chronic kidney disease, obesity, hyperlipidemia and diabetes were all aggravating factors in the development of Petitioner's carpal tunnel syndrome. However, he was unable to determine if any of the factors were more aggravating than the others (Petitioner's Exhibit 5; pp 25-27).

Dr. Stewart was deposed on April 28, 2015, and his deposition testimony was received into evidence at trial. Dr. Stewart's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Dr. Stewart also testified regarding his review of Petitioner's job duties including his discussion with Petitioner regarding same. He also noted that Petitioner had diabetes, obesity, renal insufficiency and hypercholesterolemia which he described as a "...plethora of medical issues, all of which place him at an increased risk for developing compression neuropathies and he has job activities which do not." (Respondent's Exhibit 9; pp 9-12, 19).

At trial, Petitioner testified that he still has a little bit of tingling in his left hand especially when he does a lot of work. He also believes that his left hand strength is somewhat less than it was before. In regard to the right hand, Petitioner still has complaints of pain, weakness and numbness/tingling. He does continue to wear a splint on his right hand, depending on the severity of the symptoms.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner did not sustain a repetitive trauma injury arising out of and in the course of his employment for Respondent that manifested itself on March 5, 2012, and that Petitioner's current condition of ill-being is not related to his work activities.

In support of this conclusion the Arbitrator notes the following:

Petitioner previously underwent bilateral carpal tunnel surgical releases in 2006.

The Arbitrator is unable to determine how March 5, 2012, was alleged to be the date of "manifestation." Petitioner did not seek any medical treatment from November 2, 2009, until March 20, 2012. At the time of that evaluation by Dr. Wottowa on March 20, 2012, Petitioner complained of numbness/tingling in both hands. There was no reference to March 5, 2012, as being of any significance. Petitioner did indicate the date of March 5, 2012, as being the date of injury in the "Workers' Compensation Employee's Notice of Injury" form he completed; however, the reason for this date being indicated as the date of injury (manifestation) is not stated.

There was no dispute that Petitioner's job duties required the active and repetitive use of both of his hands. Respondent's witness, William Branham, confirmed that fact.

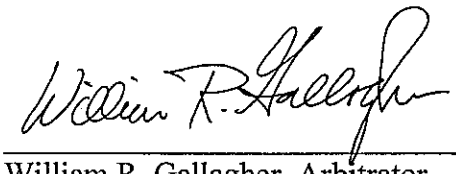
Petitioner's treating physician, Dr. Wottowa, opined that Petitioner's work activities did not cause Petitioner's carpal tunnel syndrome but that they were "...an aggravating factor to a certain

degree." Dr. Wottowa arrived at this opinion based upon a minimal amount of information regarding Petitioner's work duties. He had no knowledge as to how long Petitioner performed specific job duties including typing.

Dr. Wottowa also agreed that Petitioner's other risk factors of chronic kidney disease, obesity, hyperlipidemia and diabetes were all aggravating factors for the development of carpal tunnel syndrome.

Respondent's Section 12 examiner, Dr. Stewart, discussed Petitioner's job duties with him and reviewed information provided to him by Respondent regarding same. Accordingly, Dr. Stewart had more specific information regarding Petitioner's job activities than Dr. Wottowa. Based on the preceding, the Arbitrator finds the opinion of Dr. Stewart to be more persuasive than that of Dr. Wottowa.

In regard to disputed issues (J), (L) and (N) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion in disputed issues (C) and (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RAPSON, GREG Case# **09WC005709**

Employee/Petitioner

CHANNAHON PARK DISTRICT

Employer/Respondent

On 10/2/2015, 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 0.10% 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:

2208 CAPRON & AVGERINOS PC
STEPHEN SMALLING
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

1109 GAROFALO SCHREIBER HART ETAL
RALPH BERKE
55 W WACKER DR SUITE 1000
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF **LA SALLE**)

- [ ] 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

Greg Rapson
Employee/Petitioner

v.

Channahon Park District
Employer/Respondent

Case # **09** WC **5709**

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 **Ottawa**, on **August 28, 2015**. 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 [x] 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 **Prospective medical treatment**

FINDINGS

On **October 31, 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 $**13,858.52**; the average weekly wage was $**266.51**.

On the date of accident, Petitioner was **35** 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 $**41,138.09** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

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

ORDER

- Respondent shall pay Petitioner temporary total disability benefits of $206.67 per week for 250-5/7 weeks commencing November 1, 2008 through August 21, 2013 as provided in Section 8(a) of the Act. Respondent shall receive a credit for any TTD paid to date.

- Respondent shall pay Petitioner maintenance benefits of $206.67 a week for 50 weeks commencing August 22, 2013 through August 6, 2014 as provided in Section 8(a) of the Act. Respondent shall receive a credit for any maintenance paid to date.

- Respondent shall pay Petitioner permanent partial disability benefits of $206.67/week for 175 weeks, because the injuries sustained caused the 35% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

- Respondent shall pay the Petitioner any outstanding, related, reasonable and necessary medical expenses incurred through August 6, 2014 contained in Petitioner's Exhibit 9 as provided in Sections 8(a) and 8.2 of the Act, subject to the Fee Schedule. Petitioner's request for payment of medical care or prospective care beyond August 6, 2014 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

10/1/15
Date

OCT 2 - 2015

FINDINGS OF FACT

This case was previously tried on a Section 19(b) petition on July 16, 2009. The Arbitrator's Decision, filed on August 12, 2009, found that Petitioner sustained a compensable accident; that his current low back pain was causally connected to the accident; and that he was entitled to an epidural steroid injection in conjunction with therapy as prescribed by Dr. Charuk. Upon review, the Commission affirmed the Arbitrator's decision in their Decision on Review dated March 15, 2010. The case was then remanded to the Arbitrator and later reassigned to the current Arbitrator.

This case proceeded to hearing before the current Arbitrator on the following issues: 1) causation, 2) medical expenses, 3) prospective medical care, and 4) nature and extent. On the issue of nature and extent, the Petitioner is seeking an award of permanent total disability.

Petitioner originally injured his low back while working for the Respondent as a groundskeeper on October 31, 2008. Petitioner's accident was never in dispute. The Petitioner testified that subsequent to that arbitration hearing, he has sustained no other injuries or trauma to his low back necessitating medical treatment.

The medical evidence establishes that the Petitioner was referred by Dr. Charuk to Dr. Miz for a surgical evaluation who in turn recommended a pain management program under Dr. Lipov. (P.X. 11) Thereafter, Petitioner was evaluated by Dr. Lorenz of Hinsdale Orthopedics who recommended a three level fusion which was declined by the Petitioner as he elected to continue in a pain management program with Dr. Lipov. (P.X. 2)

On December 28, 2010, Petitioner was examined by Dr. Francisco Espinoza at the direction of the Respondent. (P.X. 10) Dr. Espinoza diagnosed Petitioner with mechanical low back pain due to degenerative disc disease and recommended he continue with narcotic pain medications or undergo a three level fusion. Dr. Espinoza opined that the back condition was related to the work related trauma sustained on October 31, 2008.

The Petitioner testified that he transferred his pain management to Dr. Samir Sharma in December 2011 who was closer in proximity to his home than Dr. Lipov. Dr. Sharma diagnosed the Petitioner with lumbar radiculopathy and lower back pain and noted that his significant narcotic dosage needed to be reduced in order for further assessments to be made. Dr. Sharma prescribed a course of physical therapy and referral to a chronic pain specialist. In response to this recommendation, Petitioner was evaluated and treated at Elite Rehabilitation Institute and came under the care of Dr. Gutta, a pain specialist. (P.X. 5)

On May 8, 2012, the Petitioner was referred from Dr. Sharma to Dr. Cary Templin for purposes of a surgical evaluation. (P.X. 1) Dr. Templin recommended facet blocks and subsequent fusion in the event the injections were not successful. In conjunction with this evaluation, Petitioner also underwent a psychological evaluation on July 12, 2012 at the request of Dr. Templin to address appropriate options for potential surgical interventional care. This evaluation was performed by Tiffany Sanders, Ph.D. who noted that Petitioner was off work until a surgical evaluation could be made subsequent to which the appropriate functional capacity evaluation and validity testing could be done in order to determine his work capacity.

As of June 19, 2012, Dr. Templin felt a three level fusion was not the perfect option for Petitioner but the only option given that he had failed all other measures at that point in time. On October 30, 2012 Dr. Templin opted against surgical intervention given the high likelihood of Petitioner being no better or worse. He was instructed to return to Dr. Sharma for future pain management and continued off work unless he was able to progress under Dr. Sharma's treatment. (P.X. 1, 1/29/13 note) Following epidural and trigger point injections, the Petitioner was evaluated by Dr. Sharma on August 21, 2013. (P.X. 3) At that time, it was noted his symptoms had improved following the last trigger point injection but the results were not sustained. At that time, Dr. Sharma deemed the Petitioner to be at maximum medical improvement and instructed him to return if he developed new or worsening symptoms. He was released to return to work with modified duty, sedentary work and instructed to return on an as needed basis.

On April 9, 2013, the Petitioner was directed to EJR Consulting, Inc. (hereinafter "EJR") by the Respondent for purposes of an initial vocational evaluation. The consultant, Edward J. Rascati recommended proceeding with job seeking skills training, including an Individual Written Rehabilitation Plan, resume development and professional advice as to conducting the job search process. He conceded that given the Petitioner's overall presentation, finding employment may prove to be a protracted experience. (P.X. 11) The Petitioner testified that he participated in the vocational rehabilitation plan instituted by EJR through June 17, 2014 at which time EJR was instructed to cease all efforts by the Respondent. (P.X. 11, 6/17/14 report) Petitioner has not looked for work since then.

On November 19, 2013, the Petitioner underwent an independent medical examination at the direction of the Respondent with Dr. Howard Konowitz. (R.X. A) As a result of the examination and his review of the medical records Dr. Konowitz opined that the pain management and prescription regimen was not sustainable or demonstrating efficacy and effectiveness. Dr. Konowitz recommended Petitioner's enrollment in the RIC/Alexian Brothers Pain Program.

Respondent authorized the enrollment in the RIC/Alexian Brothers Pain Program which was a 4-week inpatient multi-faceted program for detoxification and pain management modification, psychological treatment/training and vocational rehabilitation. Petitioner enrolled in the program on July 30, 2014.

Petitioner withdrew from the RIC/Alexian Brothers Pain Program after his last meeting with Dr. Atchinson on August 6, 2014. Petitioner testified that he believed that RIC encouraged him to do more than he could handle with regard to his pain. For example, Petitioner was not allowed to lay down and rest during his therapy. Petitioner also described not being able to walk to the pool as part of his therapy. The records of RIC (R.X. B) noted the following:

- Petitioner was "Counseled due to: Lack of acceptance of diagnosis and/or treatment plan, Compliance with treatment plan, Inconsistencies in performance." (R.X. B at p.5)
- Petitioner was counseled regarding "lack of progress/understanding/acceptance of diagnosis and/or treatment plan, non-compliance, lack of motivation, suboptimal performance. (R.X. B at p.6)
- The Team Report noted Petitioner's efforts and attitudes were poor. (R.X. B at p.6)
- Petitioner was noted to be "Not fully compliant with all components of program . . ." (R.X. B at p 7)
- Dr. Atchison documented his opinion that Petitioner should continue the program and his need to stop the opiod medications. Dr. Atchison "strongly recommend[ed] he be detoxed . . . And maintained off the opiods." (R.X. B at p.13)

Despite the strong recommendations and opinions of Dr. Atchison, Petitioner voluntarily removed himself from the RIC/Alexian Brothers Pain Program .

Petitioner testified that the Respondent suspended payments of TTD and his medical expenses as of August 21, 2013.

Dr. Gutta testified via evidence deposition on May 20, 2015 that he diagnosed the Petitioner with chronic pain syndrome attributable to the disc herniations and degenerative disc disease. Dr. Gutta testified that over the course of Petitioner's treatment and up to the present, there has been a continuing adjustment of the Petitioner's medications with the goal of maintaining the core measures of safety, tolerability and efficacy. Dr. Gutta testified that he disagreed with Dr. Konowitz's opinion that the pain medication regimen Petitioner was on was not sustainable nor demonstrating efficacy and effectiveness. Dr. Gutta opined that the Petitioner was disabled and not medically cleared to return to any work or vocation given his physical condition. He further opined it may be necessary for the Petitioner to continue on with the opiate medications for the remainder of his life as there has been no indication he is a surgical candidate for a procedure which would relieve the underlying etiology of the pain necessitating the medications.

Petitioner continues to treat with Dr. Gutta, who continues to prescribe Petitioner narcotic medication for Petitioner's pain. Petitioner testified that he takes a combination of narcotic pain medications, including Fentanyl 4 times per day, morphine 2 times per day, and flexeril 3 times per day. Petitioner currently uses a cane, which was not prescribed by any doctor. He can walk approximately 20 feet before he notices pain down into his legs. Petitioner testified that his pain is relieved with laying down, standing and sitting alternatively. He is 5'9' tall and weighs 330 lbs. He uses an assist chair and lives with his mother. He spends most of his time at home laying down, but tries to move around the house. He relies on his mother to drive him places and bring him food. The Arbitrator noted that during the hearing, Petitioner broke into tears and took a 15 minute break to lie down at the witness stand, while his mother came up to the stand to provide him comfort.

CONCLUSIONS OF LAW

1. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proof. This finding is based on both the "law of the case" and the fact that there was no evidence of any intervening incident or condition that could have broken the causation chain. Under the "law of the case," this Arbitrator is bound by the prior decisions in this case in which the issue of causation has already been resolved in favor of the Petitioner. There was no evidence presented to suggest the Petitioner's condition is due to anything other than his original work accident. Therefore, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to his October 31, 2008 accident.

2. Regarding the issue of TTD/maintenance, the Arbitrator awards the Petitioner TTD from November 1, 208 through the date he was found to be at maximum medical improvement on August 21, 2013 by Dr. Sharma. Furthermore, the Arbitrator awards the Petitioner maintenance from August 22, 2013 through August 6, 2014, the last date Petitioner attended his treatment at RIC and afterwhich voluntarily abandoned said treatment. In support of this award, the Arbitrator finds that the Petitioner's decision to voluntarily abandon his treatment at RIC was in violation of Section 19(d) of the Act which allows the suspension or reduction of benefits if an employee refuses to submit to medical treatment reasonably essential to promote his recovery.

3. With regard to the issues of medical expenses and prospective medical care, the Arbitrator finds that the Petitioner is entitled to the payment of related, reasonable and necessary medical services through August 6, 2014. Thereafter all medical expenses and any prospective medical care is denied. In support of this finding, the Arbitrator concludes that the Petitioner's decision to voluntarily abandon his treatment at RIC was in violation of Section 19(d) of the Act which allows the suspension or reduction of benefits if an employee refuses to submit to medical treatment reasonably essential to promote his recovery. The Arbitrator specifically notes that the treatment plan at RIC also included weaning Petitioner off opiate and narcotic use to improve his condition, and that in lieu of continuing with the RIC treatment plan, Petitioner chose to continue his treatment with Dr. Gutta. Petitioner's current treatment plan with Dr. Gutta is basically continuing the Petitioner on narcotic medication. As evidenced by the Petitioner's own testimony of constant pain and physical inactivity, Dr. Gutta's treatment plan does not appear to be helping the Petitioner. Accordingly, the Petitioner's request for prospective medical care is denied.

4. Regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator finds that the Petitioner has sustained injuries resulting in 35% loss of use of the person as a whole. In support of this finding, the Arbitrator relies on the medical evidence, which show that the Petitioner sustained a back injury resulting in a herniated disc at L4-L5 that has not been surgically addressed. The Arbitrator accepts all of the evidence, and particularly that of Dr. Konowitz, that the Petitioner had reached maximum medical improvement by August 21, 2013, but with significant restrictions.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PETERMEYER, JEFF Case# **09WC041291**

Employee/Petitioner

ALBERTERNST CONSTRUCTION INC

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

4888 LAW OFFICE KEITH SHORT
1801 N MAIN
EDWARDSVILLE, IL 62025

2593 GANAN & SHAPIRO PC
HEATHER J RUSSO
411 HAMILTON BLOVD SUITE 1006
PEORIA, IL 61602

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

- [ ] 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

Jeff Petermeyer
Employee/Petitioner

v.

Alberternst Construction, Inc
Employer/Respondent

Case # **09 WC 041291**

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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Collinsville**, on **2/19/2015**. 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. [x] What temporary benefits are in dispute?
[ ] TPD [x] 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 _____

FINDINGS

On **6/2/2008**, 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 $**58,234.28**; the average weekly wage was $**1,119.89**.

On the date of accident, Petitioner was **44** 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 $**103,882.67** for TTD, $**N/A** for TPD, $**N/A** for maintenance, and $**401,639.89** for other benefits (medical), for a total credit of $**505,522.56**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of $201,839.34, as provided in Section 8(a) of the Act.

Respondent shall be given a credit of $401,639.89 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 $746.59/week for 140 2/7 weeks, commencing 6/3/08 through 2/8/11, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $746.59/week for 63 1/7 weeks, commencing 2/9/11 through 4/24/12, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $636.15/week for 250 weeks, because the injuries sustained caused the 50% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay to Petitioner penalties of $**9,428.37**, as provided in Section 16 of the Act; $**23,570.92**, as provided in Section 19(k) of the Act; and $**0**, as provided in Section 19(l) 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

9/22/15
Date

ICArbDec p. 2

OCT 8 2015

BACKGROUND

Petitioner injured his low back on June 2, 2008 while working for Respondent. Petitioner underwent posterior and anterior lumbar fusions from L3 to S1 on January 15, 2010 and February 5, 2010, respectively. This matter was arbitrated pursuant to §19(b) on June 28, 2010. The Petitioner established causation and was awarded medical expenses subject to the fee schedule as well as temporary total disability benefits for a period of 108 weeks, commencing on June 2, 2008, through June 28, 2010. The decisions of the Arbitrator and Commission are admitted as AX2 & AX3. This matter was then tried on February 19, 2015. The issues in dispute are causation, future medical expenses, TTD, maintenance, nature and extent, and penalties.

FINDINGS OF FACT

Following the §19(b) hearing Petitioner has continued to treat with Dr. Taylor, an orthopedic surgeon, and Dr. Granberg of Millennium Pain Management. Dr. Taylor referred Petitioner to physical therapy post operatively, beginning June 14, 2010 and extending through January 31, 2011. (Px. 8).

Petitioner saw Dr. Granberg, every 2-3 months throughout 2011 and 2012. (Px. 5). Beginning with the June 19, 2012 visit, Petitioner reported increasing pain in his back for which Dr. Granberg offered a trial bilateral sacroiliac joint injection and trigger point injection in the lumbar paraspinous muscles above the level of his fusion. (Px. 5, pp. 314-15). The injections were performed on June 19, 2012 by Dr. Granberg. (Px. 5, pp. 316-17). Petitioner reported some relief from the injections and continued to receive medications from Dr. Granberg. (Px. 5, pp. 318-28). On January 3, 2013, Petitioner's medications were altered with the addition of Gabapentin to his Percocet regimen. The record noted he was previously able to go three months between visits but was having to be seen more frequently. (Px. 5, pp. 329-31). Second bilateral sacroiliac joint injection and trigger point injections were performed May 31, 2013. (Px. 5, pp. 338-42). Again, at the next visit on June 28, 2013, Petitioner reported 80% relief from the injection although he only reported 65% relief from medications. (Px. 5, pp. 343-45). On July 26, 2013, his Percocet dosage was increased. (Px. 5, pp.346-48). Additional trigger point and sacroiliac joint injections were performed on October 7, 2013 and December 30, 2013. (Px. 5, pp. 352-56; 363-67). Injections continued to be performed throughout 2014 in February, April, June, July, September and most recently December 2014. (Px. 5).

On February 8, 2011, Dr. Taylor found Petitioner at maximum medical improvement and deferred future pain treatment to Dr. Granberg. (Px 1, p. 51). The doctor indicated Petitioner could perform in the medium job demand level, however it reportedly caused increased symptoms of back pain and therefore Dr. Taylor recommended light demand activity as more reasonable. (Px. 1, pp. 50-51). At that time, Dr. Taylor placed "social restrictions" of frequent lifting up to 10 pounds, occasional bending, kneeling, crawling, squatting, reaching overhead, reaching above shoulders; frequent sitting, standing, walking; occasional climbing stairs, and then limited vibration, grasping, repetitive motion. (Px. 1, p. 52). Dr. Taylor's testified that as of February 8, 2011 Petitioner had a permanent restriction of duties in the "light demand level." (Px. 1, p. 53). Dr. Taylor testified the functional capacity evaluation was aligned with what he had given Petitioner in terms of permanent restrictions. (Px. 1, p. 54). Dr. Taylor did not note any signs of malingering or somatization as a significant component to Petitioner's presentation during his treatment. (Px. 1, pp. 54-55). At the time of his April 17, 2013 deposition, Dr. Taylor indicated no further surgical treatment was required and Petitioner's medical treatment moving forward would be pain management, although he would defer to Dr. Granberg with respect to any future pain management. (Px. 1, p. 57; 61). In Dr. Taylor's opinion, the medical care provided to Petitioner

has all been related to the original work injury. (Px. 1, p. 58). In his medical record of June 26, 2012, as well as those of November 2, 2012 and April 9, 2013, Dr. Taylor reiterated Petitioner could work within the light duty level. (Px. 3, pp. 162-64; Px. 2, p. 157). When Dr. Taylor saw Petitioner on November 2, 2012, he reported hip pain and groin pain increased with activity and improvement of some pain symptoms following sacroiliac joint injection performed by Dr. Granberg on June 19, 2012. (Px. 1, pp. 59, 61; Px. 5, pp. 314-17).

On December 24, 2012, an FCE was performed at Apex Physical Therapy which noted Petitioner could function at least at the light duty level. (Rx. 7, p. 119).

The next time Dr. Taylor saw Petitioner following November 2, 2012, was on July 16, 2014. (Px. 3; Px. 2, pp. 112-13). On April 9, 2013 Dr. Taylor again indicated Petitioner was capable of performing light duty demand level work. (Px. 2, p. 112; 154). When Dr. Taylor saw Petitioner on July 16, 2014, Petitioner reported his symptoms were significantly worse and reported being markedly limited by his pain symptoms. (Px. 2, p. 115). Petitioner reported his pain medications were providing him with little relief although he did obtain short term improvement after injections from Dr. Granberg. (Px. 2, p. 115). Dr. Taylor's examination findings were substantially similar to the physical findings noted at the November visit. Dr. Taylor testified this is consistent with SI joint pathology bilaterally. (Px. 2, p. 116). An EMG conducted by Dr. Phillips on July 16, 2014 was negative. (Px. 6). Dr. Taylor diagnosed Petitioner with end stage failed back syndrome due to both SI joint and L2-3 adjacent segment issues. (Px. 2, p. 117). Dr. Taylor testified he determined that Petitioner's back condition had deteriorated as of July 16, 2014, based on Petitioner's subjective complaints of pain and the relief Petitioner reported to him from the injections performed by Dr. Granberg. (Px. 1, p. 134). Dr. Taylor testified he denotes "social restrictions" separate from work restrictions. (Px. 1, p. 137). Dr. Taylor placed a work restriction that Petitioner was unemployable based on worsening symptoms. (Px. 2, p. 120). Dr. Taylor also placed sedentary social restrictions indicating lifting at a maximum of 5 pounds, limited bending, kneeling, crawling, squatting, working overhead or reaching above shoulder level. (Px. 2, p. 156). Dr. Taylor indicated he used the term "unemployable" because he felt his overall prognosis would be best if he was not in the work environment, but it does not delineate any physical restrictions. (Px. 1, p. 138). Socially, Dr. Taylor felt Petitioner could function at the sedentary level. (Px. 1, p. 138). Dr. Taylor further indicated the basis for the change in work status between April 2013 and July 2014 was primarily Petitioner's subjective report of symptoms and the description Petitioner gave of his capabilities and limitations. (Px. 2, pp. 139, 142). Dr. Taylor conceded he is not an expert in vocational rehabilitation. (Px. 1, p. 138).

With regard to further treatment, Dr. Taylor testified that as a last resort there is an operation which is extremely morbid and includes extending the fusion into the thoracic spine and past the SI joint into the sacrum, essentially locking the sacrum or pelvis to the thoracic spine. (Px. 2, p. 121). Dr. Taylor does not actually have any plans to perform this procedure on Petitioner. (Px. 2, p. 122). At this point, Dr. Taylor is not recommending Petitioner have the additional fusion procedure. (Px. 1, p. 128). Dr. Taylor has not seen Petitioner again since his July 16, 2014 visit. (Px. 2, p. 128).

Dr. R. Peter Mirkin saw Petitioner pursuant to §12. Dr. Mirkin initially saw Petitioner prior to the 19(b) hearing, on February 9, 2009 with addendums dated July 23, 2009 and April 26, 2010. (Rx. 4). Dr. Mirkin performed another §12 examination on October 24, 2014. He was deposed on November 21, 2014. (Rx. 2; Rx. 1). Dr. Mirkin testified at the time of the independent medical examination Petitioner reported he was doing better than before the surgery, was taking four Oxycodone per day but had complaints of pain in his back and numbness in his legs. (Rx. 1, pp. 8-9). Dr. Mirkin noted positive Waddell sign due to Petitioner's complaint of

pain when he only lightly touched his back. (Rx. 1, p. 10). Petitioner was noted to have 70% range of motion, forward flexion within 15 inches of touching his fingers to the floor, ability to walk on his heels and toes, squat and rise from the squat position, negative straight leg raise test and intact motor and sensory examination. (Rx. 1, p. 10). Dr. Mirkin reviewed x-rays taken in his office which showed an intact fusion with hardware in place from L3 to S1 with the disc above the fusion appearing normal. (Rx. 1, p. 11). Dr. Mirkin agreed with the functional capacity evaluation conducted in October 2012 indicating Petitioner could work at least in the light demand capacity. (Rx. 1, p. 11). In Dr. Mirkin's opinion, there was nothing to indicate progressive pathology of the spine. (Rx. 1, p. 12). Additionally, Dr. Mirkin saw no indication for further surgical procedure as there were no physical findings which supported further surgeries. (Rx. 1, pp. 12-13). Dr. Mirkin noted Petitioner had mild subjective findings and the only objective finding was that he had a prior fusion visible via hardware. (Rx. 1, p. 13). Dr. Mirkin was aware Petitioner was able to, and did work following surgery, and therefore, in his opinion, is employable in some capacity. (Rx. 1, p. 20). Further, in Dr. Mirkin's opinion, Petitioner does not need ongoing medications or a pain specialist. (Rx. 1, p. 37).

Petitioner testified he improved after the surgery and then started declining. In 2011 and early 2012, he began developing hip pain and pain radiating into his legs. In order to do yard work, he utilizes a riding lawn mower, but mostly has his wife and son perform such tasks. (T. 20; 41).

Petitioner completed high school and went to trade school for refrigeration, heating and cooling and also has a degree in construction management from Belleville Area College, now SWIC. Petitioner indicated he did a job search following his release to light duty in 2011 which was marked Petitioner's Ex. 15. He testified he looked for jobs in the construction field because that was all he knew, having worked at Alberternst Construction since the age of 18. Petitioner participated in vocational rehabilitation provided by Respondent. Respondent's counselor first met with Petitioner on March 15, 2012. He indicated there after he was rarely contacted by the vocational counselor and when they did connect it was at times favorable to her. He further testified the vocational counselor provided him a resume which he sent to a few people, only one of which responded, but did not offer him employment. He did not inquire at any residential construction jobs in St. Louis. Petitioner testified he followed up with every lead the vocational rehabilitation counselor sent. Petitioner testified he did not recall the vocational counselor discussing a vocational rehabilitation plan with him. Petitioner testified that in April 2012 he was on light duty, could not tolerate a lot of bending, and lifting anything caused pain or soreness for the next few days.

In 2012 Petitioner worked for a friend who was building a house. His duties included obtaining permits, helping with blueprints, organizing workers and going to the construction site to make sure they were doing the job. (Px. 4; Rx. 10). He did no manual labor. His job duties while working construction management for his friend also included opening and closing the job site as well as supervising what was done throughout the day. (T. 32-33). He could not check anything outside, walk on uneven ground or climb up a ladder to the attic. Petitioner testified he worked between 10 and 30 hours a week in construction management for his friend.

Petitioner also helped his brother-in-law with courier deliveries but he did not pursue that further after working there for approximately a year because he would only deliver smaller items and most of the items they delivered were heavier than 15 pounds, which was his lifting limitation at the time. He assisted with deliveries from May 2012 until late of 2013

Petitioner last actually looked for full time employment at the end of 2012 when he began receiving Social Security Disability. Petitioner testified he would be willing to try to work if there was a job available within his restrictions. Petitioner testified he could not stoop/squat. (T. 58). He testified anything with vibration takes its toll. He avoids bending at the waist, crouching or kneeling and walking over uneven surfaces. (T. 59; Px. 4). He has more functional capability earlier in the day. (Px. 4, p. 215).

Petitioner testified he received changes in his restrictions by Dr. Taylor in 2014. In July 2014 he was placed on a lifting restriction of 5 pounds and told to remain sedentary. Petitioner testified he is limited in terms of functional abilities. He can sit in a comfortable chair for maybe a half hour but then he needs to stand or lie in bed. He can't do much bending, stooping or picking things up. He does not do any yard work now, although he did in 2012. His wife does most of the mowing.

Respondent hired investigators to conduct surveillance of Petitioner. Surveillance was conducted for three days, on August 18, 2014, August 19, 2014 and August 20, 2014. On August 19, 2014, Petitioner was observed and recorded utilizing a leaf blower on the exterior of his home. This went on for approximately 3 to 4 minutes. (Rx, 12). The Arbitrator notes leaf blower did not appear heavy and Petitioner moved at a leisurely pace. That days surveillance showed nothing else of any significance. On August 20, 2014, Respondent's investigator obtained surveillance video of Petitioner from his home to a retail shopping plaza in St. Louis, MO. Petitioner's young niece had been in a minor motor vehicle accident and Petitioner traveled to the scene to assist his brother in law who was trying to repair the girl's vehicle enough that it could be driven home. Petitioner is seen putting gasoline in his truck and cleaning the windows. He is next seen handing tools to his brother-in-law and watching him attempt to make repairs to the vehicle's side-panels. Petitioner is seen using a small power screw driver and lightly pulling a few times on the side panel. He bends and kneels a few times to watch the other man work. The Arbitrator notes the tools do not appear to weigh more than his doctor's limitations. Petitioner is not seen lifting, pulling or pushing more than the few times. Respondent's investigator, Mr. Miller, acknowledged that the total amount of time Petitioner is seen using or handing small hand tools to the other man was about 3 minutes and that he actually used tools for approximately 2 minutes. Mr. Miller agreed that for the vast majority of the video on the 20th Petitioner is simply standing watching someone else work. The Arbitrator finds this to be an accurate description. Finally, the Arbitrator notes that in three days of surveillance Petitioner is seen actually engaged in about 4 to 6 minutes of activity, none of which appears to exceed the restrictions given by Dr. Taylor.

Petitioner retained vocational expert, Stephen Dolan. Mr. Dolan has a bachelor's degree, a Master's in American and English Literature, and took one graduate level coursework in Rehabilitation Counseling. (Px 4, p 196-7; 244). He is a certified rehabilitation counselor. (Px 4, p. 244). Mr. Dolan testified he met with Petitioner once on December 8, 2011 and then spoke to him one time after that on April 8, 2014. (Px. 4, p. 229). Petitioner had a number of transferrable job skills, excellent job history and qualities which Mr. Dolan indicated were beneficial to a prospective employer. (Px. 4, pp. 229-30). Mr. Dolan did not perform a labor market survey because, in his opinion, it was unnecessary due to what he termed "Petitioner's pain problem". (Px. 4, p. 230). Mr. Dolan documented Petitioner's educational history which was significant for graduation from high school, training at a technical school in the St. Louis area and Belleville Area College, where he obtained a certificate in construction management. (Px. 4, p. 206).

Mr. Dolan indicated Petitioner worked in 2011 as a construction consultant in building a new house which was quite large and also worked part time for a company called DZ Trucking as a courier. (Px. 4, p. 208).

Mr. Dolan testified Petitioner discontinued his work activities because they were exacerbating his pain problem. (Px. 4, pp. 208-09). Mr. Dolan reported Petitioner described limitations of being able to sit comfortably for only 10 to 15 minutes before having to change positions; standing for one hour, so long as he can move around; walking for 1.5 miles, although not on rough ground or on a slope; avoiding bending at the waist due to pain; and inability to crouch/squat or kneel. Furthermore, in terms of functional limitations, Petitioner can push and pull lightly, although not with force, and has to keep his low back out of any pushing or pulling. (Px. 1, pp. 213-14). Petitioner gave Mr. Dolan a list of companies he was familiar with from his work at Respondent which he had contacted about employment, but indicated no one was interested. (Px. 1, pp. 220-22). Mr. Dolan is of the opinion that Petitioner is not able to be gainfully employed in any regular and continuous marketplace due to his "pain problem" which requires Petitioner to take prescription pain medication. (Px. 4, pp. 225-26). Mr. Dolan agreed that Petitioner did a number of things as a construction manager which are within the light duty demand level. Those include reading blueprints, allocating manpower, budgeting, and the permitting process. (Px. 1, p. 228). However, Mr. Dolan testified his transferrable skills such as reading blueprints did not make him qualified for any job within the construction environment. (Px. 1, p. 231). Mr. Dolan determined Petitioner is not able to tolerate a regular work schedule, eight hours per day, five days per week due to his poorly controlled pain. (Px. 4, p. 254).

Respondent retained Brenda Latham to provide vocational rehabilitation services to Petitioner. Ms. Latham initially met with Petitioner on March 15, 2012. At that time, Petitioner was working as a construction manager on a new home being built by a friend. He spent approximately 20 hours weekly on the job site supervising and inspecting the work. He also assisted his brother in law as a contract delivery driver for which he usually got called once weekly. Ms. Latham reviewed Petitioner's list of employers he had contacted between April 2011 and January 2012. (Px. 15). Petitioner indicated most employers told him business was "too slow" or work would exceed his physical capabilities. Ms. Latham discussed possible jobs in construction management, "light" driving jobs, security/gate guard work, and sales of construction related equipment with Petitioner. Ms. Latham obtained job leads for Petitioner which she forwarded to him. On March 19, 2012, she provided two job leads for sales associates at Home Depot and transporter positions with Hertz Rent a Car. On March 26, 2012, she provided a lead for a part time insurance inspector. (Rx. 10, p. 150). On April 2, 2012, Petitioner responded to Ms. Latham indicating he had acted on four job leads. Ms. Latham identified additional leads for deck and fence services on April 3, 2012. On April 19, 2012, Ms. Latham provided additional job leads and developed a vocational rehabilitation plan. (Rx. 10, p. 151). Ms. Latham noted she was unable to complete a face to face meeting with Petitioner since the initial meeting on March 15, 2012 due to difficulties in reaching him by phone/email and scheduling conflicts. (Rx. 10, p. 151). On April 24, 2012, Ms. Latham met with Petitioner to review job placement services, at which time they reviewed the rehabilitation plan. (Rx. 10, p. 153). Petitioner indicated he was agreeable to the job goals but requested Ms. Latham to set up appointments with potential employers, as he did not want to "run around" to employers because he was not receiving any benefits. (Rx 10, p. 153-54). It was Ms. Latham's opinion that as of April 24, 2012, Petitioner refused to comply with the vocational rehabilitation plan which required him to contact at least 10 employers per week either via phone, mailing a resume, or by online application. (Rx 10, p. 153-54). On May 18, 2012, Ms. Latham wrote to Petitioner indicating that since he had not provided employer contact records indicating whether or not he was following up on job leads she wished to know whether he was still interested in job placement assistance and reminded him regular contact would be needed to coordinate vocational services. (Rx. 10, p. 156).

Respondent called Kelly Burger to testify at the arbitration hearing. Ms. Burger is a vocational case manager with a bachelor's degree in communications, a master's degree in vocational rehabilitation counseling, and has been a certified rehabilitation counselor since 2007. (T. 110). She reviewed Mr. Dolan's vocational rehabilitation evaluation and various medical records. (Rx. 8, 9). She also reviewed and relied upon the initial vocational evaluation from Brenda Latham, dated March 22, 2012, and her two progress reports dated April 19, 2012 and April 30, 2012. (T. 111). She did not meet with Petitioner. Ms. Burger testified Petitioner has an excellent work history which included supervisory and customer service skills which were transferrable to several light and sedentary positions. (T. 117; Rx. 8, p 134). She conducted a labor market survey which revealed 15 companies, all contacted between August 22, 2014 and August 26, 2014. (Rx. 9). Ten of these 15 companies indicated they were currently hiring or were hiring within the last month. Based on this totality of information, Ms. Burger concluded there was a potential labor market for Petitioner with positions within his work restrictions. She indicated Petitioner is employable in light or sedentary positions including but not limited to: supervisor/manager, supply clerk, inspector, dispatcher, customer service representative, telephone solicitor, chauffeur, front desk clerk, sale representative, hotel clerk, security/surveillance monitor, cashier, host, file clerk, parking lot attendant, bus monitor, office clerk, or light assembly/production. (Rx. 8, p 134). Although Ms. Burger was not aware of the July 16, 2014 restriction of Dr. Taylor to purely sedentary jobs, she testified this would not change her opinion because there are a multitude of factors beyond simply current medical status which she considers when determining employability. (T. 121-22; 128-29). Ms. Burger concluded Petitioner was not motivated to look for employment or participate in job search activities based on his conduct during the vocational rehabilitation efforts conducted in early 2012. (T. 114).

Petitioner was paid temporary total disability benefits by Respondent from the date of accident, June 2, 2008, through February 8, 2011. (Rx 6, p. 104-06).

CONCLUSIONS OF LAW

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

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?

The only issue in dispute regarding causal connection is related to future medical treatment. There was future surgery discussed by Dr. Taylor, however that surgery has not been recommended at this time and therefore is not ripe for consideration. Furthermore, Respondent did not place any other causal connection issues in dispute. Further, Respondent does not dispute the reasonableness or necessity of any treatment provided prior to the date of this hearing. As indicated above, since no treatment has been recommended as of this time, the question of the reasonableness and necessity of any potential prospective medical treatment is not ripe for consideration at this time.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner has met his burden of establishing that his current condition of ill-being is causally related to the accident. The respondent shall pay $201,839.34 for medical services, as set forth in Petitioner's exhibits 9 - 14 pursuant to Section 8(a) of the Act. Respondent is to hold Petitioner harmless for any claims for reimbursement from any health insurance provider and shall provide payment information to Petitioner relative to any credit due. Respondent is to pay unpaid balances with regard to said medical expenses directly to Petitioner. Respondent shall pay any unpaid,

related medical expenses according to the fee schedule and shall provide documentation with regard to said fee schedule payment calculations to Petitioner. The Arbitrator notes that the parties stipulated that Respondent is entitled to a credit of $401,639.89 for medical bills that have been paid. This amount however includes amounts paid for treatment both before and after the earlier 19(b) hearing.

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

The parties stipulated that Petitioner is entitled to temporary total disability benefits for the period of 6/3/08 through 2/8/11. Respondent terminated benefits following 2/8/11. Thereafter Respondent denies that Petitioner is entitled to any temporary benefits.

On 2/8/11 Dr. Taylor placed Petitioner at MMI. However, Petitioner was not released to his former employment and had significant restrictions that precluded a return to construction. Petitioner has proved that he was incapable of returning to his former employment. He remained disabled and his restrictions have gone from light duty to sedentary duty. Petitioner did conduct a job search following his release but was unable to locate work on his own. Respondent paid no benefits and offered no vocational rehabilitation services. There was no medical opinion contrary to that of Dr. Taylor at that time. Respondent did not have Petitioner re-examined by Dr. Mirkin until 10/24/14. Despite the fact that Petitioner was clearly incapable of returning to his former employment, Respondent did not provide vocational rehabilitation services until Ms. Latham met with Petitioner on 3/15/12. Petitioner initially cooperated with the limited vocational assistance he was provided by Respondent from 3/15/12 through 5/18/12. He eventually became difficult to contact and failed to comply fully with the vocational services provided. As of April 24, 2012, Petitioner was non-compliant as he refused to agree to contact at least ten employers per week via various means.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner is entitled to temporary total disability benefits of $746.59 per week for 140 2/7 weeks, commencing 6/3/08 through 2/8/11, as provided in Section 8(b) of the Act. The Arbitrator further finds Petitioner is entitled to maintenance benefits of $746.59 per week for 63 1/7 weeks, commencing 2/9/11 through 4/24/12, as provided in Section 8(a) of the Act.

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

Petitioner seeks a finding of odd lot permanent total disability. An employee is totally and permanently disabled when he is unable to make some contribution to industry sufficient to justify payment of wages to him. *A.M.T.C. of Illinois v. Industrial Comm'n,* 77 Ill.2d 482, 487 (1979). A claimant can establish entitlement to permanent total disability benefits under the Act in one of three ways: by a preponderance of the medical evidence; by showing a diligent but unsuccessful job search; or by demonstrating that, because of age, training, education, experience, and condition, there are no available jobs for a person in claimant's circumstance. *Federal Marine Terminals Inc. v. Illinois Workers' Compensation Comm'n,* 371 Ill.App.3d 1117, 1129 (2007). If claimant's disability is limited in nature so he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to establish the unavailability of employment to a person in his circumstance. A claimant can satisfy the burden of proving he falls into the odd-lot category in one of two ways; (1) by showing diligent but unsuccessful attempts to find work, or (2) by showing that because of his age, skills, training, and work history, he will not be regularly employed in a well-known branch of the labor market. *Alano v. Industrial Comm'n,* 282 Ill.App. 3d 531, 534 (1996). Once a

claimant meets his burden of proving he falls into the "odd lot" category, the burden then shifts to the employer to prove the claimant is employable in a stable labor market and that such market exists. *Waldorf Corp. v. Industrial Comm'n,* 303 Ill.App.3d 477, 484 (1999).

Petitioner has failed to meet his burden of proving he falls into the permanent total disability category through a preponderance of the medical evidence. Dr. Taylor placed light duty restrictions on Petitioner as of the date of MMI, February 8, 2011. Since that date, the only basis for a change in Petitioner's restrictions were subjective complaints to Dr. Taylor and to Dr. Granberg. There was little change in the physical examination findings, radiographic studies or any objective findings either by Dr. Taylor or by Dr. Granberg. Although Dr. Taylor testified Petitioner's work status was "unemployable," he admitted that Petitioner was capable of work at the light demand level, in line with the FCE performed October 24, 2012.

Dr. Mirkin testified he saw no physical findings to support restrictions beyond the light demand level and specifically that there had been no changes he last examined Petitioner. The Arbitrator finds Dr. Taylor's testimony regarding Petitioner being unemployable in terms of work status yet having sedentary "social" restrictions less persuasive than that of Dr. Mirkin in this regard. If Petitioner is able to function socially at a sedentary level, certainly he is capable of working at least at a sedentary level. Work at the light or sedentary level is in line with the recommendations and opinions of Respondent's vocational rehabilitation counselor as well as the FCE performed in October 2012.

Petitioner has failed to meet his burden of proving he falls into the odd-lot category because he has failed to show either diligent but unsuccessful attempts to find work, or, that because of his age, skills, training, and work history he is not be regularly employable in a stable labor market. Although Petitioner did engage in a limited search for employment, the Arbitrator finds that Petitioner did not engage in diligent attempts to find work. Petitioner indicated he had contacted some companies with which he was familiar from his work for Respondent, but he could provide no documentation of jobs for which he applied. Petitioner's testimony established that he did not even look for work after he started receiving Social Security Disability benefits in late 2012. Petitioner's lack of diligent job search effort is also well-documented in the reports of Respondent's vocational rehabilitation experts, Kelly Burger, and Brenda Latham. Ms. Burger testified Petitioner did not give full effort to the vocational rehabilitation services provided by the Respondent from March 15, 2012 through May 18, 2012 and Petitioner refused to follow the vocational rehabilitation plan of at least ten employer contacts per week.

Mr. Dolan's testimony established Petitioner's excellent transferrable skills, education, training and work history. Petitioner has training and experience in computer software applications including Word and Excel, as well as supervisory and customer service skills which are transferrable to several light or sedentary positions. He has a high school degree, an associate degree in HVAC, and a certificate in construction management. He has a solid work history throughout his adult life. All of these skills are transferrable to light or sedentary work. Although Mr. Dolan testified due to Petitioner's self-described functional limitations he cannot tolerate a full work day, there is no medical evidence to support this assertion. Mr. Dolan did not perform a labor market survey and did not appear to base his vocational opinions on the variety of favorable factors he identified, including transferrable skills and education, but rather relied more on what he described as a "pain problem." Respondent's vocational rehabilitation expert, Ms, Burger, opined that Petitioner is employable at the light to sedentary duty level. The Arbitrator further notes this is in line with the social restrictions placed by Dr. Taylor. The Arbitrator finds the opinions of Ms. Burger more persuasive.

Petitioner points to the inability of vocational services provided by Respondent to secure him employment as support for his position he should be found to fall in the odd-lot permanent total disability category. The Arbitrator finds that the inability to obtain employment during vocational services was due, at least in part, to Petitioner's lack of diligent compliance with the vocational services provided.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner has not met his burden of proving he falls into the odd-lot permanent total disability category.

While the possibility exists that Petitioner may have suffered some diminishment of earning capacity which may have entitled him to a wage differential award, the record in this case contains no evidence from which the amount of any such award could be determined.

Based on his medical treatment and his permanent restrictions, the Arbitrator finds Petitioner has proven he suffered a permanent partial disability of 50% loss of his body as a whole, for a total of 250 weeks.

Issue (M) Should penalties or fees be imposed upon Respondent?

On 2/8/11 Dr. Taylor had placed Petitioner at MMI. Petitioner was not released to his former employment. At no time was Petitioner released to return to full duty employment yet TTD stopped when Petitioner reached MMI. Respondent was well aware of significant restrictions that precluded a return to construction. Petitioner has proved that he was incapable of returning to his former employment. Petitioner conducted a job search following his release but was unable to locate work on his own. Respondent paid no benefits and offered no vocational rehabilitation services. There was no medical opinion contrary to that of Dr. Taylor at that time. Respondent did not have Petitioner re-examined by Dr. Mirkin until 10/24/14. Despite the fact that Petitioner was clearly incapable of returning to his former employment, Respondent did not provide vocational rehabilitation services until Ms. Latham met with Petitioner on 3/15/12. Still Respondent paid no maintenance benefits. The Arbitrator previously found Petitioner is entitled to maintenance benefits of $746.59 per week for 63 1/7 weeks, commencing 2/9/11 through 4/24/12, a total of $47,141.83. Respondent has offered no plausible excuse for its failure to offer vocational rehabilitation or pay maintenance benefits for over one year from the date of MMI to 3/15/12. Even after vocational rehabilitation was initiated Respondent persisted in its failure to pay maintenance benefits.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Respondent's refusal to pay maintenance benefits beginning 2/9/11 was vexatious and unreasonable. Respondent shall pay penalties of $23,570.92 pursuant to section 19(k) and attorney's fees of $9,428.37 pursuant to section 16.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ROGERS, DENNIS Case# **10WC016972**

Employee/Petitioner

PACE SOUTH DIVISION

Employer/Respondent

On 10/26/2015, 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:

0905 NEWMAN, BOYER & STATHAM
JAMES HAMMAN
18400 MAPLE CREEK DR SUITE 500
TINLEY PARK, IL 60477

1505 SLAVIN & SLAVIN
PATRICK SHIFLEY
20 S CLARK ST SUITE 510
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DENNIS ROGERS
Employee/Petitioner

v.

PACE SOUTH DIVISION
Employer/Respondent

Case # **10** WC **16972**

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 **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **07/15/14 and 11/05/14**. 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. [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 [x] Maintenance [ ] 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

FINDINGS

On **12/06/2009**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**50,569.65**; the average weekly wage was $**936.06**.

On the date of accident, Petitioner was **60** 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 $**55,507.77** for TTD (Per Ax.1), $**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 permanent partial disability benefits of $**561.64**/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.

Petitioner is entitled to temporary total disability benefits of $**624.04**/week for **86-4/7** weeks for the period of **12/06/09** through **08/03/11**.

Respondent shall pay Petitioner **$350.00** for unpaid medical charges incurred for the reasonable, necessary and related medical care rendered to Petitioner, pursuant to Section 8(a) and subject to Section 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.

Signature of Arbitrator

October 26, 2015
Date

OCT 2 6 2015

Dennis Rogers v. Pace South Division
10 WC 16972

Statement of Facts:

At the initial hearing of this case on July 15, 2014, the Petitioner testified that on the date of the accident, he worked for the Respondent as a bus driver. As such, his duties included driving the bus and assisting handicapped passengers. He would have to push, but not lift, the wheelchairs. The Petitioner also testified that he had back surgery twenty-five years prior to this accident, but noted that he had no problems with his back from that time up to the accident and added that he had perfect attendance with the Respondent for his first five years of employment. He worked for the Respondent for six and a half years. Prior to working at the Respondent, he was a line operator at Miles Laboratories for approximately 23.6 years

The Petitioner stated as a bus driver, he was required to drive in the right lane of traffic, which he had done on December 6, 2009. He described how the bus would hit bumps and potholes that caused pain in his back. On December 6, 2009, he experienced back pain after driving on such a surface. He reported the accident to Robert Bernett, the safety manager for the Respondent, who sent him to the company doctor. The Petitioner also testified that, prior to the accident date, he had been having a few problems with his back that got worse from bouncing in the bus seat and hitting potholes.

After the accident, the Respondent sent the Petitioner to Ingalls Occupational Health. The Petitioner subsequently treated with Dr. Martin Luken. (Px.1)

On July 15, 2010, Dr. Luken performed the following procedure:

1. Lumbar re-exploration with decompressive laminectomies: Partial L4, complete L5 and S1.

2. Bilateral L5-S1 complete facetectomies and foraminotomies.

3. Bilateral L5-S1 radical discectomies.

4. Bilateral L5-S1 carbon fiber cage interbody fusion (9 x 11 x 23 mm. Brantigan-type carbon fiber cages charged with local autologous bone and bone morphogenic protein, i.e., "BMP")

5. Bilateral L5 and S1 pedicle screw and rod fixation (AcroMed polyaxial screws and rods, Steffee insertion technique).

6. Bilateral posterolateral (transverse process and lateral mass) fusion with prepared local autologous bone and bone morphogenic protein. (Px.1)

Dr. Luken's post-operative diagnosis was L5-S1 lumbar disk herniation, many years status post discectomy, with lumbosacral instability syndrome. (Px.1)

The Petitioner later saw Dr. Paul DeFrino at Parkview Musculoskeletal Institute for an ankle injury that he sustained while in post-operative physical therapy for his back injury. The Petitioner testified that he also saw Dr. Holly Carobene for pain management. She gave him three injections in his back. The

last physician that he saw was Dr. Susan Jones, whom he saw in Longview, Texas. The Petitioner further testified that he moved to Texas in April 2011.

At the request of the Respondent, and pursuant to Section 12 of the Act, the Petitioner submitted to an examination by Dr. Gunnar Andersson. Dr. Andersson actually examined the Petitioner on two occasions: May 11, 2010 and October 31, 2013. Dr. Andersson authored two reports and two letters. (Rx.1, Rx.3, Rx.2) Dr. Andersson testified via deposition on November 20, 2013. (Rx.4)

The Petitioner testified with regard to the October 13, 2013 examination by Dr. Andersson. He described how he was required by the Respondent to fly from Longview, Texas, to Chicago for the examination. He noted that the connecting flight was four hours late. He said that when he arrived in Chicago, he learned that the hotel at which the Respondent arranged for him to stay had no room reserved for him. As a result, he had to sit in a chair all night long until he was picked up and taken to the examination the next morning.

The Petitioner also testified that, on his own behalf, Dr. Michael Treister examined him. The records indicate that Dr. Treister examined the Petitioner on two dates: April 23, 2011 and June 3, 2012. (Px.6, Dep. Ex. 2, Dep. Ex. 3) Dr. Triester testified via deposition on July 24, 2013. (Px.6)

The Petitioner testified that on August 3, 2011, he underwent a functional capacity evaluation ("FCE") at Good Shepherd Occupational Medicine in Longview, Texas. The FCE indicated that the Petitioner was at a sedentary work level.

The Petitioner testified that he had attempted to return to work for the Respondent on three occasions. On each of those occasions, he stayed for approximately an hour and a half while doing bus training. He added that he was unable to continue working on those occasions due to the bouncing of the driver's seat on the bus. He testified that the Respondent would not allow his return to work if he had any restrictions. He eventually learned that the Respondent had sent him a termination letter, which he never received.

The Petitioner presented a job search log of potential employers, at which he attempted to obtain positions of employment, but was unsuccessful. The Petitioner testified: "These are jobs that I was to get on the Internet and, you know, tried to apply for." (Px.8) He testified that he also contacted quite a few other potential employers that are not on this list, but added that none of them were hiring. He said that he was not provided with vocational services by the employer. The Petitioner also testified that he applied for and was awarded Social Security Disability benefits based on his inability to return to work.

The Petitioner testified that he does not have a college degree and, other than a CDL license, he does not have any specialized skills or training.

The Petitioner testified that when he applied for jobs, he tried to find anything just to get in the door.

The Petitioner further testified that, in driving from Longview, Texas to the hearing in Chicago, he and his twin brother stopped on several occasions because of the Petitioner's back condition. He added that he and his brother are identical twins who live together in Texas. The brothers have a special living

arrangement at the Petitioner's home in which his brother does all of the yard work and any heavy work that is required around the house.

The Petitioner testified that he is six feet tall and that in 2011, he weighed 255 pounds. He testified that his brother may be a couple of pounds lighter.

The Petitioner testified that he was aware of several surveillance videos that had been taken at the Respondent's request, which were used as a basis for terminating his workers' compensation benefits. He added that he was never provided with copies of those videos and was never allowed to see what was on those videos. He testified that his benefits were terminated in November of 2011 after those videos had been taken. He also testified that he told both Dr. Treister and Dr. Andersson that, although he had not seen the videos, he knew they were not of him, but rather were of his twin brother since his brother does all the yard work around the house. He also testified that he owned a gray Avalon. He further testified that he received a letter from the Respondent asking him if he wanted his 401k funds. At that point, he contacted the employer's representative, who told the Petitioner that he had been terminated for failing to report to work after a termination letter had been sent to him.

The Petitioner's twin brother, Prentiss Rogers, testified that he lived in Longview, Texas with his identical twin brother, the Petitioner, and that he, Prentiss, did all of the maintenance around the house. He further testified that he owned a gray Mazda 6 and a 2006 Honda Ridgeline. He testified that he did most of the driving from Texas to Chicago and that he weighs fifteen to twenty pounds less than his brother Dennis. He further testified that both he and Dennis shop. If he needs something, he goes to the store and gets it and if Dennis needs something, Dennis goes to the store and gets what he needs. Prentiss Rogers further testified that back in 2011, he himself was twenty-five to thirty pounds heavier.

An investigator, James Pate, testified next on behalf of the Respondent. He said that he did surveillance for a company named Archangel, which provided him with information regarding property owned by the Petitioner. He looked up vehicle information. His surveillance was done on July 9, 10 and 11, 2011. He testified that he thought a question had already arisen at that time concerning the Petitioner's having an identical twin brother and he added that he knew it was somewhat important to get a positive identification. He explained how he initially positively identified the Petitioner on July 9th. He further testified that, on the second day, July 10th, the Petitioner met with someone from Carrier air conditioning. The Petitioner then departed in a greenish Toyota Tacoma pickup truck, and went to a laundry facility, then Sam's Club, then the gas station, then went next door to Wal-Mart where he made some purchases. He put such purchases in his vehicle and returned to his residence. The investigator said that he had no videotape of the Petitioner on July 11, 2011. He was hired by Archangel Investigations to conduct the surveillance. When asked about the difference between the Petitioner and his identical twin brother, the investigator testified that other than Dennis Rogers specifically identifying himself, he was not sure that he had spent anytime seeing the Petitioner's twin brother.

At the initial hearing of this case, the Respondent's attorney also called Jonathan Scudella of Photo Fax, Inc., to testify as to a second surveillance of the Petitioner. He did not conduct this second surveillance; someone who worked for him conducted it. After explaining how surveillance is initiated and how corresponding reports are produced, the witness's further testimony was objected to by Petitioner's attorney. The Respondent's attorney sought to admit the related surveillance video into evidence as a business records exception to the Petitioner's hearsay objection. Her direct examination of the witness was her attempt to lay a foundation in that regard. The Arbitrator in effect sustained the

Petitioner's objection to the further testimony by the witness and found that the videos were not business records and that the investigator who took the videos was required to appear and testify to lay the proper foundation in order for the videos to be admitted into evidence. The Respondent's attorney suggested a continuance of the hearing in order to issue a subpoena to have the investigator appear and testify in the case. After a brief recess as to that issue, the Respondent's attorney requested a continuance to bring in the investigator to testify. The hearing was then continued.

On November 5, 2014, the hearing resumed with the testimony of Alex Miley. The witness testified that he was assigned through Photo Fax to conduct surveillance on the Petitioner. He said that he was given a description of the Petitioner. He could not recall if there was a picture. There was an age, and he assumed the claimant's identity based on the information he was given in the background set up. He testified that at the time of his surveillance, he did not know that the Petitioner had an identical twin brother. He testified that he called his case manager about a second unidentified male that raised his suspicions because he looked exactly like the Petitioner. He testified that the marks that distinguished the two were that their legs were a little bit different and the hairstyle was different.

The investigator was then asked questions concerning his surveillance and videotaping of the Petitioner, on August 9th, 10th and 11th of 2011. The witness testified that before he initially shot the video, he called his supervisor about the unidentified individual. He testified that he later performed further surveillance of the Petitioner on October 11th, 12th, and 18th of 2011. He said that he identified the Petitioner based on his previous visual of the individual and his previous surveillance video. He once again testified that, at that time, October 2011, he was not aware that the Petitioner had an identical twin brother. He further testified as to the individual he videotaped on October 18th, 2011, that, based on the description in the previous surveillance, he assumed it to be the Petitioner detailing a car. He added that he believed that all of the videotape he took was of the Petitioner.

The investigator testified that he did not know why he had not been at the initial hearing of this case and did not think that he had been subpoenaed. He then stated that he had asked to be compensated to appear and testify at that initial hearing, but they could not agree on an amount. He testified that he was only going to be paid seventy-five dollars for two days of work. He further testified that for appearing and testifying at the continued hearing of this case, he was paid two hundred dollars by Photo Fax and the Respondent's attorney was paying his expenses. The investigator added that he had not been subpoenaed to appear at the hearing.

The investigator testified that in reviewing the film, he noted that the two were very close in size and that it was "very tough" to distinguish between the Petitioner and his identical twin brother and, at the hearing, he picked the one he believed to be the Petitioner. He said that he did not know until the hearing, when he saw the Petitioner and his brother, that they were identical twins. He testified that he believed, for the most part, that he had filmed the Petitioner.

The investigator also testified that his initial day of surveillance had been complimentary, i.e.,free of charge. He believed that was done because the agent who conducted the previous surveillance did not do a good job. He further testified that one of the vehicles described in the information provided was registered to Prentiss Rogers. He did not question that. He went on to say that he noticed on that occasion that the vehicle registered to Prentiss Rogers was not at the home, so he went on an extensive search of the area for it. He explained that there was activity, since the vehicle was not at the residence and the Petitioner may have been driving it. He also stated that the description that he had for the

Petitioner was the same as that for the Petitioner's brother. He testified that he located the Petitioner at Good Shepherd Rehabilitation in Longview, Texas. The Petitioner was there for a medical appointment. He also testified that he saw the Petitioner at one time of the day wearing one outfit and later that day wearing a different outfit. He said that it could quite possibly have been two different people. He went on to state that, at certain points in time, it was questionable as to whether he was videotaping the Petitioner or his identical twin brother. As to a case of bottled water that the Petitioner was said to be carrying, the investigator testified that he did not know the weight of the object that the Petitioner was carrying. He also testified that, with regard to pictures of vehicles that were being washed, he thought that it had been the Petitioner at the time he took the video, but stated at the hearing that he could not tell if it was him. He said that the two vehicles being washed were a Honda Ridgeline and a Mazda Miata.

The Petitioner and his brother, Prentiss Rogers, were recalled to testify in rebuttal at the second hearing.

Prentiss, the Petitioner's identical twin brother, testified to the following: that he had subsequently viewed the video surveillance; that, at the time the videos were taken, he was living with his brother, the Petitioner; that he owned the Honda Ridgeline and the Mazda Miata and that he drove his brother's Toyota Tacoma a lot; that he was driving the Tacoma and was lifting cases of bottles at Wal-Mart when the video was taken; that he does all of the hard work around the house because of his brother's back surgery; that it was his green shirt that he had purchased at a church function that he was wearing in the video surveillance at Wal-Mart; and that it was he that was filmed taking out bags of garbage. He explained that it was he who was videotaped washing the vehicles that belonged to him. He washed them using a pressure washer that also belonged to him.

The Petitioner then testified that he agreed with all of the testimony of his brother, Prentiss Rogers, with regard to where he and the Petitioner appeared in the videos.

The records admitted into evidence indicate that the Petitioner was initially sent to Ingalls Occupational Health for treatment and subsequently went to see Dr. Martin Luken, who was his primary treating physician. He also saw Dr. Paul DeFrino at Parkview Musculoskeletal Institute for treatment of his ankle that was sprained during physical therapy. Finally, he saw Dr. Holly Carobene for pain management treatment. He testified that he also saw a Dr. Susan Jones in Longview, Texas, who checked his back and gave him restrictions. The Petitioner was seen and evaluated on two occasions by Dr. Gunnar Andersson on behalf of the Respondent and, on his behalf, by Dr. Michael Treister. He also went to Good Shepherd Occupational Medicine in Longview, Texas, for a functional capacity evaluation, which indicated that the Petitioner was at a sedentary work level.

The records include those of the Petitioner's treating physician, Dr. Martin Luken, which includes his initial record, dated February 12, 2010, and those of Dr. Holly Carobene, which includes her initial record of March 30, 2010. Those initial records both indicate that the Petitioner experienced pronounced mechanical back pain caused by his bus driving work for the Respondent. The records indicate that the Petitioner had lumbar surgery some twenty-five years prior to this most recent problem with his back and reflect that he had recovered from that previous surgery and did very well during the intervening years, up until this occurrence. The physicians both state that Petitioner's strenuous work and bouncing in his seat while driving precipitated his symptoms and disability. Dr. Carobene administered several epidural steroid injections to treat the Petitioner's back condition, but that course of treatment was unsuccessful. Dr. Luken performed a lumbar fusion on the Petitioner on July 15, 2010.

Subsequent to his surgery, the Petitioner underwent a course of physical therapy at the Ingalls Center for Outpatient Rehabilitation. During that physical therapy, the Petitioner sustained a sprain of his left ankle on January 6, 2011, and underwent treatment for that injury with Dr. Paul DeFrino at Parkview Musculoskeletal Institute. Dr. DeFrino prescribed an ankle brace and physical therapy for the ankle. He eventually returned the Petitioner to work full duty with respect to his ankle injury in March of 2011. At approximately the same time, Dr. Luken prescribed a functional capacity evaluation, after which he suggested he would release the Petitioner to work pursuant to the findings of that FCE. That FCE was performed at Good Shepherd Occupational Medicine in Longview, Texas, on August 3, 2011. The ultimate finding of the report was that the Petitioner would perform best at the sedentary physical demand level.

Dr. Michael Treister evaluated the Petitioner on the Petitioner's behalf and he testified as to the history given to him by the Petitioner. The Petitioner told him that he was injured while working for the Respondent on or about December 6, 2009. He told the doctor that the buses that he had been driving had bad suspension and bad air shock absorbers and the driver's seats could not be adjusted. Those conditions caused him to bounce around a lot when he would drive over uneven areas, potholes and bumps in the road. He sustained an injury to his lumbar spine while driving. The evaluating physician added that the bouncing was significant, since the Petitioner had a prior lumbar laminectomy twenty-five years prior to this accident. The parties agreed to put Dr. Treister's evaluation reports into evidence in this case. His opinions regarding the Petitioner's condition and its relatedness to his activities as a bus driver are outlined in detail in those reports. Dr. Treister testified as to those opinions. In doing so he stated that the Petitioner's current condition was related to the accident that he had while working for the Respondent on December 6, 2009, and, as a result, he did not think that the Petitioner could return to work as a bus driver.

Dr. Treister also testified that the Petitioner is capable of many activities of daily living and does not claim to be unable to wash a car, push a shopping cart, or carry groceries. He also testified that the Petitioner told him that he cannot sit comfortably for more than an hour and cannot exert the forces necessary to "wheelchair" a passenger on and off the bus, which is consistent with having had that surgery. (Tx of July 15, 2015 hearing, p. 22)

In his report dated April 23, 2011, Dr. Treister concludes: "Mr. Rogers is not likely to return to bus driving, and should be considered for vocational rehabilitation." (Px.6, Dep. Ex. 2)

The Petitioner never made a formal request for vocational rehabilitation services.

The Petitioner was also seen and evaluated on two occasions by Dr. Gunnar Andersson on behalf of the Respondent. Dr. Andersson testified that he thought that the Petitioner could have injured his back at the time of the alleged accident, that he was suffering from the consequences of the accident, that he had failed conservative treatment and that he was a candidate for surgery. He went on to state that he believed that the Petitioner had aggravated his degenerative disc disease in that accident, that he was capable of working, but not in his regular job, and that the Petitioner was a candidate for surgery. The Respondent's evaluating physician also testified that he prepared an addendum after his initial report and, after reviewing the records of Dr. Luken and Dr. Treister, the FCE and the surveillance videos, he thought that the Petitioner had recovered from the surgery performed to address his work-related injury and that he was capable of returning to work as a bus driver for the Respondent without any restrictions.

Conclusions of Law:

In support of his decision with regard to issue (F) "Is Petitioner's current condition of ill-being causally related to the injury?", the Arbitrator finds as follows:

The Petitioner testified that he worked for the Respondent as a bus driver and, as such, was required to traverse bumpy streets with potholes that caused him to bounce in his driver's seat, which he testified could not be adjusted. He was also required to assist handicapped passengers, which would include giving them a little push up the ramp. The Petitioner testified that on December 6, 2009, while driving his bus for the Respondent, he injured his back. The Respondent does not contest that an accident occurred that arose out of and in the course of the Petitioner's employment by the Respondent. They do contest that the Petitioner's condition of ill-being is causally related to that accident.

As evidence that the Petitioner had a very successful result from the fusion surgery performed by Dr. Luken, the Respondent went to great lengths to show through investigation and surveillance videos that the Petitioner was capable of returning to his previous position of employment as a bus driver and to regular work duties in general. The Arbitrator finds that the investigators' reports and testimony regarding the Petitioner's daily activities are not persuasive. First, the Arbitrator concludes that, based on the testimony of the Petitioner, his brother and the investigators, it is not clear which activities the Petitioner was engaged in. It is clear from the testimony of the investigators that they were not convinced of who was who in the videos at any given time. Second, the Arbitrator finds that the activities ascribed to the Petitioner do not indicate to any extent that the Petitioner was capable of working at anything other than the sedentary work level indicated by the FCE evaluator. The findings of the FCE evaluator were not substantially challenged by the testimony of the investigators or the surveillance videos admitted into evidence.

The Petitioner testified that, for the first five years of his employment with the Respondent, he had perfect attendance. He also testified, without contradiction, that up until the date of the accident on December 6, 2009, he had no significant problems with his back. He further testified that after the date of the accident, he was unable to operate the bus because of the frequent bouncing in the driver's seat and the resulting impact on his back. The Petitioner received ongoing medical care thereafter, at least up until the time his benefits were terminated.

Proof of the state of health of the employee prior to and down to the time of the injury, and the change immediately following the injury and continuing thereafter, is competent as tending to establish that the impaired condition was due to the injury. Kress Corp. v. Indus. Comm'n, 190 Ill. App. 3d 72, 82 (3rd Dist.1989).

The Petitioner was seen by Dr. Michael Treister for an evaluation on his behalf. He found that the Petitioner sustained a work-related accident on January 24, 2011, that the accident resulted in an aggravation of the Petitioner's pre-existing degenerative spinal condition, which caused bulging/ herniated discs at the L4/L5 and L5/S1 levels, and that the Petitioner required fusion surgery. Dr. Treister further opined that the Petitioner's present condition of ill-being is causally related to the accident of December 6, 2009.

Based on the foregoing, the Arbitrator finds that the Petitioner's current condition of ill-being of his low back is causally related to the accident that he sustained on December 6, 2009.

In support of his decision with regard 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 medical services?", the Arbitrator finds as follows:

The Arbitrator finds, based on the evidence introduced at the hearing, that the medical services provided to the Petitioner for treatment of his back injury were reasonable and necessary to cure or relieve the Petitioner from the effects of the work accident. The Arbitrator finds the Respondent liable for the medical bills related to the foregoing related treatment contained in Petitioner's Exhibits 1 and 7 ($350.00) and supported by the corresponding medical records. Payment of the bills by the Respondent is pursuant to Section 8(a) and subject to Section 8.2 of the Illinois Workers' Compensation Act.

In support of his decision with regard to issue (K) "What temporary benefits are in dispute? Maintenance", the Arbitrator finds as follows:

The Petitioner is seeking maintenance benefits from August 4, 2011 through the date of the first hearing, July 15, 2014. (Ax.1)

It is well established that when the Petitioner and the Respondent agree on a vocational rehabilitation program, the Petitioner is entitled to maintenance benefits during the course of such program as long as he fully complies with the program.

The Respondent has relied upon the opinion of Dr. Andersson that the Petitioner was capable of returning to work at his full-duty job of bus driver. The Respondent did not draw up a vocational rehabilitation plan, in accordance with Section 7110.10 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission.

Based on the FCE results and Dr. Treister's opinions, the Arbitrator has found that the Petitioner has not been able to return to work as a bus driver. The Arbitrator finds that as a result, the Petitioner has experienced a reduction in his earning power.

However, there is no evidence that vocational rehabilitation services would increase his earning capacity. More importantly, the Petitioner failed to conduct a diligent job search.

The Petitioner provided documentary evidence of a self-directed job search that he began on January 20, 2013 and ended on October 11, 2013 (37-6/7 weeks). (Px.8) As it relates to Px.8, the Petitioner testified as follows:

Q: Now, let me show you what I have marked as Petitioner's Exhibit No. 8. Mr. Roger (sic), if you can take a look at that, please, and explain for the Arbitrator what that is.

A: These are jobs that I was get (sic) on the Internet and, you know, tried to apply for.

Q: Do you know how many prospective employers you contacted in attempting to obtain a position of employment?

A: Probably about half of them, I never did get no, you know, none of them hiring, so.

Q: Okay, but those places that you have listed on there you contacted each one of those employers?

A: I didn't contact not all of them (sic), you know, 50 percent of them.

Q: Why are the other once (sic) listed on there. You said you didn't contact those people?

A: Yeah, I contact all of these on the paper.

Q: Will (sic), I'm not understanding, why did you say only half of them?

A: I'm sorry, I didn't understand your question.

Q: Okay, so you contacted each of those employers?

A: Yes.

Q: How did you contact them?

A: By the Internet.

Q: Okay, so did you have help with that?

A: Yes, see I don't know too much about the computer, so I had my daughter help me.

Q: So you contacted all those employers by computer?

A: Yes.

Q: And no result?

A: No response. (Tx of July 15, 2014, pp. 21-23)

The Arbitrator notes that he began this self-directed, Internet-based job search approximately 17-1/2 months after he reached MMI. The "HISTORY OF APPLIED JOBS" is a list of 65 prospective employers/jobs. (Px.8) He applied for jobs on this list from January 20, 2013 through October 11, 2013, which is a period of 37-6/7 weeks. If one were to divide 37-6/7 weeks by 65 prospective employers, one would find that the Petitioner searched for only 1.72 jobs per week. Moreover, many of the jobs that he sought appear to exceed his restrictions.

The Petitioner testified that he contacted quite a few other prospective employers, but to no avail. The Petitioner provided no detail and no documentary evidence to corroborate such claim. There is no documentary evidence that the Petitioner "pounded the pavement" in search of a job. There is no evidence that the Petitioner looked for "help wanted" signs or looked in the newspaper for job leads.

Contrary to the case at bar, in Roper Contracting v. Indus. Comm'n, 812 N.E.2d 65, 285 Ill. Dec. 476 (5th Dist. 2004), the evidence showed that the claimant's self-created vocational program did in fact increase his earning capacity as demonstrated by the positive results of the claimant's job search. The Appellate Court affirmed the Circuit Court's judgment that affirmed the Commission's maintenance award.

Based on the foregoing, the Arbitrator finds that the Petitioner is not entitled to maintenance benefits.

In support of his decision with regard to issue (L) "What is the nature and extent of the injury?", the Arbitrator finds as follows:

The Arbitrator finds that as a result of the December 6, 2009 accident, the Petitioner sustained a loss of use of his person as a whole to the extent of 40%, pursuant to Section 8(d)2 of the Act. In finding that the Petitioner has suffered a loss of trade, the Arbitrator relies on the results of the FCE and the opinions of Dr. Treister.

The Arbitrator finds the opinions of Dr. Treister to be more persuasive than those of Dr. Andersson.

The Petitioner asserts that he is entitled to permanent total disability benefits. For the reasons stated below, the Arbitrator finds that the Petitioner is not entitled to permanent total disability benefits.

No physician has declared the Petitioner to be medically permanently and totally disabled.

In Ceco Corp. v. Indus. Comm'n, 95 Ill.2d 278, 286 (1983), the court held that an employee is totally and permanently disabled when he is unable to make some contribution to the work force sufficient to justify the payment of wages. Where an employee's disability is of a limited nature such that he is not obviously unemployable, or where there is no medical evidence to support a claim of total disability, the employee has the burden of establishing that he falls into the "odd-lot" category – one who, though not altogether incapacitated from work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market. Id. at 287.

There are two ways an employee can ordinarily satisfy his burden of proving that he falls into the "odd-lot" category: (1) by showing a diligent but unsuccessful job search, or (2) by demonstrating that because of his age, training, education, experience, and condition, he is unable to engage in stable and continuous employment. Westin Hotel vs. Indus. Comm'n, 372 Ill. App. 3d 527, 544 (1st Dist. 2007).

If the employee is able to establish 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. vs. Indus. Comm'n, 84 Ill. 2d 538, 547 (1981).

The Arbitrator finds that the Petitioner did not meet his burden of establishing the unavailability of employment to a person in his circumstances by either of the two means prescribed. Clearly, the Petitioner did not conduct a diligent job search. The Petitioner submitted into evidence a document entitled "HISTORY OF JOBS APPLIED." This is a list of 65 prospective employers with whom the Petitioner allegedly applied via the Internet over 37-6/7 weeks (1.72 applications per week).

Moreover, many of the jobs that he sought appear to exceed his restrictions.

The Petitioner testified that he contacted quite a few other prospective employers, but to no avail. Yet, the Petitioner provided no detail and no documentary evidence to corroborate such claim. There is no evidence that the Petitioner "pounded the pavement" in search of a job. There is no evidence that the Petitioner looked for "help wanted" signs or looked in the newspaper for job leads.

No vocational expert has opined that a stable labor market does not exist for the Petitioner.

On August 3, 2011, the FCE evaluator determined that the Petitioner demonstrated functional tolerance at a sedentary, ten-pound lifting level with limited pushing/pulling, stooping/crouching, reaching forward/handling and prolonged neck positioning. However, the evaluator noted that the Petitioner can do more at times than he currently states or perceives. For example, the Petitioner rated his sitting tolerance at twenty-five to thirty minutes, yet he demonstrated a tolerance of twice that time in the FCE without obvious signs of discomfort and did not demonstrate any stiffness when he got up from sitting. (Px.5)

The FCE evaluator was unable to simulate a bouncing bus seat during the FCE.

The Petitioner testified that after he moved to Texas in 2011, he joined a health club. Upon registration at such health club, he informed the staff that he had undergone back surgery. The health club representative asked for his weight-lifting restrictions. The Petitioner then saw Dr. Susan Jones who gave him a restriction list. Such list included a restriction from lifting any more than thirty to thirty-five pounds. (Tx of July 15, 2014, pp. 32-33)

The Petitioner testified that he takes Aleve to relieve low back pain.

Finally, despite the fact that the Petitioner has not opted out of receiving an 8(d)1 award, there is no evidence of a wage that the Petitioner could expect to earn in a new job given his skill level, education, training, work restrictions and geographical area. The Petitioner objected to the admission of the Blind Labor Market Survey, and the Arbitrator rejected such exhibit. (Px.12)

In support of his decision with regard to issue (M) "Should penalties or fees be imposed upon Respondent?", the Arbitrator finds as follows:

The Petitioner may be entitled to penalties and fees when the conduct of the Respondent demonstrates unreasonable or vexatious delay in the payment of benefits for a covered claim under the Act. Generally, an employer's reasonable and good faith challenge to liability will not subject it to penalties under the Act. Residential Carpentry, Inc. v. Illinois Workers' Comp. Comm'n, 389 Ill. App. 3d 975, 983, 910 N.E.2d 109, 117 (3rd Dist. 2009).

The Arbitrator finds that penalties and fees are not warranted in this case. Although the Petitioner's examining physician opined that Dennis Rogers "should be considered for vocational rehabilitation," no vocational expert opined that such services would increase his earning capacity. More significant is the fact that although the Petitioner carried out an Internet-based job search, he began such search approximately 17-1/2 months after he reached MMI and he failed to conduct a *diligent*, self-directed job search at that time. (Emphasis added)

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

BARNES, DONALD Case# **12WC044202**

Employee/Petitioner

PARSEC

Employer/Respondent

On 10/26/2015, 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:

0274 HORWITZ HORWITZ & ASSOC
TYLER BERBERICH
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT T NEWMAN
105 W ADAMS ST SUITE 2200
CHICAGO, IL 60606

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) & 8(a)

Donald Barnes
Employee/Petitioner

v.

Parsec
Employer/Respondent

Case # **12** WC **44202**

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 **Ottawa** on **July 27, 2015** and in the city of **Kankakee** on **August 14, 2015**. 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. [x] 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, October 14, 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 as explained *infra*.

In the year preceding the injury, Petitioner earned $33,855.12; the average weekly wage was $651.07 as explained *infra*.

On the date of accident, Petitioner was 51 years of age, *married* with 1 dependent child.

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

Respondent shall be given a credit of $10,505.04 for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $10,505.04. *See* AX1.

Respondent is entitled to a credit of $0 under Section 8(j) of the Act. *See* AX1.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $434.05/week for 73 & 6/7th weeks, commencing November 15, 2012 through April 15, 2014, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from October 14, 2012 through July 27, 2015, and shall pay the remainder of the award, if any, in weekly payments.

As stipulated by the parties, Respondent shall receive credit of $10,505.04 for temporary total disability benefits paid. *See* AX1.

Medical Benefits

Respondent shall pay reasonable and necessary medical services as reflected in Petitioner's Exhibits that remain unpaid pursuant to the medical fee schedule as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit, if any, as agreed by the parties.

Prospective Medical Treatment

As explained in the Arbitration Decision Addendum, the Arbitrator awards the prospective medical care in the form of a right shoulder surgery right elbow injections as prescribed by Dr. Urbanowsky and a low back surgery as prescribed by Dr. Templin pursuant to Section 8(a) 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

October 21, 2015
Date

OCT 2 6 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*
19(b) & 8(a)

Donald Barnes
Employee/Petitioner

v.

Parsec
Employer/Respondent

Case # **12** WC **44202**

Consolidated cases: **N/A**

FINDINGS OF FACT

The issues in dispute include causal connection, Respondent's liability for certain unpaid medical bills, Petitioner's entitlement[1] to temporary total disability benefits from June 8, 2013 through April 15, 2014, and whether he is entitled to prospective medical care in the form of a low back surgery as ordered by Dr. Templin as well as a right shoulder surgery and right elbow injections as ordered by Dr. Urbanowsky. Arbitrator's Exhibit[2] ("AX") 1. The Arbitrator notes that while Petitioner underwent treatment for injuries to various body parts as addressed herein, the focus of the parties' disputes relate to the low back, right shoulder, and right elbow.

Employment & Background

Prior to his employment with Respondent, Petitioner testified that he worked as a truck driver for 18 years or so from 1995 to 2012. He performed mostly local, but also some interstate, driving. Petitioner testified that he engaged in a lot of equipment handling, which he does not do now as a truck driver. He explained that he was not placed on any work restrictions by any physician during this period of time.

Petitioner testified that he was employed by Respondent on October 14, 2012 as a ground man. He was also employed by a franchisee of Domino's Pizza as a delivery driver for about four (4) months. In this position, he would perform clean-up duties in the store as well as make deliveries. Petitioner testified that he worked about 20 hours per week earning minimum wage plus tips. He received paychecks from Domino's Pizza and was paid $4.95 per hour while making deliveries and $8.25 per hour while working in the store. *See* PX10. On cross examination, Petitioner testified that the checks he received were for work performed before his accident at work with the exception of the last week of pay.

Petitioner testified that he never had low back, right elbow, or left elbow injuries or treatment prior to October 14, 2012. He did have an injury to his right shoulder in the late 1980's and underwent surgery with medical treatment spanning three years or more. He testified that, however, that he had no other injuries to his right shoulder or work restrictions after completing this treatment. Also, in June of 2012, Petitioner did complain of pain to the left knee and underwent x-rays, but testified that he was not placed on any work restrictions and he continued to work full duty. Petitioner is right hand dominant. *See generally* PX2.

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[1] Respondent stipulated that Petitioner is entitled to temporary total disability benefits commencing on November 16, 2012 through June 7, 2013. AX1.

[2] 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. Exhibits attached to depositions will be further denominated with "(Dep. Exh. _)."

Petitioner testified that he interviewed with Respondent about two-to-three days before he was hired and worked for Respondent from October 1, 2012 until June 30, 2013. Petitioner testified that he informed Respondent on his application about his other job as well as during his interview with Mr. Barnes.

While working for Respondent, Petitioner testified that he worked eight hours per day, sometimes up to 12 hours per day, five days per week. He was paid $13.50 per hour up to eight hours and he received "time and a half" for time worked over eight hours. Petitioner explained that he was required to work that overtime and the supervisor would let him know at the end of his shift whether he was going to work overtime. Petitioner submitted into evidence copies of his paychecks from Respondent. PX9.

Petitioner testified that his job duties as a ground man required him to walk up and down tracks, bend, climb steel ladders, pick up "ICB" pins that keep container boxes from falling off of the train cars, and locking and unlocking pins weighing about 15 pounds each. He was on his feet about seven hours per day and testified that he would have to lock and unlock about 25-30 cars per hour. Petitioner explained that locking and unlocking pins entailed climbing on the carts, which sometimes required him to use his hard hat to make the pins come loose, and then replacing the pins. Petitioner reviewed Respondent's Exhibit 3, which is the ground man job description. RX3. He noted that it includes a high "pace rating," which requires "[h]ands or body in rapid, steady motion. Opportunities for temporary pauses are few and worker may occasionally fall behind." *Id.*

October 14, 2012

On October 14, 2012 Petitioner was working as a ground man. Petitioner testified that it was raining and cold outside and he was unlocking pins off railcars. When he was unlocking the last pin on the railcar he fell backwards off the ladder onto the concrete pavement. Petitioner testified that his back, shoulders, hands, and head with a hard hat on hit the pavement.

Medical Treatment

On October 14, 2012, Petitioner went to Provena St. Joseph Medical Center for emergency care. PX3 at 26-27. He reported that he fell off of a ladder at work onto concrete and fell on his back. *Id.* He reported pain in the low, mid, and upper back and in both elbows. *Id.* He underwent x-rays of both shoulders, both elbows, and the entire spine. PX3 at 19-25. The emergency room physician diagnosed a fall with multiple contusions, provided pain medication, and discharged Petitioner with instructions to follow up with his primary care physician. PX3 at 26-27.

Petitioner testified that he continued working for Respondent after October 14, 2012, but he was in a lot of pain and could not keep up with the pace of his work. He explained that he had difficulty engaging in the physical activities of the job and experienced a lot of pain in his shoulders, elbows and low back climbing up ladders.

Petitioner then went to the office of his primary care physician, Jitinder Singh, D.O. ("Dr. Singh") at CR Medical Group on October 22, 2012. PX1 at 2-3. He reported an injury at work on October 14, 2012 involving his back, elbows, back of neck, shoulders, and left knee. *Id.* Petitioner was diagnosed with lumbago, thoracolumbar back pain, and a neck sprain and strain. *Id.*

As ordered by Dr. Singh, Petitioner underwent a thoracic MRI on November 8, 2012. PX1 at 4-6. The interpreting radiologist noted no acute compression deformity or subluxation, some endplate changes at multiple levels that appeared chronic, a Schmorl's node within the inferior endplate of T11, some disc space narrowing,

and small disc bulges throughout the thoracic spine most notable at T3-T4 and T4-T5 along with flattening of the cord at those levels. *Id.* Petitioner also underwent a lumbar MRI. *Id.* The interpreting radiologist noted disc protrusions at L4-L5 and L5-S1 with some encroachment upon the descending S1 nerve roots. *Id.*

On November 15, 2012, Dr. Singh noted Petitioner's report that he had continued to work since his injury, but in severe pain. PX1 at 8-9. He also reported continued pain in the back, shoulders, knee and both elbows, and low back pain radiating down the left leg. *Id.* Dr. Singh noted tenderness to palpation along the midline lumbo-sacral spine and paraspinal musculature, limited range of motion secondary to pain, lumbar paraspinals spasms, and a positive straight leg raise test on the left. *Id.* He diagnosed a disc bulge at L4-L5, nerve root compression, and left knee pain. *Id.* Dr. Singh ordered narcotic pain medications, and referred Petitioner to Dr. Henry Fuentes for a surgical evaluation. *Id.* Petitioner continued to see Dr. Singh while receiving medical treatment from orthopedic specialists through December 18, 2014. PX1.

On December 6, 2012, Petitioner saw Henry Fuentes, M.D. ("Dr. Fuentes") at Parkview Orthopedic Group. PX4 at 2-4; RX6 at 9. He reported pain over the posterior aspect of both elbows and pain over the medial aspect of the left knee. *Id.* After an examination, Dr. Fuentes diagnosed Petitioner with bilateral elbow contusions with lateral epicondylitis of the right elbow and medial epicondylitis of the left elbow status post his injury at work. *Id.* Dr. Fuentes also ordered a left knee MRI to rule of a medial meniscal tear as well as physical therapy for both elbows and the left knee. *Id.*

On December 7, 2012, Petitioner saw Cary Templin, M.D. ("Dr. Templin") at Hinsdale Orthopaedics for the first time. PX2 at 5-8. He reported an injury at work on October 14, 2012 when he fell off a ladder on a rail car landing flat on his buttock, loading on his back. *Id.* Petitioner also reported continued pain at a level of 9/10 extending across the lower back in the lumbosacral region with some pain extending into the posterior thighs and up to the thoracolumbar junction. *Id.* In addition, Petitioner reported some shoulder and elbow pain. *Id.*

Dr. Templin examined Petitioner and reviewed his MRIs noting that lumbar MRI showed very mild disc protrusions at L4-5 and L5-S1 with degenerative changes and no nerve root compression, although there was some abutment of the nerve traversing near the L5-S1 level. *Id.* With regard to the thoracic spine, Dr. Templin noted that the MRI showed mild flattening of the cord at T3-4 and T4-5 due to small disk bulges and kyphosis, but no disc herniations or cord impingement. *Id.* Dr. Templin diagnosed status post work injury with an axial load to the spine and continued lower back pain. *Id.* He recommended physical therapy followed by a possible pain management referral, and imposed work restrictions. *Id.* Petitioner testified that he provided these restrictions to Respondent's nurse via facsimile and that he spoke with her by phone when he first received the off work note and restrictions. Petitioner testified that he was not offered light duty by Respondent.

On December 20, 2012, Dr. Fuentes noted his review of Petitioner's left knee MRI, which showed Grade II-III patellofemoral chondromalacia most pronounced along the medial facet, a small joint effusion, and medial and lateral tibial-femoral joint space narrowing with osteophyte formation and Grade III chondromalacia. PX4 at 12-13; RX6 at 8. Dr. Fuentes administered a cortisone injection into the left knee, recommended continued physical therapy for the knee and elbows, and kept Petitioner restricted to light duty work. *Id.*

First Section 12 Examination – Dr. Andersson

On January 8, 2013, Petitioner saw Gunnar Andersson, M.D. ("Dr. Andersson") at Respondent's request. RX2 (Dep. Exh. 2). Dr. Andersson's report reflects that he took a history from Petitioner, examined him, reviewed

various treating medical records, and rendered opinions regarding his physical condition. *Id.* At the time of this evaluation, Petitioner reported pain in the back, neck, elbows and shoulders. *Id.*

Dr. Andersson diagnosed Petitioner with contusions to the neck and back as related to the accident at work. *Id.* He recommended an additional four weeks of physical therapy at which point Petitioner would reach maximum medical improvement. *Id.* Dr. Andersson noted that Petitioner's thoracic MRI was essentially normal and that the lumbar MRI showed mild degenerative changes "felt to be normal by Dr. Templin." *Id.* Dr. Andersson opined that Petitioner's lumbar condition was degenerative and neither caused nor aggravated by the accident at work on October 14, 2012. *Id.* He also opined that there were no objective findings precluding Petitioner from working full time and that he was not in need of any narcotic pain medication for his neck or back conditions. *Id.*

Second Section 12 Examination – Dr. Karlsson

On January 16, 2013, Petitioner submitted to a medical evaluation with Troy Karlsson, M.D. ("Dr. Karlsson") at Respondent's request. RX1 (Group Dep. Exh. 3). Dr. Karlsson's report reflects that he took a history from Petitioner, examined him, reviewed various treating medical records, and rendered opinions regarding his physical condition in the bilateral shoulders, bilateral elbows, and left knee. *Id.*

Specifically, Dr. Karlsson noted Petitioner's report that he fell at work on October 14, 2012 from a railcar landing on his back. *Id.* Petitioner reported pain in the right shoulder when trying to lift the arm and pain in the anterior and lateral aspects of the shoulder. *Id.* He also reported right elbow pain over the outer aspect of the elbow as well as pain with lifting and pain that sometimes awakened him at night. *Id.* With regard to the left shoulder, Petitioner reported pain if he moved it a lot. *Id.* With regard to the left elbow, Petitioner reported sometimes feeling as though a shockwave was going down his arm toward the hand which he localized posteriomedially. *Id.* With regard to the left knee, Petitioner reported pain primarily over the front of the knee, which worsened with ladders, driving or walking. *Id.*

After an examination, Dr. Karlsson diagnosed Petitioner with chondromalacia and osteoarthritis of the left knee unrelated to work, lateral epicondylitis of the left elbow, and rotator cuff syndrome of the right shoulder. *Id.* Dr. Karlsson found no objective abnormalities in the left upper extremity. *Id.*

Dr. Karlsson opined that Petitioner's left knee condition was completely unrelated to the accident at work. *Id.* He also opined that Petitioner's right elbow and right shoulder conditions as well as the need for further medical treatment were causally related to the accident at work. *Id.* Dr. Karlsson restricted Petitioner from overhead work with the right arm, indicated that he could perform the reaching activities of his job with his left arm, and indicated that narcotic pain medications were not appropriate. *Id.*

Continued Medical Treatment

On January 17, 2013, Petitioner saw Dr. Fuentes reported only two days of relief with the cortisone injection into the left knee and continued bilateral elbow pain, worse on the left, with a shooting pain down the left forearm to the hand. PX4 at 14-17; RX6 at 7. Dr. Fuentes ordered a left upper extremity EMG to rule out left ulnar neuropathy. *Id.*

On January 28, 2013, Petitioner underwent the recommended right shoulder MRI. PX2 at 19-20; RX5. The interpreting radiologist noted mild supraspinatus tendinopathy without evidence for full thickness rotator cuff

tear, moderate arthrosis of the AC joint with associate edema, inflammatory changes and narrowing of the supraspinatus outlet (recommending clinical correlation to rule out impingement syndrome), anchoring or the right biceps relating to previous surgery, and no significant joint effusion. *Id.*

On February 1, 2013, Petitioner returned to Dr. Templin reporting continued pain in the back, neck, arms, and legs with most of the pain localized to the lower back. PX2 at 21-23. He also reported completing physical therapy, which provided no benefit and continued pain at a level of 8/10. *Id.* Dr. Templin noted that, given Petitioner's widespread pain, a referral to a pain management physician was appropriate. *Id.* Petitioner remained on work restrictions. *Id.*

On February 7, 2013, Petitioner saw Dr. Fuentes reporting "right shoulder pain secondary to the fall in October of 2012, this while he was at work." PX4 at 19-20; RX6 at 5. Petitioner had pain on shoulder abduction beyond 90 degrees and positive Kennedy's and Neer's impingement signs. *Id.* Dr. Fuentes diagnosed right shoulder impingement, degenerative joint disease of the left knee with patellofemoral pain, and status post contusions of both elbows, rule out left-sided ulnar neuropathy. *Id.* He ordered continued physical therapy to include the right shoulder and administered a cortisone injection into the right shoulder. *Id.*

Petitioner testified that he then saw Samir Sharma, M.D. ("Dr. Sharma") as referred by Dr. Templin. The medical records reflect an initial visit with Dr. Sharma on February 11, 2013. PX5 at 6-16. Petitioner reported neck and back pain after his fall at work. *Id.* Dr. Sharma diagnosed Petitioner with neck pain, cervical myositis, low back pain, a lumbar strain, and lumbosacral radiculitis. *Id.* He recommended a transforaminal epidural steroid injection for the low back pain and radiculopathy. *Id.*

Petitioner returned to Dr. Sharma on February 18, 2013 reporting neck and back pain. PX2 at 24-26; PX5 at 17-20. Dr. Sharma recommended and administered a lumbar epidural steroid injection. *Id.* Petitioner then returned to Dr. Templin on March 8, 2013 at which time he reported continued pain mostly in the lower back extending into the right leg as well as somewhat into the left leg. PX2 at 27-28. Dr. Templin kept Petitioner on light duty work restrictions while undergoing treatment with Dr. Sharma. *Id.*

On March 7, 2013, Petitioner returned to Dr. Fuentes reporting left knee pain, right shoulder pain and pain in both shoulders. PX4 at 21-24. Dr. Fuentes continued to recommend a left upper extremity EMG. *Id.*

On March 20, 2013, Petitioner saw Dr. Sharma reporting continued neck and lower back pain. PX2 at 35-37; PX5 at 24-27. Dr. Sharma recommended and administered a lumbar intra-articular facet joint injection of the L4-L5 and L5-S1 joints. *Id.* Petitioner returned to Dr. Templin on April 16, 2013. PX2 at 38-45; PX5 at 31. Dr. Templin noted that Petitioner had failed conservative treatment in the form of physical therapy and injections. *Id.* He recommended rehabilitation through additional physical therapy and work conditioning, which he had yet been unable to do given his pain, or a discogram to determine whether Petitioner was a surgical candidate. *Id.* Dr. Templin kept Petitioner on light duty work restrictions. *Id.*

As of April 4, 2013, Dr. Fuentes believed that Petitioner may have left cubital tunnel syndrome, and continued to recommend a left upper extremity EMG. PX4 at 25-26; RX6 at 3. On May 1, 2013, Petitioner underwent the EMG/NCV of the left arm after falling at work onto his left elbow with ongoing radiating pain, numbness and tingling. PX2 at 46-47. The results were normal. *Id.*

Third Section 12 Examination – Dr. Karlsson

On May 1, 2013, Petitioner underwent a second medical evaluation at Respondent's request with Dr. Karlsson. RX1 (Group Dep. Exh. 3). Dr. Karlsson's report reflects that he took additional history from Petitioner, examined him, reviewed various interim treating medical records, and rendered opinions regarding his physical condition in the right shoulder and right elbow. *Id.*

Dr. Karlsson diagnosed Petitioner with right rotator cuff tendinitis and AC arthropathy as well as lateral epicondylitis of the right elbow. *Id.* He opined that Petitioner's rotator cuff tendinitis could be related to his injury at work, but that the AC arthritis was solely a pre-existing and degenerative condition. *Id.* Dr. Karlsson indicated that Petitioner was a candidate for further treatment to the right shoulder including an injection, if needed, followed by surgery and post-operative physical therapy as well as an injection to the right elbow. *Id.* He indicated that "[b]oth the injection of the elbow and the surgery or injection to the shoulder, if it has not already been given, would be related to the October 14, 2012 injury." *Id.* Dr. Karlsson maintained that Petitioner could perform his full duty work and indicated that narcotic pain medications were not necessary. *Id.*

Continued Medical Treatment

Petitioner returned to Dr. Fuentes on May 2, 2013 and was released back to full duty work. PX4 at 27-28. Also on May 2, 2013, Petitioner saw Dr. Sharma who refilled his prescription pain medications and instructed him to follow up after his discogram. PX5 at 32-34.

On June 7, 2013, Petitioner underwent the lumbar discogram, which was performed by Dr. Sharma as ordered by Dr. Templin. PX2 at 49-51; PX5 at 35-38, 50-52, 55-57. Dr. Sharma noted concordant pain at L4-L5 and L5-S1. *Id.* Petitioner's post-discogram CT scan showed a small focal contained central protrusion at L4-L5 and a diffuse contained protrusion at L5-S1. PX2 at 48.

Petitioner returned to Dr. Fuentes on June 27, 2013 and was again discharged from care and released to full duty work. PX4 at 29; RX6 at 1.

On July 19, 2013, Petitioner returned to Dr. Templin. PX2 at 52-61. Noting the results of the discogram, Dr. Templin recommended a two-level fusion surgery. *Id.* However, Petitioner declined surgery at that point indicating that he wished to return to work. *Id.* On cross examination, Petitioner testified that he did not recall telling Dr. Templin that he did not want surgery. The medical records reflect that Dr. Templin ordered a functional capacity evaluation and follow up visit after a return to work to determine how to proceed. *Id.*

Petitioner underwent the recommended functional capacity evaluation on August 8, 2013. PX2 at 64-70; PX8; RX7. The evaluating physical therapist found the test results to be valid and representative of Petitioner's ability to work at the light-to-medium demand level. *Id.* Petitioner's job duties as a truck driver/groundsman were considered to be at the medium physical demand level. *Id.*

On August 26, 2013, Petitioner saw Leah Urbanowsky, M.D. ("Dr. Urbanowsky") at Hinsdale Orthopaedics as referred by her colleague, Dr. Templin. PX2 at 74-78. Petitioner reported bilateral shoulder and elbow pain when raising his arms and lifting as well as other symptoms radiating into the fingers. *Id.* However, Petitioner's complaints were worst in the right shoulder. *Id.* On examination, Petitioner had tenderness in the right elbow and decreased flexion and extension in the right shoulder as well as positive impingement and Yergason's tests. *Id.* Dr. Urbanowsky diagnosed right shoulder impingement syndrome, secondary bursitis, and

right elbow lateral epicondylitis. *Id.* She administered a right shoulder subacromial bursa injection, ordered physical therapy, prescribed medications, fitted Petitioner for a right wrist cock up splint, and placed Petitioner off work. *Id.*

On September 13, 2013, Petitioner returned to Dr. Templin. PX2 at 85-88. Dr. Templin cleared Petitioner to work within the restrictions outlined by the functional capacity evaluation and noted that he had as of that visit continued to decline surgery. *Id.* He was to return as needed. *Id.*

Petitioner continued in physical therapy for the right shoulder and right elbow and returned to Dr. Urbanowsky on September 30, 2013. PX2 at 95-100. He reported pain in the right posterior shoulder, lateral elbow, and ulnar wrist as well as pain in the left elbow. *Id.* After an examination, Dr. Urbanowsky diagnosed Petitioner with right lateral epicondylitis, bilateral carpal tunnel syndrome, neck pain, and right shoulder pain unresponsive to therapy and injections. *Id.* She discontinued physical therapy, as it was not helpful, maintained the work restrictions imposed by Dr. Templin, and ordered a bilateral EMG. *Id.*

Petitioner continued to see Dr. Sharma for follow up and medication refills due to his low back pain through October 14, 2013. PX5 at 64-76. On this date, Dr. Sharma ordered an updated lumbar MRI. PX5 at 74-76.

On November 22, 2013, Dr. Urbanowsky noted that Petitioner's bilateral EMG was negative. PX2 at 101-105. She maintained Petitioner's diagnoses noting that the bilateral carpal tunnel syndrome was a clinical diagnosis, and administered a second subacromial bursa injection for diagnostic purposes. *Id.* Dr. Urbanowsky ordered a right elbow MRI and recommended a right shoulder arthroscopy with inspection of the bicep tendon and rotator cuff, acromioplasty, distal clavicle resection, and debridement as necessary. *Id.*

On December 5, 2013, Petitioner underwent the right elbow MRI. PX2 at 111-112. He reported that he fell and injured his right elbow. *Id.* The interpreting radiologist noted to show elbow joint effusion, common extensor tendinosis that was likely post-traumatic, and no other abnormality. *Id.*

Narrative Report – Dr. Templin

On December 6, 2013, Dr. Templin authored a narrative report regarding his treatment of Petitioner's neck, mid back, and low back as a result of his accident at work. RX19 (Dep. Exh. 2). Dr. Templin noted his review of Petitioner's medical records from other treating physicians. *Id.* He diagnosed Petitioner with lumbar degenerative disease, discogenic low back pain, cervical and thoracic strains, and cervical and thoracic spondylosis. *Id.* Dr. Templin also rendered various opinions about Petitioner's condition of ill-being and relation, if any, to his accident at work. *Id.*

Specifically, Dr. Templin opined that Petitioner's injury at work on October 14, 2012, more likely than not, caused Petitioner's current condition of ill-being. RX19 (Dep. Exh. 2). He explained that Petitioner had a pre-existing condition in the spine, which was "aggravated by the axial load imparted to his spine when falling approximately 5 feet and landing on his buttocks loading the spine." *Id.* Dr. Templin noted that Petitioner had continued pain since his accident and that it was probable that his injury at work contributed to his current condition. *Id.* With regard to future medical treatment, Dr. Templin noted that Petitioner had declined the surgery he recommended. *Id.* Thus, he recommended pain management treatment as well as a home exercise program. *Id.* Dr. Templin also indicated that Petitioner should be restricted to light-to-medium physical demand level work consistent with the results of the functional capacity evaluation. *Id.*

Continued Medical Treatment

On December 23, 2013, Dr. Urbanowsky noted Petitioner's report of numbness down his entire right arm, pain in the elbow, and anterior and posterior shoulder pain that worsened with movement. PX2 at 113-119. She kept Petitioner off work and continued to recommend right shoulder surgery. *Id.*

Fourth Section 12 Examination – Dr. Karlsson

On January 16, 2014, Petitioner saw Dr. Karlsson a third time at Respondent's request. RX1 (Group Dep. Exh. 3). Dr. Karlsson's report reflects that he took additional history from Petitioner, examined him, reviewed various interim treating medical records, and rendered opinions regarding his physical condition in the right shoulder and right elbow. *Id.*

Dr. Karlsson diagnosed Petitioner with right shoulder rotator cuff tendinitis and lateral epicondylitis of the right elbow, which were related to his injury at work on October 14, 2012. *Id.* However, Dr. Karlsson opined that Petitioner did not need surgery to the right shoulder at this time. *Id.* In so concluding, he noted that Petitioner had injections to the right shoulder with absolutely no relief and no evidence of a tear in the shoulder. *Id.* Thus, Dr. Karlsson recommended a home exercise program only. *Id.* With regard to the right elbow, Dr. Karlsson also found that no further medical treatment was necessary. *Id.* In reaching this conclusion, he noted that Petitioner had "complaints of tenderness diffusely around the elbow, though greater on the lateral epicondyle. Yet, he has no pain with resisted wrist extension. I do not feel he is a candidate for further treatment of the elbow either." *Id.*

Dr. Karlsson maintained that Petitioner could work his full duty job as outlined in the job description of July 8, 2008, no narcotic medications were necessary, and he concluded that Petitioner had reached maximum medical improvement with regard to his injury at work. *Id.*

Continued Medical Treatment

Petitioner returned to Dr. Urbanowsky on February 10, 2014. PX2 at 121-126. She continued to recommend right shoulder surgery and also recommended a right elbow lateral epicondylar PRP injection. *Id.* Petitioner remained off work per Dr. Urbanowsky's orders. *Id.*

On March 21, 2014, Petitioner underwent the recommended right elbow injection with Dr. Urbanowsky and remained on work restrictions. PX2 at 133-136.

On March 31, 2014, Petitioner returned to see Dr. Templin about his ongoing low back pain. PX2 at 137-138. Dr. Templin noted that Petitioner wished to proceed with surgery. *Id.*

Fifth Section 12 Examination & AMA Guides Rating – Dr. Andersson

On April 1, 2014, Petitioner returned to Dr. Andersson a second time at Respondent's request. RX2 (Dep. Exh. 3). Dr. Andersson's report reflects that he took additional history from Petitioner, examined him, reviewed various interim treating medical records, and rendered opinions regarding his physical condition. *Id.*

Dr. Andersson stated that it was "difficult to understand how a patient from a fall can develop degenerative changes requiring surgery without having any evidence of a herniation or vertebral fracture. Clearly the degenerative changes have no relationship to the alleged accident. I also think that the surgical indication is in question particularly since this patient underwent a functional capacity evaluation which would allow him to return to his previous job without restrictions. ... I think this patient has reach maximum medical improvement and that he is capable of performing his job as a ground man without any restrictions. I do not believe that the patient requires surgery as a result of the occupational injury." *Id.*

With regard to Petitioner's cervical condition, Dr. Andersson maintained that Petitioner sustained a contusion and possible sprain with only occasional complaints of neck pain and no objective findings. *Id.* Dr. Andersson also determined that Petitioner had an impairment of class 1, grade B with impairment of 1% of the whole person. *Id.*

Continued Medical Treatment

On May 7, 2014, Petitioner returned to Dr. Urbanowsky and saw her certified physician's assistant, Matthew Schneider, PA-C. PX2 at 139-142. Mr. Schneider maintained Petitioner's diagnoses as assessed by Dr. Urbanowsky and recommended a series of three injections for the right lateral epicondylitis. *Id.* Petitioner remained on light duty work restrictions. *Id.*

Deposition Testimony – Dr. Templin

Petitioner called Dr. Templin as a witness and he provided testimony at an evidence deposition on May 23, 2014. RX19. Dr. Templin testified that he is a board certified orthopedic surgeon. RX19 at 4-5; RX19 (Dep. Exh. 1). Dr. Templin testified consistent with the information contained in his narrative report. *See generally* RX19. He also explained his opinions. *Id.*

Dr. Templin maintained that Petitioner's condition in the spine was causally related to his accident at work because he sustained an axial load injury to the spine, which disrupted the disc and aggravated his pain. RX19 at 14-15. He explained that an axial load injury occurs when a disc is compressed. RX19 at 15. A degenerative disc does not have the ability to manage such stress and the annulus of the disc can tear and aggravate pain. *Id.* Dr. Templin testified that none of his opinions regarding Petitioner's diagnoses or causal connection have changed since December 6, 2013. RX19 at 18-19. He understood that Petitioner had no treatment to the low back and was asymptomatic prior to his accident at work, but acknowledged that he did not have any treating medical records related to the back other than those of Dr. Fuentes related to Petitioner's extremities. RX19 at 32-33.

On cross examination, Dr. Templin testified that regarding certain abilities noted by the evaluating physical therapist at the time of Petitioner's functional capacity evaluation on August 8, 2013. RX19 at 21-22. Dr. Templin acknowledged that the physical therapist did not have Petitioner's job description as a ground man available to him at the time of the functional capacity evaluation. *Id.* He also acknowledged that the functional capacity evaluation showed that Petitioner was able to occasionally lift 41.2 pounds from chair to floor, 39 pounds from desk to chair, and 28 pounds to the shoulders. *Id.* Dr. Templin agreed that, if all that Petitioner's job for Respondent required him to carry was inner box connector locks weighing 14 pounds up to 52 feet, then Petitioner could do this with pain if he decided to do so. RX19 at 22-23.

On cross examination Dr. Templin also testified that that at the time he initially examined Petitioner, he noted an intact neurological examination and negative straight leg raise test. RX19 at 23-24. Dr. Templin acknowledged that Petitioner was 51 years old at the time of his initial treatment and the MRI findings of mild disc protrusion at L4-L5 and L5-S1 could be consistent with degeneration due to aging. RX19 at 25. He explained that Petitioner's pain was musculoskeletal or discogenic, and that Petitioner's MRI showed no compression such that Petitioner's complaints of pain extending upward were not radicular caused by nerve root compression. RX19 at 25-26. He testified that Petitioner's problems were not radicular in nature. RX19 at 30-31.

Deposition Testimony – Dr. Karlsson

Respondent called Dr. Karlsson as a witness and he provided testimony at an evidence deposition on June 2, 2014. RX1. Dr. Karlsson testified that he is a board certified orthopedic surgeon. RX1 at 5-8; RX1 (Dep. Exh. 1). Dr. Karlsson testified consistent with the information and opinions contained in his Section 12 examination reports. *See generally* RX1. He also testified consistent with the opinions rendered in his various reports. *Id.*

Ultimately, Dr. Karlsson opined that Petitioner had right shoulder rotator cuff tendonitis and right elbow lateral epicondylitis that were causally related to his injury at work as well as AC joint arthritis that was unrelated to his injury at work. RX1 at 43, 62. He maintained that Petitioner did not require any surgery for the right shoulder because he did not have at least a temporary response to any of the injections he had to the shoulder and no evidence of a tear or structural damage in his MRI. RX1 at 43-45. Dr. Karlsson also maintained that Petitioner was not a candidate for any elbow surgery because of his diffuse complaints of tenderness around the elbow, not localized to the lateral epicondyle, and his and Dr. Urbanowsky's inability to reproduce pain with resisted use of the muscles attached to the lateral epicondyle. RX1 at 45-46. Dr. Karlsson further testified that Petitioner could perform all of the duties of a ground man when he compared the job description given to him to Petitioner's functional capacity evaluation results. RX1 at 41-42, 46, 47, 49.

On cross examination, Dr. Karlsson testified that he performs approximately 150 medical examinations per year virtually all requested by respondents. RX1 at 51-52. He acknowledged that Petitioner had no prior condition in either elbow and no shoulder problems in either shoulder for approximately 20 years. RX1 at 52. Dr. Karlsson also acknowledged that as of Petitioner's first and second evaluations, he recommended further diagnostic tests and treatment for the right shoulder and right elbow. RX1 at 53-58.

On re-direct examination, Dr. Karlsson testified that Petitioner's physical presentation changed between the second and third evaluations. RX1 at 63-64. He testified that he was able to reproduce elbow pain with resisted wrist extension and Petitioner pointed to the area that he would expect to hurt with epicondylitis; this was not the case at Petitioner's third evaluation with Dr. Karlsson. RX1 at 63-64. Dr. Karlsson testified that he wondered if Petitioner's elbow condition had improved with treatment or time after his second evaluation. *Id.*

Continued Medical Treatment

On June 4, 2014, Dr. Urbanowsky continued to recommend right shoulder surgery and a series of injections for the right elbow. PX2 at 144-149. She also kept Petitioner restricted to light duty work. *Id.* On July 9, 2014,

Dr. Urbanowsky administered a third right shoulder subacromial bursa injection and maintained her treatment recommendations for the right shoulder and right elbow. PX2 at 150-154.

Deposition Testimony – Dr. Andersson

Respondent called Dr. Andersson as a witness and he provided testimony at an evidence deposition on October 8, 2014. RX2. Dr. Andersson testified that he is a board certified orthopedic surgeon. RX2 at 4-7; RX2 (Dep. Exh. 1). Dr. Andersson testified consistent with the information and opinions contained in his Section 12 examination reports. *See generally* RX2.

Specifically, Dr. Andersson testified that as of his first evaluation he believed that Petitioner contused his back and neck as a result of his accident at work and that his MRIs showed no evidence of structural damage caused by his accident. RX2 at 12-13. He believed that Petitioner would benefit from four additional weeks of physical therapy and that he did not require narcotic pain medication. RX2 at 13-14.

As of Petitioner's second evaluation, Dr. Andersson noted that Petitioner had no further complaints in the upper back or neck, and he found that Petitioner's low back MRI showed degenerative changes at L4-5 and L5-S1 with small central annular tears, no evidence of spinal stenosis, and mild protrusions at both levels evidenced by Petitioner's post-discography CT scan. RX2 at 18-19. Dr. Andersson maintained that Petitioner sustained contusions and that his ongoing symptoms were related to his degenerative condition in the back only. RX2 at 20-21. He indicated that Petitioner did not need any surgery. RX2 at 22-23.

Finally, Dr. Andersson explained how he reached the conclusion pursuant to the AMA Guides Sixth Edition that Petitioner had a zero impairment rating with regard to the neck and a 1% impairment rating with regard to the low back. RX2 at 23-25.

On cross examination, Dr. Andersson testified that a fall of the type sustained by Petitioner could cause an asymptomatic condition in the lumbar spine to become symptomatic. RX2 at 33.

Continued Medical Treatment & Narrative Report (Dr. Urbanowsky)

Petitioner returned to Dr. Urbanowsky on several occasions beginning August 22, 2014 through April 27, 2015. PX2 at 157-186. She continued to recommend a right shoulder arthroscopy with inspection of the bicep tendon and rotator cuff, acromioplasty, distal clavicle resection, and debridement as necessary as well as right lateral PRP injections for the right elbow. *Id.* Dr. Urbanowsky also kept Petitioner on light duty work restrictions throughout this period of time. *Id.* Petitioner testified that he continues to be on work restrictions.

In the interim, Dr. Urbanowsky issued a narrative report in September of 2014 at Petitioner's counsel's request. RX18 at 9; RX18 (Dep. Exh. 2). She reviewed her own medical records relating to Petitioner's treatment, medical records from Petitioner's other treating physicians, as well as the reports of Dr. Karlsson. RX18 at 9-26; RX18 (Dep. Exh. 2).

In her report, Dr. Urbanowsky diagnosed Petitioner with (1) right shoulder subacromial bursitis, supraspinatus tendinosis, and AC arthrosis all contributing to secondary impingement temporarily responsive to injection, nonresponsive to medication, therapy and rest; and (2) right elbow lateral epicondylitis, minimally responsive to medication, splinting, rest, and therapy with 40% transient pain relief with local anesthetic present post-injection. RX18 (Dep. Exh. 2). She opined that these conditions were causally related to Petitioner's accident

at work. *Id.* In so concluding, Dr. Urbanowsky noted that Petitioner reported these symptoms at the emergency room on the date of injury and throughout his medical care with herself and his other physicians and therapists. *Id.*

Dr. Urbanowsky noted that the mechanism of injury reported by Petitioner to her and throughout his medical records are consistent regarding a fall from a railcar backwards onto concrete and that "[b]asic instinct would be to reach back with the arms to break the fall, which would explain both the right shoulder and right elbow pains. Regardless of prior history of shoulder surgery as well as presence of acromioclavicular arthritis, this mechanism of injury does explain perpetuation of his symptoms." RX18 (Dep. Exh. 2). She opined that Petitioner's right shoulder pain including subacromial bursitis/impingement resulted from his accident at work and that his pre-existing osteoarthritis was asymptomatic and aggravated by the accident. *Id.* Dr. Urbanowsky also opined that Petitioner's right elbow pain resulted from the fall at work noting that he had no prior complaints in the right elbow. *Id.*

Dr. Urbanowsky disagreed with the opinions of Dr. Karlsson. RX18 (Dep. Exh. 2). She noted that Petitioner did show improvement after his injections into the shoulder and elbow, although the relief was only temporary, showing that his response made him a good surgical candidate. *Id.* Dr. Urbanowsky recommended right shoulder surgery and a right elbow PRP injection with work restrictions including no lifting over 30 pounds or overhead reaching or lifting. *Id.*

Deposition Testimony – Dr. Urbanowsky

Petitioner called Dr. Urbanowsky as a witness and she provided testimony at an evidence deposition on February 18, 2015. RX18. Dr. Urbanowsky testified that she is a board certified orthopedic surgeon specializing in upper extremity, including the elbow and shoulder, as well as microvascular surgery in addition to a certificate for added qualification in surgery of the hand. RX18 at 4-5; RX18 (Dep. Exh. 1). Dr. Urbanowsky testified consistent with the information contained in her medical records. *See generally* RX18.

Specifically, Dr. Urbanowsky testified consistent with the opinions in her report that Petitioner's right shoulder and right elbow conditions were causally related to the accident at work, noting that he was asymptomatic in the shoulder and elbow prior to his accident. RX18 at 27-29. She recommended a right shoulder arthroscopy with subacromial decompression to include acromioplasty as necessary, distal clavicle resection, extensive bursectomy and smoothing of any partial thickness rotator cuff tears and assessing the biceps for any needed tenodesis. RX18 at 29. She also testified that Petitioner was not at maximum medical improvement without surgery and that his work restrictions were necessary as a result of Petitioner's condition after his accident at work. RX18 at 32-33.

Timothy Sullivan

Respondent called Timothy Sullivan ("Mr. Sullivan") as a witness. He testified that he is an Assistant Terminal Manager and has been employed by Respondent since November of 2005. Mr. Sullivan testified that Respondent loads and unloads trains for other companies. He works at the Elwood Logistics Park Chicago ("LPC"). Mr. Sullivan testified that he is in charge of anyone that is on the Respondent's property at any given time, including ground men. Mr. Sullivan reviewed Respondent's Exhibit 3, the ground man job description.

Mr. Sullivan explained that there are some duties at the Elwood LPC that a ground man does not have to perform. Mr. Sullivan testified that ground men are trained to direct cranes using hand signals, load and unload

trains, lock and unlock interlock connectors (a.k.a. "IBCs") which keep containers attached to the railcars, climb up and down ladders, and warn operators of obstacles on the tracks. Mr. Sullivan explained that an IBC has two-cone shaped pieces and an 8" handle to spin cones together to lock or unlock them. He also testified that a pedestal is on a flat car where you would seat the container for that car style. He explained that it is used to lock the car, but pedestals are not used at the Elwood LBC because they do not receive that type of car at the facility.

Mr. Sullivan testified that a ground man can do his job at the LPC without lifting over 30 pounds. He explained that the IBCs have to be lifted, but weigh only 14-15 pounds and, when standing on the platform, the IBCs are at chest/face level. Mr. Sullivan also testified that anything relating to a trailer is not required at the Elwood LPC and that the duties listed in numbers 4, 13, 14 &15 are not performed at the Elwood LPC.

Additional Information

Beginning on April 16, 2014, Petitioner testified that he worked for another employer, Crown Services, a temporary staffing company as a truck driver and doing spotting work. Petitioner testified that he has to bag up grain underneath, open doors and take trailers out to the parking lot area and drop trailers there. He would also let down the landing gear using a crank and he would wind the dolly legs down to the ground, which he explained requires very little force. Petitioner testified that he is not expected to lift anything at all and he is on his feet very little (i.e., 3 hours at the most throughout the day), he does not climb ladders, and the pace of work is slow, without rush.

While performing his job for Crown, he testified that his back hurt really badly when he sat for long periods of time. He experienced shooting pain, stiffness, radiating symptoms down his legs and pain in the lower back and into the buttocks. With regard to his right shoulder, Petitioner testified that he experienced pain when pulling pins and "dollying" down the trailer legs and operating the truck steering wheel. Petitioner also testified that he had a lot of pain in his right elbow when lowering the trailer legs.

On cross examination, Petitioner also testified that he worked for Crown Services driving a spotter truck in Joliet for Midwest Bulk. He explained that he did the grain filling work for about one month from April 15, 2014 until sometime in May of 2014, and he did not work there in 2013. *See* RX9 (Petitioner's 2014 W-2 wage and tax statements). Petitioner could not recall an employer named "MI" for which he worked in 2014 and earned $728. *Id.*

On cross examination, Petitioner further testified that he began working for CCS Trucking on May 29, 2014 and that he remains a current employee. He drives an 18-wheeler tractor trailer and performs mostly local driving as well as some interstate driving. Petitioner testified that he has to connect the tractor to the trailer using the fifth wheel. With regard to the physical responsibilities of the job, Petitioner testified that he hooks electrical components and air-lines, and cranks dolly legs up or down depending on whether he is hitching or dropping the trailer. Petitioner testified that he does not unload the contents of the trailers; that work is done by dock workers at the destination sites. He also testified that this work is within Dr. Templin and Dr. Urbanowsky's restrictions. Petitioner testified that he earned $24.00 per hour for CCS Trucking in 2015 and $23.50 per hour in 2014. *See* RX9 (Petitioner's 2014 W-2 wage and tax statements).

On cross examination, Petitioner also testified that he could not perform his job for Respondent with the job restrictions imposed by Dr. Urbanowsky. Petitioner testified that he wants to undergo the recommended surgeries to the low back, right shoulder and right elbow injection. Petitioner testified that he has not had any

new injuries. He also testified that he stays within the work restrictions given to him by Dr. Templin and Dr. Urbanowsky while working.

Petitioner also acknowledged that he has filed prior workers' compensation claims. He had a settlement for $140,000 against Newberg Construction working on a Commonwealth Edison nuclear plant as a laborer after an accident on April 3, 1989. He testified that he saw doctors for his right shoulder and torn biceps tendon and underwent surgery. Petitioner testified that he could not go back to work as a construction laborer per his doctors' orders. Petitioner also had an injury in the left arm in 1996 at Argonne National Laboratory. RX4.

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

To recover in a preexisting condition case, a claimant need only establish a causal connection between his work-related injury and claimed current condition of ill-being by showing that his injury aggravated or accelerated the preexisting disease. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 204-206, (2003) (*citing Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36-37 (1982) (an accidental injury will be deemed compensable if it can be shown that the employment was also a causative factor)). It has long been held that an employer takes its employees as it finds them. *Sisbro*, 207 Ill. 2d at 205 (*citing Baggett v. Industrial Commission*, 201 Ill.2d 187, 199 (2003)). As in this case, even where an employee has a pre-existing condition that renders him more vulnerable to an 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." *See Sisbro*, 207 Ill. 2d at 205 (*citing Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d at 36; *Williams v. Industrial Commission*, 85 Ill. 2d 117, 122 (1981); *County of Cook v. Industrial Commission*, 69 Ill. 2d 10, 18 (1977)).

Petitioner claims injury to various body parts as a result of his undisputed accident. Specifically, he asserts injury to the low back, right shoulder, right elbow, left elbow, and left knee. Petitioner also received some medical treatment to the neck, which appears to have been minimal. In light of the record as a whole, the Arbitrator finds that Petitioner has established a causal connection between his current condition of ill-being and his accident at work. In so concluding, the Arbitrator first addresses the several body parts for which no further medical treatment is being requested.

With regard to the cervical spine, the Arbitrator notes that Petitioner initially complained of pain and symptoms in the neck when he received emergency care. Thereafter, he sought medical treatment with Drs. Singh, Templin, Sharma, and Urbanowsky. Petitioner reported neck pain to all of these physicians as well as to Respondent's Section 12 examiner, Dr. Andersson. However, the medical records reflect very limited treatment to the neck. Indeed, Petitioner had no focused treatment to the cervical spine despite ongoing complaints of neck pain. He was diagnosed with a cervical strain by his primary care physician, Dr. Singh, and subjectively reported ongoing neck pain which his other physicians diagnosed. Petitioner was evaluated by Dr. Andersson on two occasions regarding the neck at Respondent's request, and he opined that Petitioner sustained contusions to the neck only. Notably, no treatment has been recommended by Petitioner's treating physicians for the

cervical spine although he continues to report neck pain without any change in condition. Moreover, no physician has opined that Petitioner's ongoing symptoms in the neck are causally related to the accident at work. Thus, the Arbitrator finds that Petitioner has reached maximum medical improvement with regard to the cervical spine as opined by Dr. Andersson in his April 1, 2014 Section 12 report. A determination regarding permanent partial disability, if any, is deferred to final resolution of Petitioner's case.

With regard to the left knee, the record reflects that Petitioner reported left knee pain immediately after his accident at work. He then reported left knee pain to his primary care physician, Dr. Singh, who referred him to a specialist, Dr. Fuentes, for further care. Petitioner underwent a left knee MRI, a course of physical therapy, and a cortisone injection into the left knee as ordered by Dr. Fuentes. Dr. Fuentes diagnosed Petitioner with degenerative joint disease of the left knee with patellofemoral pain through May 2, 2013. On this date, Dr. Fuentes diagnosed status post left knee contusion and he released Petitioner back to full duty work with regard to his left knee. There is no evidence that Petitioner had any left knee injury or medical treatment before his accident at work, and his testimony at trial relating the left knee condition is corroborated by the medical records. Thus, the Arbitrator finds that Petitioner has established causal connection between his left knee condition and his accident at work. A determination regarding permanent partial disability, if any, is deferred to final resolution of Petitioner's case.

Petitioner also claims an ongoing condition in the left elbow. He immediately reported bilateral elbow pain in the emergency room and underwent follow up case with Dr. Singh and Dr. Fuentes thereafter. Dr. Fuentes diagnosed bilateral epicondylitis, status post contusion for which Petitioner underwent physical therapy. He released Petitioner from care and back to full duty work on May 2, 2013. Thereafter, Petitioner reported some transient left elbow pain to Dr. Urbanowsky, but that those complaints seemed to remit without the need for injection or further care. There is no evidence that Petitioner had any left elbow injury or medical treatment before his accident at work, and his testimony at trial relating the left elbow is corroborated by the medical records. Thus, the Arbitrator finds that Petitioner has established causal connection between his left elbow condition and his accident at work. A determination regarding permanent partial disability, if any, is deferred to final resolution of Petitioner's case.

The most readily disputed injuries relate to Petitioner's low back, right shoulder and right elbow. Petitioner seeks further medical treatment pursuant to Section 8(a) with regard to these body parts. In light of the record as a whole, the Arbitrator finds that Petitioner has established causal connection between his current condition of ill-being in the low back, right shoulder, and right elbow and his accident at work. In so concluding, several undisputed facts are significant.

Petitioner had no complaints or medical treatment relative to the low back or right elbow before his accident at work. He did have significant treatment to the right shoulder including a surgery, but this occurred in the late 1980's. In the decades that followed, Petitioner worked several different, full duty jobs. He did not receive any medical treatment to the right shoulder during those years until after his October 14, 2012 accident. While it is also clear that Petitioner had pre-existing degeneration in the lumbar spine and right shoulder at the time of his accident, he only became symptomatic immediately after his accident prompting emergency room care and, ultimately, a recommendation for a low back surgery, right shoulder surgery, and right elbow injections.

With regard to the low back, Petitioner reported symptoms beginning on the date of accident which were consistently reported to emergency room, treating, and evaluating physicians alike. He also reported low back pain to Dr. Andersson when he underwent the first evaluation of the low back at Respondent's request on January 8, 2013. Dr. Andersson diagnosed Petitioner with contusions to the back that were related to the

accident at work and which required an additional four weeks of physical therapy. As of his second evaluation of Petitioner, Dr. Andersson maintained that Petitioner only sustained contusions and opined that he needed no further treatment. He concluded that Petitioner's ongoing low back condition was degenerative and no longer causally related to the accident at work. However, Dr. Andersson only saw Petitioner on two occasions. He acknowledged that Petitioner was asymptomatic in the low back before his accident at work. He also acknowledged at his deposition that a fall of the type sustained by Petitioner could cause an asymptomatic condition in the lumbar spine to become symptomatic. Regardless, Dr. Andersson maintained that Petitioner's lumbar condition was wholly unrelated to the accident at work beyond a contusion despite the mechanism of injury.

In contrast, Petitioner's treating physician, Dr. Templin, opined that Petitioner's low back condition was causally related to the accident on October 14, 2012. He examined Petitioner every six weeks or so during treatment in 2013 and continued to see Petitioner regularly thereafter while he was in pain management with Dr. Sharma and receiving care for the right shoulder and right elbow with Dr. Urbanowsky. In his narrative report and deposition testimony, Dr. Templin opined that Petitioner's accident, more likely than not, caused his low back condition. In so concluding, he acknowledged that Petitioner had a pre-existing condition in the spine; an agreement with Respondent's examiner, Dr. Andersson. However, Dr. Templin explained that this pre-existing lumbar condition was "aggravated by the axial load imparted to his spine when falling approximately 5 feet and landing on his buttocks loading the spine." RX19 (Dep. Exh. 2). He also noted that Petitioner had continued pain since his accident, which was a plausible response to the mechanism of injury.

In light of the totality of the evidence, the Arbitrator finds the opinions of Petitioner's treating physician, Dr. Templin, to be persuasive. Dr. Templin plausibly reasoned that the mechanism of Petitioner's injury was competent to cause the type of pain and symptoms that he experienced and highlighted the lack of prior back injuries, pain, or medical treatment. Dr. Andersson's opinions are simply unpersuasive given these facts, as are the opinions of Dr. Karlsson.

With regard to the right shoulder and right elbow, Petitioner also reported pain when he presented in the emergency room on the date of accident. He then saw his primary care physician, Dr. Singh, on October 22, 2012 and received follow up care with Dr. Fuentes reporting pain in the right or both shoulders and in the right or both elbows. On February 7, 2013, Petitioner received a cortisone injection into the right shoulder and sought further care of the right shoulder with Dr. Urbanowsky.

On August 26, 2013, Petitioner saw Dr. Urbanowsky reporting pain and symptoms in the bilateral arms, but his complaints were worst in the right shoulder. Dr. Urbanowsky diagnosed right shoulder impingement syndrome, secondary bursitis, and right elbow lateral epicondylitis and administered a right shoulder subacromial bursa injection. As of November 22, 2013, Dr. Urbanowsky recommended a right shoulder arthroscopy with inspection of the bicep tendon and rotator cuff, acromioplasty, distal clavicle resection, and debridement as necessary. As of February 10, 2014, Dr. Urbanowsky continued to recommend right shoulder surgery and also recommended a right elbow lateral epicondylar PRP injection. As of June 4, 2014, Dr. Urbanowsky continued to recommend right shoulder surgery and a series of injections for the right elbow. On July 9, 2014, Dr. Urbanowsky administered a third right shoulder subacromial bursa injection.

Petitioner then saw Dr. Karlsson at Respondent's request on January 16, 2013. He initially opined that Petitioner's right elbow and right shoulder conditions were causally related to the accident at work. Dr. Karlsson also imposed work restrictions, but felt that Petitioner could perform the reaching activities of his job with his left arm, and indicated that narcotic pain medications were not appropriate. As of May 1, 2013, Dr.

Karlsson opined that Petitioner's rotator cuff tendinitis and lateral epicondylitis of the right elbow were related to his injury at work, but maintained that he could perform his job and that he did not need narcotic pain medication. By the time of Petitioner's third evaluation with Dr. Karlsson on January 16, 2014, Dr. Karlsson again diagnosed Petitioner with right shoulder rotator cuff tendinitis and lateral epicondylitis of the right elbow, which were related to his injury at work on October 14, 2012, but he maintained that Petitioner did not need surgery to the right shoulder or right elbow because he had "absolutely" no relief from diagnostic injections, diffuse pain around the elbow, and no pain with resisted wrist extension.

In her narrative report, Dr. Urbanowsky disagreed with the opinions of Dr. Karlsson. In so doing, she explained that Petitioner did show improvement after his injections into the shoulder and pain with wrist extension during physical examinations, which were necessary to determine whether he was a surgical candidate. Dr. Urbanowsky also identified Petitioner's reports of improvement in her medical records which conflicted with Petitioner's generalized statements to Dr. Karlsson that the injections to the shoulder did not help his conditions. She explained that, although the relief from the injections was only temporary, evidence of such a response made him a good surgical candidate. Dr. Urbanowsky maintained that Petitioner would benefit from right shoulder surgery and a right elbow PRP injection with work restrictions including no lifting over 30 pounds or overhead reaching or lifting.

In light of the totality of the evidence, the Arbitrator finds the opinions of Petitioner's treating physician, Dr. Urbanowsky, to be persuasive. Dr. Urbanowsky explained how Petitioner's physical responses to the diagnostic injections and on physical examination showed that he was a good candidate for shoulder surgery and elbow injections despite any generalized statements he may have made as a patient that the treatment thus far had not benefited him at all. It is notable that Dr. Karlsson performs medical evaluations almost exclusively for respondents, but found over his three evaluations of Petitioner that the right shoulder and right elbow conditions were causally related to the accident at work. Dr. Karlsson's ultimate departure in opinion from Dr. Urbanowsky about Petitioner's need for further medical treatment, the type of medical treatment, or the type of work Petitioner could perform, are simply unpersuasive given these facts.

Thus, given the totality of the medical evidence in this record the Arbitrator finds that Petitioner has established causal connection between his low back, right shoulder, and right elbow conditions and his accident at work on October 14, 2012.

In support of the Arbitrator's decision relating to Issue (G), what were Petitioner's earnings/average weekly wage, the Arbitrator finds the following:

Petitioner asserts that his average weekly wage should total $770.07 per week including earnings in the year preceding the injury of $40,043.64 from Respondent as well as from another employer, Domino's Pizza. *See* AX1. Respondent asserts that Petitioner is only entitled to an average weekly wage totaling $540.00 with annual earnings of $28,080.00. *Id.* Section 10 of the Act states in pertinent part:

> When the employee is working concurrently with two or more employers and the respondent employer has knowledge of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

820 ILCS 305/10 (LEXIS 2011). In cases where a claimant works less than a full year before his injury, there are several methods to calculate the claimant's average weekly wage.

In *Sylvester*, the Illinois Supreme Court explained:

> [S]ection 10 provides four different methods for calculating average weekly wage. (1) By default, average weekly wage is 'actual earnings' during the 52 week period preceeding the date of injury, illness or disablement, divided by 52. (2) If the employee lost five or more calendar days during the 52 week period, 'whether or not in the same week,' then the employee's earnings are divided not by 52, but by 'the number of weeks and parts thereof remaining after the time so lost has been deducted.' (3) *If the employee's employment began during the 52 week period, the earnings during employment are divided by 'the number of weeks and parts thereof during which the employee actually earned wages.'* (4) Finally, if the employment has been of such short duration or the terms of the employment of such casual nature that it is 'impractical' to use one of the three above methods to calculate average weekly wage, 'regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.'

Sylvester v. Industrial Comm'n, 197 Ill. 2d 225, 230-31 (2001) (citing 820 ILCS 305/10 (West 1992) (*emphasis* added)).

Petitioner's testified that his first day of work with Parsec was October 1, 2012, but his pay stubs reflect four hours of work during the pay period beginning September 24, 2012 through September 30, 2012. PX9. From September 24, 2012 through October 7, 2012 Petitioner earned $510.79 for 86.25 hours of work over three weeks. *Id.* While working for Respondent, Petitioner testified that he worked five days per week and eight hours per day, sometimes up to 12 hours per day while working overtime.

Petitioner also submitted into evidence paychecks from NRJM, Inc., which he referred to as Domino's Pizza, showing his earnings during one week of concurrent employment for days worked from September 24, 2012 to October 7, 2012. PX10. During these dates, Petitioner earned $338.09 for 33.37 hours worked. *Id.* However, Petitioner testified that he began working for Respondent on October 1, 2012 and his pay stubs show that he worked half of one day (4 hours) before October 1, 2012. PX9.

Petitioner further testified that he interviewed with Respondent several days before he was hired and worked for Respondent from October 1, 2012 until June 30, 2013. He explained that Respondent was aware of his concurrent employment because he noted the work with Domino's on his application and informed Respondent during his interview for the position. No evidence was submitted to the contrary.

In light of the evidence presented, the Arbitrator finds that Petitioner established earnings of $33,855.12 with an average weekly wage of $651.07. Petitioner actually earned $1,348.61 during the 52 week period before his accident while working for Respondent. This amount is reached by adding Petitioner's gross earnings from his employment with Respondent plus half of his gross earnings for employment with Domino's Pizza[3] while working for Respondent ($1,179.56 + $169.05). Petitioner's actual earnings amount of $1,348.61 is then divided by the weeks and parts thereof (14 ½ days) resulting in an average weekly wage of $651.07. The average weekly wage is then multiplied by 52 weeks resulting in a yearly earnings amount of $33,855.12.

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[3] While it's unclear exactly how many hours Petitioner worked during the pay period from September 24, 2012 through October 7, 2012, it is also unclear on what day or days Petitioner worked four hours for Respondent during that overlapping period. *See* PX9 & PX10. Petitioner's pay stubs for work for Domino's Pizza (through NRJM, Inc.) show that in the prior two pay periods preceding this these overlapping employment dates Petitioner earned $527.06 and $579.69) PX9. The Arbitrator finds it to be a reasonable inference that Petitioner earned half of the $338.09 total during the pay period from September 24, 2012 through October 7, 2012 while working for Respondent only 4 hours during the same two-week period.

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's current conditions of ill-being are causally related to his accident at work relying on Petitioner's testimony which is corroborated by the medical records as well as the recommendations and opinions of his treating physicians. The medical bills submitted into evidence which Petitioner calculates to total $97,816.57 are for the reasonable and necessary medical treatment rendered to Petitioner to address these conditions.

According, the Arbitrator finds that the medical bills submitted into evidence by Petitioner that remain unpaid are to be paid by Respondent as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit, if any, as agreed by the parties.

In support of the Arbitrator's decision relating to Issue (K), Petitioner's entitlement to prospective medical care, the Arbitrator finds the following:

As explained above, the Arbitrator finds that Petitioner's current conditions of ill-being are causally related to his accident at work as claimed. Petitioner's low back, right shoulder and right elbow conditions have not improved since his accident at work.

In consideration of the record as a whole, the Arbitrator awards the recommended prospective medical care in the form of a lumbar fusion surgery as prescribed by Dr. Templin as well as a right shoulder surgery and right elbow injections as recommended by Dr. Urbanowksy pursuant to Section 8(a) of the Act as these treatments are reasonable and necessary to alleviate Petitioner from the effects of his injuries at work.

In support of the Arbitrator's decision relating to Issue (L), Petitioner's entitlement to temporary total disability benefits, the Arbitrator finds the following:

In light of the causal connection analysis explained above, the Arbitrator addresses Petitioner's claim that he is entitled to temporary total disability benefits for the disputed period beginning June 8, 2013 through April 15, 2014.

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, i.e., until the condition has stabilized." *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). The dispositive fact is whether the claimant's condition has stabilized, i.e., reached MMI. *Sunny Hill of Will County*

v. Ill. Wo *s' Comp. Comm'n*, 2014 IL App (3d) 130028WC at *28 (opinion filed June 26, 2014); *Mechanical Devices* *lustrial Comm'n*, 344 Ill. App. 3d 752, 760 (4th Dist. 2003).

In this ca he record reflects that Petitioner was undergoing active medical treatment and placed off work or on light restrictions by Drs. Singh, Fuentes, Sharma, Templin, and Urbanowsky as they related to his low back, rig oulder, right elbow, and left knee conditions during this period of time. Respondent disputes that Petitione s unable to work during this period of time based on the opinions of its evaluating physicians, Drs. Andersso d Karlsson, as well as on the job description for a ground man. While the weight limits noted in the job d ption may appear at first blush to be within the restrictions imposed during certain periods of the claimed t orary total disability period, Petitioner testified that the performance of his duties required continuo ork at a fast pace beyond that indicated in the job description. The functional capacity evaluation also indic l that Petitioner was released to work at the light-to-medium demand level, while Petitioner's job duties as ound man were considered to be at the medium physical demand level. The opinions of Respond evaluating physicians that Petitioner could perform work for Respondent with one arm for example ithout use of narcotic pain medication is in conflict with the opinions of Petitioner's treating physicia ho have opined otherwise.

In light e foregoing, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from as claime Respondent shall receive a credit as agreed by the parties. *See* AX1.

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

MARSHALL, OWEN Case# **14WC029395**

Employee/Petitioner

WALQUIST FARM PARTNERSHIP

Employer/Respondent

On 10/2/2015, 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 0.10% 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:

5404 LAW OFFICE OF FOLEY & DENNY
TIMOTHY D DENNY
PO BOX 685
ANNA, IL 62906

5657 MORROW-WILLINAUER-KLOSTERMAN
KIM PARKS
500 N BROADWAY SUITE 1420
ST LOUIS, MO 63102

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)

Owen Marshall
Employee/Petitioner

v.

Walquist Farm Partnership
Employer/Respondent

Case # **14** WC **29395**

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 7, 2015**. 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. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On the date of accident, **March 5, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**34,840.00**; the average weekly wage was $**670.00**.

On the date of accident, Petitioner was **48** 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 $**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** for medical bills paid by its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Petitioner sustained an accident on March 5, 2014 but failed to prove that his condition of ill-being in his back is causally connected to that work accident. Petitioner's claim for compensation 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

September 30, 2015
Date

ICArbDec19(b)

OCT 2 2015

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner alleges an injury to his low back on March 5, 2014 while helping to move a barrel of iodine. The issues in dispute are accident, causation, medical expenses, prospective medical care and temporary total disability benefits. Respondent tendered no exhibits.

The Arbitrator finds:

Medical records from Rural Health Vienna Medical Clinic were offered into evidence as Petitioner's Exhibit 1. These records date back to June 7, 2007 and reflect treatment to Petitioner for a variety of unrelated issues except for the following. There is an x-ray from Massac Memorial Hospital dated October 17, 2011 reflecting moderate degenerative disc disease at L2-4, moderate to moderately severe degenerative disc disease at L4-S1 and anterior osteophytosis diffusely throughout the lower thoracic upper lumbar spine. At the March 28, 2012 office visit Petitioner was noted to have some arthritis of his back and a previous surgery in 2004. Petitioner was noted to be a farmer with lots of twisting and climbing and he reported some aching in his low back. Petitioner was started on Naproxen. As of July 25, 2012 Petitioner was requesting narcotics for his chronic back pain as the Naproxen hadn't helped. Advil did and the doctor encouraged him to continue using it but not to go on naproxen due to the nature of his work activities (heavy equipment). Petitioner did not return to see his doctor at Rural Health until April 17, 2013 at which time no back complaints were noted. Similarly, no complaints were noted on May 5, 2013 and December 4, 2013. (PX 1)

Petitioner next presented to Rural Health, Inc. on March 7, 2014 regarding an "acute visit." He was seen by Amanda Endrizzi, PAC, and Dr. Ribbing Petitioner complained of numbness in his feet of three months' duration, primarily in his right foot. Petitioner described difficulty walking

and he was having a little bit of back pain. The office note records Petitioner's history of back surgery in 2004 and imaging done in 2011 showed moderate degenerative disc disease at L2-4 and moderate to moderately severe degenerative disc disease L4 to S1. Petitioner's history of alcoholism was also noted with the doctor reporting that Petitioner had recently had another bout with it and was having a difficult time coming off of it because of symptom withdrawal. Petitioner also had a history of manic depression but didn't wish to take any medication for it. Petitioner was diagnosed with alcohol withdrawal and foot numbness. An MRI of his back was ordered to see if it could be causing the foot numbness. No mention of a work accident was noted. Petitioner was to return thereafter. (PX 1)

Petitioner underwent an MRI on March 18, 2014 as a result of bilateral foot numbness. (PX 1) It revealed: neural foraminal narrowing (moderate to severe) at L5-S1 bilaterally; no significant spinal canal narrowing; disc desiccation throughout the lumbar spine with disc height loss greatest at L5-S1 which is moderate to severe: and subtle grade 1 retrolisthesis of L4 on L5 and L5 on S1.

Petitioner followed up with Rural Health, Inc. on March 21, 2014 and he and the doctor reviewed the MRI. Petitioner's complaints included his right foot (described by Petitioner as "pretty much dead") and left back pain radiating down his left leg. Petitioner had some feeling in his left foot that would come and go. Standing made it worse. Petitioner was also reportedly working on his alcohol issue. He was referred to Dr. Grubbs, a neurosurgeon, "as soon as possible" for his back pain. No mention of a work accident was made. (PX 1)

Petitioner presented to the office of Dr. Fonn on April 16, 2014. As part of the examination Petitioner completed a Patient Medical History form in which he gave an accident date of March 5, 2014 when he was helping lift a 55 gal. drum of iodine at work. Petitioner also referenced "farm related work due to lifting." He listed Dr. Thomas Wilson as a doctor he had seen. Petitioner complained of being unable to be on his feet for any period of time and experiencing pain in his

lower back and the bottom of his feet and toes with numbness and sharp shooting pains. Petitioner claimed he was unable to work and had work restrictions from a doctor. (PX 3)

According to Dr. Fonn's office note of April 16, 2014 Petitioner had a history of undergoing a microdiscectomy in September of 2004 at the L3/4 level with good relief of his left-sided symptoms. Petitioner reported that on March 5, 2014 he was working around livestock, rolling a 55 gallon drum and bent over and twisted while lifting it and felt a popping sensation in his back and developed more severe back pain. Initially his back pain was more severe than his leg pain but now it was just the opposite and Petitioner was having a difficult time walking. Petitioner reported the pain radiated into his right calf and all five toes, "right a little worse than the left." Petitioner reported undergoing physical therapy but no injections. Dr. Fonn recommended a course of lumbar epidural steroid injections at L5/S1 bilaterally and noted Petitioner might be a candidate for a fusion surgery pending the results of a CT myelogram and discogram of lumbar spine. Dr. Fonn took Petitioner off work at that time. (PX 3, p. 24)

Petitioner followed up with Rural Health, Inc. on May 21, 2014. Petitioner reported seeing Dr. Fonn, a neurosurgeon, and that he was waiting for injections but was having complications with workers' compensation which would not pay. No mention of a work accident was noted. (PX 1)

Petitioner underwent lumbar epidural steroid injections beginning on July 30, 2014. (PX 3, pp. 29-50)

Petitioner signed his Application for Adjustment of Claim herein on August 2, 2014. (AX 2)

Petitioner returned to Dr. Fonn on August 20, 2014 reporting minimal relief in his symptoms. Dr. Fonn planned to proceed with surgical intervention as he recommended a PLIF L5/S1 pending the results of the CT myelogram. (PX 3, p. 51). That procedure was performed on September 4, 2014. (PX 3, pp. 52-53). The discogram was performed on

September 11, 2014 noting concordant pain at L5/S1. (PX 3, p. 55). On September 25, 2014 Dr. Fonn re-examined Petitioner and again recommended surgical intervention at L5-S1. (PX 3, p. 57).

After additional follow-up visits Petitioner underwent surgery on October 31, 2014 at St. Francis Medical Center. The procedure consisted of L5-S1 bilateral laminectomies with decompression and fusion. (PX 3, p. 60). The operative note also notes broad based disc herniations. (PX 3, p. 61)

A January 5, 2015 CT of Petitioner's lumbar spine showed the instrumentation was in place and fusing had begun. Petitioner also reported falling out of bed a week and a half earlier with increasing pain down his legs. (PX 3, p. 64)

Ms. Endrizzi (Rural Health) prepared a note dated January 21, 2015 indicating Petitioner did state on March 7, 2014 that he was injured while working on the farm. The note also indicates he stated he would be filing a work comp claim. (PX 1)

As of February 11, 2015 another CT showed good fusion occurring with placement and instrumentation with no migration subluxation or fracture of the instrumentation. (PX 3, p. 65) Petitioner was advised to begin physical therapy, aquatic therapy, and trigger point injections. (PX 3, p. 65) As of May 14, 2015 Petitioner was hoping to return to work and advised he was retraining for a different field. Through the last office note offered into evidence on June 22, 2015 Petitioner was continuing in physical therapy under the direction of Dr. Fonn. Petitioner's recovery continued to be satisfactory and without complication. (PX 3, p. 69)

The evidence deposition of Dr. Sonjay Fonn, taken on July 8, 2015, was offered into evidence as Petitioner's Exhibit 5. Dr. Fonn has been a practicing neurosurgeon for approximately 8 years. (PX 5, p. 4) He focuses primarily on disorders of the spine but, also

does some cranial work as well as peripheral nerve work. (PX 5, p. 4) He is currently licensed to practice neurosurgery in the state of Missouri. (PX 5, p. 5)

Dr. Fonn testified that Petitioner was first seen in his practice on April 16, 2014 on referral by Dr. William Jerald Ribbing from Anna IL. (PX 5, p. 6) He confirmed that Dr. Ribbing was Petitioner's family physician at Rural Health. (PX 5, p. 7) The petitioner reported an injury that occurred on March 5, 2014 while he was working on a farm rolling a 55 gallon drum and felt a popping sensation in his back while lifting and had severe pain. (PX 5, p. 7). Upon physical examination Dr. Fonn noted weakness in the extensor halluces longus and the right side was greater than the left side. He also noted decrease sensation in the L5 distribution. (PX 5, p. 8). After review of the MRI, Dr. Fonn formulated a diagnosis with lumbar radiculopathy and spine spondylolisthesis at L45, 5/S1. (PX 5, p.9). Dr. Fonn initially recommended conservative treatment consisting of off work pain medications muscle relaxers and epidural steroid injections. (PX 5, pp. 9-10) Dr. Fonn noted the goal of injections is to decrease inflammation in the nerve that might be caused by stenosis or compression and the injection might become diagnostic in nature if the patient reports relief post injection. (PX 5, p. 10) The steroid injections calmed some of Petitioner's inflation and confirmed the initial diagnosis which was a problem of lumbar radiculopathy L5/ S1 level. (PX 5, p. 11) He recommended possible surgical correction pending results of a myelogram and discogram. (PX 5, p. 11) That study gives a lot of information regarding the boney structure and is useful when one considers a fusion and the placement of instrumentation. (PX 5, p. 12) The CT myelogram in this case confirmed a disc osteophyte primarily L5/S1 levels causing stenosis. (PX 5, p. 12). On October 31, 2014 Dr. Fonn proceeded with an L5/S1 decompression and stabilization with instrumentation as he felt the L5-S1 level was the cause of Petitioner's back and leg pain. (PX, p. 13)

Dr. Fonn offered the opinion within a reasonable degree of medical certainty that the work- related accident on March 5, 2014 was a cause of the pathology and symptoms that he diagnosed at the L5/S1 level and the conservative treatment, surgery, and post-operative care. (PX 5, p. 17). Dr. Fonn further clarified that in his experience he frequently treats patients that have performed labor and specifically farm labor. (PX 3, p.17). A part of that practice involves observing what are the limits that one person can reasonably be expected to do. (PX 5, p.17). He confirmed that a 55 gallon drum of liquid would weigh 450 pounds. (PX 5, p. 17). In his experience it would seem very unlikely that one person would be able to unload a 55 gallon drum of iodine out of the back of a truck alone. (PX 5, p. 18).

On cross-examination Dr. Fonn noted that Petitioner had a history of an antalgic gait for two months prior to his initial exam. (PX 5, p. 21). Dr. Fonn acknowledged that the note was made by his assistant and while he did not note the two months history in his note he did reference Petitioner had difficulty walking. Dr. Fonn also acknowledged he had seen no records from Rural Health Clinic. When asked regarding documentation or a referral from Dr. Ribbing at Rural Health Dr. Fonn noted that a referral is usually placed onto the online system by the receptionist and the referral does not necessarily make it to the actual physical chart. (PX 5, p. 23)

Dr. Fonn testified that his physician's assistant sometimes examines the patients and Petitioner was last seen by him personally on February 11, 2015. He confirmed that on January 5, 2015 the note indicates that Petitioner had fallen out of bed a week and a half earlier and had increased pain radiating into both legs. (PX 5, p. 32). However he noted that the physical examination was unchanged from the December 3, 2014 exam. (PX 5, p.33).

Dr. Fonn confirmed that although his notes may not specifically read that there are restrictions, the restrictions remain as previously dictated and that he had not changed the

restrictions as previously given through February 11, 2015. (PX 5, p. 34-35). Dr. Fonn was asked multiple times during cross-examination about the lack of physical examination results in his notes to which he responded that the notation of resolution of pain, or unchanged from prior visits, denotes an exam was performed and those were the essential findings. (PX 5, p. 35). He also noted that it is common for him to recommend trigger point injections post-operative before surgery because a patient commonly has muscle spasms after a fusion surgery. (PX 5, p. 36). Dr. Fonn confirmed that he had reviewed medical records from Petitioner's prior surgery in 2004. (PX 5, p. 38). Dr. Fonn also testified that his opinions in this case were based upon Petitioner's history to him as to how he hurt himself and his opinion could change if that history was inaccurate or incomplete. (PX 5, pp. 42-43)

On redirect examination Dr. Fonn noted that his common practice is to carbon copy the referring physician on patient notes and in this case he was carbon copying Dr. Ribbing. (PX 5, p. 45). Dr. Fonn also confirmed that he not only relies on the patient's history, but he also "evaluates" whether the patients account of the accident is a "plausible one." (PX 5, p. 45). For instance if someone had reported they lifted something beyond what one could reasonably expect one person to lift it would "raise a red flag in his mind." (PX 5, pp. 45-46). He also clarified that it is usual and customary for patients to follow up with the physician's post-operatively for care. (PX 5, p. 46). He reiterated that the current restrictions for Petitioner are based upon the procedure he performed, his experience, and the fact that he is ultimately responsible for his patient's care. (PX 5, p. 46). He confirmed none of the questions on cross-examination altered his opinion regarding Petitioner's injury as pertaining to this work accident. (PX 5)

The form 45 Employer's First Report of Injury was offered into evidence as Petitioner's Exhibit 6. It confirms that Petitioner reported that he was injured on March 5, 2014 and claimed a back injury two days later. (PX 6)

Petitioner's case proceeded to arbitration on August 7, 2015. Witnesses included Petitioner, Aric Walquist (Respondent's representative) and Eric Unverfehrt.

Petitioner testified he was employed as a farm hand by Respondent for approximately five years before the alleged date of accident. He testified his job duties include milking cows, feeding cows and a little bit of everything.

Petitioner testified he was working on March 5, 2014 and he was physically able to do his job. He testified a vendor was at the farm because a special order for iodine had been called in. Petitioner testified that he was inside with Aric Walquist when the vendor arrived. Mr. Walquist was on the telephone and the vendor needed assistance. Petitioner testified he went out to see if he could help and when the vendor explained he needed assistance getting the drum off the truck, Petitioner told him he didn't think he could do that. Petitioner then returned to Mr. Walquist's office to get him but he was still on the phone. Since Mr. Walquist had already been on the phone for over an hour Petitioner decided to go back out and help the vendor. Petitioner testified he helped the vendor get the tailgate off the truck, laid the barrel down and pulled it out of the truck and set it on the ground.

Petitioner testified the iodine was in a 55 gallon plastic drum and weighed approximately 450 pounds. He testified as he was helping to unload it and when they slid it off of the tailgate, it jerked and was very heavy. He testified he jerked his back "out of whack." He testified the pain came on hard later and he began having pain down the back of his leg and into his feet. Since he was already running late he put the tailgate on and went back to running the heifers when he noticed the problems with leg pain then the back of his left leg into his feet. The pain is down the left leg

around his buttocks area. Petitioner testified he had not had that type of pain for years. Petitioner testified that Aric then came out, noticed the vendor's truck was stuck, and went to help the vendor get the truck out.

Petitioner testified he had experienced that type of pain years ago and while working on the farm his back hurt him off and on. Petitioner testified he had back surgery in 2004 and he testified he had not been to any spine doctors or sought treatment for his back since that time. Petitioner testified a day or two after the alleged incident he went to his doctor and she ordered an MRI and then referred him to a neurosurgeon.

Petitioner testified when he first saw the physician's assistant, after the accident, he told her about the incident. He testified although it was not mentioned in the initial note he did discuss it with her and that she issued a supplemental note correcting the history.

Petitioner also testified he talked with Aric Walquist about the incident the day after it happened.

Petitioner testified he worked Monday, Tuesday, half a day on Wednesday, and Thursday the week of the alleged incident. He testified the accident happened on Thursday and he worked half a day on that day. He testified he did not work a full day because his back was hurting. He testified he talked to Aric's son, Andy, to see if he would milk for him and Andy indicated he would. He testified he told Andy he was having problems and he had already had three work injuries and he did not want to lose his job over something he did not know was going to be as serious an illness as it was.

Petitioner denied that he told Andy that he was battling demons. When asked if he told Andy he was fighting alcohol problems he admitted he does have alcohol problems. He testified he did not tell Andy he was going back into rehab. He then testified he was considering it but he did not go.

Petitioner testified he paid for the initial visit with Amanda Endrizzi on March 7, 2014 himself. He testified he had a $10.00 co-pay. He testified he did turn that visit in as workers' compensation. Petitioner has undergone low back surgery at St. Francis Hospital which has helped his left side problems and improved his pain. As of the day of arbitration Petitioner was still under the care of Dr. Fonn and still unable to work. Petitioner testified he was on the sliding scale at Rural Health which is why it was listed as self-pay. He also testified that he attempted to see Dr. Grubs who would not take Illinois Medicaid so he was referred to Dr. Fonn.

After his surgery in 2004 Petitioner's back pain was managed with over-the-counter medication. Petitioner does not take narcotics unless he has to because they don't agree with him. When he went to Rural Health on March 7th he was still hoping to go back to work the next week and his physician advised him he could work if he was physically able.

Aric Walquist, testified on behalf of Respondent. Mr. Walquist is a dairy and grain farmer and one of the partners of Walquist farms. He confirmed that Petitioner had worked for them for approximately five years and was employed by Respondent on March 5, 2014. He also confirmed that he was not present when the barrel of iodine was unloaded as he was in the office signing Petitioner up for Obama Care. Mr. Walquist explained that when he went outside the barrel of iodine had already been moved into the supply room. Mr. Walquist agreed that since water weighs 8.6 gallons that the barrel of iodine would weight approximately 450 pounds. He also agreed that a tractor was not used to unload the barrel and the only two people present were the vendor and Petitioner. He was unable to recall how much a barrel of iodine cost. Mr. Walquist confirmed he had no first-hand knowledge how the alleged accident occurred or how the barrel got off the truck onto the ground. The truck used to deliver the iodine is a standard pick-up truck. Although he conducted an investigation, he did not have anyone write down any statements regarding the

incident. Mr. Walquist agreed that farm work is pretty hard work and one gets a lot of bumps, bruises, and strains on a day to day basis. Mr. Walquist testified the delivery person who was present from the vendor was Eric Unverfehrt.

Mr. Walquist testified Petitioner never mentioned to him he had hurt his back or was having problems on that day. Mr. Walquist testified he did receive a telephone call from Petitioner on Friday and on that day Petitioner told him he hurt his back.

Mr. Walquist testified that in investigating the incident he talked to his son Andy. He testified he had talked to Andy about his conversation with Petitioner and that investigation did not show anything that indicated Petitioner had hurt his back. When asked if he was aware Petitioner had problems with his back before March 5, 2014 Mr. Walquist indicated Petitioner had constant nagging problems with his back the whole time he worked there. When asked how he knew, he indicated Petitioner would tell him and they had agreed he would stay away from heavy objects and mostly he was able to do that.

Mr. Walquist testified that prior to his conversation with Petitioner he received a telephone call from Petitioner's sister. He testified Petitioner's sister called pleading for Petitioner's job and he told her Petitioner no longer had a job. At the time of the conversation with Petitioner's sister, Mr. Walquist had no idea Petitioner was alleging a workers' compensation injury. Mr. Walquist then testified that Petitioner had missed work on Monday and he called in on Tuesday, but Mr. Walquist insisted he come in to milk. Petitioner then showed up on Wednesday "and the incident happened" and then Petitioner left. Mr. Walquist testified he called Petitioner at some point and he said he had alcohol problems again. Mr. Walquist testified the alleged injury had nothing to do with him telling Petitioner's sister he no longer had a job because he was not aware of the alleged injury at the time of the conversation with Petitioner's sister.

The second witness to testify on behalf of Respondent was Eric Unverfehrt. He testified he is employed by Unverfehrt Farm Supply in sales. He testified it is a family business and he was previously in the service end but now he is getting more into sales.

Mr. Unverfehrt testified he was working for Unverfehrt Farm Supply on March 5, 2014. He testified he is familiar with Walquist Farms and knows them as customers. He denied being related to the Walquists in any way. He testified when his sales guy could not make his route or could not go somewhere, he would help him out delivering chemicals. He testified iodine is considered a chemical and was something he delivered.

Mr. Unverfehrt testified he did make a delivery to Walquist Farms on March 5, 2014. He testified it was 55 gallons of pre-drip or post-drip and then some 15 gallon barrels of chlorine and some towels. He testified he was by himself that day for the delivery. He testified he had a Chevy 1500 pick-up truck and he unloaded the items by hand. He testified there was one item that he went to ask for a skid loader but they were busy so he just unloaded it by himself. He testified he went to ask Aric for a skid loader but Aric was in the office. He testified while he was unloading the 55 gallon drum Petitioner stood next to the truck but that was it. He testified at no point did he get in the back of the truck and unload the drum. He testified Petitioner did not assist in any way with putting the tailgate down, taking it off, or doing anything like that.

Mr. Unverfehrt testified he did not know exactly how much a 55 gallon drum of iodine would weigh but he would say approximately 400 pounds. Mr. Unverfehrt testified he would not be able to lift that amount by himself but if it is tipped over you can always pick it back up or you can roll it on its side and move it around. He testified he was able to maneuver the drum by himself. When asked how he got the drum off the truck, he indicated one takes the tailgate off and places a rubber mat down so it does not puncture, then you tilt the barrel up, and you let it slide down and hit the mat. He testified he had done that before March 5, 2014. He testified he did take the tailgate

off on that day. He testified no one came out to help him put the tailgate back on. Mr. Unverfehrt testified he did not have any conversation with Petitioner that day about any injury or pain in his back.

Mr. Unverfehrt testified the drums are not normally put on a pallet when they deliver them.

Petitioner's medical bills are set forth in Petitioner's Exhibit 4. They include the following:

Rural Health Inc. -- $333.85

Cedar Court Imaging -- $1691.00;

Dr. Fonn -- $145,119.00;

St. Francis Medical Center -- $222,704.66;

The Arbitrator concludes:

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

Petitioner sustained an accident on March 5, 2014 that arose out of and in the course of his employment with Respondent. The Arbitrator bases her determination on Petitioner's testimony and the histories included in the medical records which were consistent with Petitioner's testimony. Petitioner claims he was injured in the course of his employment with Respondent on March 5, 2014 while he was assisting the vendor unloading a 55 gallon drum/barrel of iodine. Respondent disputes that Petitioner assisted the vendor (Eric Unverfehrt) in unloading the 55 gallon drum out of the back of a Chevy 1500 pick-up and injured his back at that time. All witnesses testifying in the case confirmed that the 55 gallon drum of iodine would weigh approximately 450 pounds. Mr. Unverfehrt agreed that he had requested the use of a tractor/skid loader to assist in unloading this barrel confirming that he did not believe he could have reasonably unloaded it alone. The Arbitrator finds it highly unlikely that a person of Mr. Unverfehrt's size could successfully unload a 55 gallon drum of iodine out of a

pick-up truck by himself. Petitioner's account of what happened at the time of the accident was generally believable.

The Arbitrator further notes that Petitioner testified he spoke with Aric's son, Andy, about the accident. Andy Walquist did not testify and the Arbitrator did not find Aric Walquist's testimony about his investigation and speaking with his son, Andy, about the matter sufficient to overcome Petitioner's testimony concerning the events of the day. Mr. Walquist did not testify about any specific conversation between Petitioner and Andy; however, Petitioner credibly testified that he did so. The person in the best position to refute any conversation with Petitioner was Andy Walquist. Additionally, she notes Aric Walquist's testimony on cross-examination wherein he testified that Petitioner showed up on Wednesday, "the incident happened," and then Petitioner left. This testimony, and the manner in which he spoke, appears to suggest Mr. Walquist's belief that an incident did occur on Wednesday March 5, 2014 and that after the incident Petitioner left work. This is also consistent with Respondent's form 45 indicating the date and time of the accident was March 5, 2014 and that the employee claimed a back injury two days later.

While Eric Unverfehrt failed to corroborate Petitioner's account of the accident, Mr. Unverfehrt's testimony wasn't altogether believable by virtue of the business relationship between Respondent and Mr. Unverfehrt's employer (also his family).

While Petitioner testified that he told the nurse at Rural Health about the accident at work, her January 2015 statement doesn't corroborate Petitioner's testimony regarding the details of an accident on March 5, 2014 involving a barrel of iodine. It simply refers to work at the farm – a history found in earlier records of Rural Health also. Petitioner did, however, mention the accident to Dr. Fonn and this occurred before he had signed his Application for Adjustment of Claim herein. Therefore, given the totally of the evidence the Arbitrator gives

Petitioner the benefit of the doubt on the issue of accident and concludes that Petitioner met his burden of proof on that issue.

F. **Is Petitioner's current condition of well-being cause related to the injury?**

While Petitioner may have sustained an accident at work on March 5, 204 he failed to prove that his current condition of ill-being in his back, or the need for surgery, was/is causally connected to that work accident. In light of Petitioner's pre-existing back problems and the interesting history[1] contained in the March 7, 2014 Rural Health Clinic records, a chain of events analysis won't establish causal connection herein. Petitioner relies upon the opinions and testimony of Dr. Fonn in support of causal connection; however, Dr. Fonn readily admitted that if the history provided by Petitioner was inaccurate or incomplete, his opinion might change. He further acknowledged he had never seen or reviewed the Rural Health Clinic records.

Petitioner testified, and the records reflect, that he suffered from a back injury and underwent surgery in 2004. While Petitioner received no significant treatment for is low back between his surgery in 2004 and his accident in March of 2014, Petitioner did have occasional office visits with his family physician reporting back pain associated with his lifting duties as a farm hand. He also presented on March 7, 2014 with a very specific history of numbness in his feet for the previous three months. This would pre-date the accident. An MRI was ordered in light of Petitioner's degenerative back condition (as noted in 2011) in an effort to see if that had any causal relationship to his feet complaints. Again, Petitioner did not mention the March 5th accident nor did PAC Endrizzi address it in her 2015 statement. None of that history was provided to Dr. Fonn. Furthermore, when Petitioner presented to Dr. Fonn he gave him two sources of his back pain – the March 5th accident and his overall farm

[1] A 3 month history of foot numbness which would have pre-dated the accident.

duties. Dr. Fonn did not address this in his deposition whatsoever. Additionally, Dr. Fonn was unaware of Petitioner's prior treatment at Rural Health Clinic and did not consider that history in rendering his opinion. Finally, the Arbitrator notes Petitioner's reference to treatment for his back with Dr. Wilson. No records or testimony regarding Dr. Wilson was provided. Of additional concern was Petitioner's own testimony that he initially told the delivery guy he didn't think he could help him. The Arbitrator reasonably infers from the testimony that Petitioner didn't believe he could help him because of ongoing back issues which both he and Mr. Walquist acknowledged. Petitioner failed to meet his burden of proof on the issue of causal connection.

J. **Has Respondent paid all appropriate charges for reasonable and necessary medical services?**

The parties agreed that Respondent has not paid any of the medical bills. (AX 1) Respondent did not dispute the reasonableness and necessity of the treatment provided to Petitioner, but simply disputed liability. Consistent with her causation determination, Petitioner's request for payment of medical bills is denied. Although Petitioner did sustain an accident he failed to prove that the treatment at Rural Health, the MRI, or any of the treatment with Dr. Fonn was causally connected to the work accident.

K. **Is Petitioner entitled to prospective medical care?**

Consistent with her causation determination, prospective medical care is denied. Additionally, the Arbitrator notes that Petitioner did not seek any specific prospective medical care. He continues under the care of Dr. Fonn while he recovers from back surgery; however, none of that treatment is causally related to the accident. Prospective medical care is denied.

L. **What temporary total disability benefits are in dispute?**

Respondent did not dispute the period of temporary total disability benefits, only liability for them. Consistent with the Arbitrator's causation determination Petitioner's request for temporary total disability benefits is denied. No doctor or PAC took Petitioner off of work as a result of his March 5, 2014 accident.

****

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MORELL, RONALD P
Employee/Petitioner

Case# **09WC001822**

12WC029168

ST OF IL-DEPT OF HUMAN SERVICES
Employer/Respondent

On 10/21/2015, 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:

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0502 STATE EMPLOYEES RETIREMENT
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PO BOX 19255
SPRINGFIELD, IL 62794-9255

4993 ASSISTANT ATTORNEY GENERAL
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SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
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CHICAGO, IL 60601-3227

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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

OCT 21 2015

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

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

Ronald P. Morell
Employee/Petitioner

v.

State of Illinois - Department of Human Services
Employer/Respondent

Case # 09 WC 01822

Consolidated cases: 12 WC 29168

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 26, 2015. 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. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On November 19, 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 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 $63,267.88; the average weekly wage was $1,216.69.

On the date of accident, Petitioner was 37 years of age, married with 1 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 $0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's conclusions of law attached hereto, 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

October 19, 2015
Date

OCT 21 2015

Findings of Fact

Petitioner filed two Applications for Adjustment of Claim which alleged he sustained repetitive trauma injuries arising out of and in the course of his employment for Respondent. In case number 09 WC 01822, the Application alleged a date of accident (manifestation) of November 19, 2008, and that Petitioner sustained repetitive trauma to the bilateral upper extremities and that caused bilateral carpal tunnel syndrome/overuse syndrome. In case number 12 WC 29168, the Application alleged a date of accident (manifestation) of March 5, 2012, and that Petitioner sustained repetitive trauma to the bilateral upper extremities and that caused overuse syndrome (Petitioner's Exhibit 1). Respondent disputed liability on the basis of accident and causal relationship. Respondent also claimed a credit for compensation previously paid in workers' compensation case numbers 07 WC 43676 and 07 WC 52778 (Arbitrator's Exhibit 1).

In regard to Petitioner's settlement in case numbers 07 WC 43676 and 07 WC 52778, the settlement contract was received into evidence at trial. The contract indicated that Petitioner settled those cases for 17.5% loss of use of the right upper extremity and 17.5% loss of use of the left upper extremity. The settlement contract was approved on September 24, 2008 (Respondent's Exhibit 1).

Petitioner began working for Respondent as a caseworker in 2001. Petitioner was subsequently promoted to Management Operations Analyst I in July, 2007, and Management Operations Analyst II in February, 2009.

Petitioner testified that during the time he worked as a Management Operations Analyst I, he worked at a desk and performed data entry using a keyboard for approximately four to six hours per day. Petitioner would respond to inquiries from other employees via e-mail, telephone and fax. Petitioner is right hand dominant and he used his right hand to use the computer mouse and to write for approximately one and one-half hours per day.

While working as a Management Operations Analyst I, Petitioner began to experience symptoms of numbness/tingling in both of his hands. These were the same symptoms Petitioner had in connection with his prior workers' compensation cases.

On November 19, 2008 (the date of manifestation alleged in case number 09 WC 01822), Petitioner was seen by Dr. Christopher Wottowa, the physician who performed the carpal tunnel release surgeries in 2006. Dr. Wottowa noted that Petitioner had done well in regard to the prior surgeries, but that four to six weeks prior to the time he saw him, Petitioner woke up with constant tingling in the thumb and index finger of his left hand. Dr. Wottowa ordered and EMG/nerve conduction study (Petitioner's Exhibit 2).

The EMG/nerve conduction study was performed on November 28, 2008. The study was positive for moderately severe or recurrent left carpal tunnel syndrome. It was noted that the median distal latencies were less prolonged when compared to the study that was performed prior to Petitioner undergoing surgery in 2006 (Petitioner's Exhibit 2).

Dr. Wottowa saw Petitioner on December 8, 2008, and reviewed the EMG/nerve conduction study. He opined that Petitioner was having a recurrence of carpal tunnel or carpal tunnel induced by either hypertension, hyperlipidemia or even a problem Petitioner had with his kidneys. He recommended Petitioner wear wrist braces at night (Petitioner's Exhibit 2).

On January 12, 2009, Petitioner completed a "Workers' Compensation Employee's Notice of Injury" form which stated that he sustained tingling and numbness in his left hand because of repetitive motion of data entry. The date of diagnosis was stated as November 19, 2008, and described as an "on-going condition" (Respondent's Exhibit 3). At trial, Petitioner testified that his carpal tunnel syndrome symptoms had been an ongoing condition since 2006 and that his symptoms had improved following carpal tunnel surgery but that he had begun to experience the symptoms again.

In February, 2009, Petitioner was promoted to Management Operations Analyst II. At trial, Petitioner testified that the time he spent performing data entry increased to approximately six to seven hours per day. Petitioner also performed other tasks that involved the active use of both of his hands.

On May 13, 2009, Petitioner was again seen by Dr. Wottowa. At that time, Petitioner informed Dr. Wottowa that the numbness in his left hand and had improved; however, it had previously been constant, but now was intermittent. However, Petitioner also advised that he had been experiencing intermittent symptoms in his right hand as well. Dr. Wottowa prescribed medication and instructed Petitioner to wear splints at night (Petitioner's Exhibit 2).

Petitioner was seen by Dr. Wottowa on October 12, 2009, and complained that his symptoms in both hands were worse, but more so in regard to the left than right. Dr. Wottowa ordered an EMG and nerve conduction study (Petitioner's Exhibit 2).

The EMG/nerve conduction study was performed on October 15, 2009. It revealed Petitioner had mild to moderately severe bilateral carpal tunnel syndrome. Dr. Wottowa saw Petitioner on November 2, 2009, and reviewed the EMG/nerve conduction study. Dr. Wottowa noted that the study results revealed improvement in both hands when compared to the test performed in 2006 (prior to Petitioner's carpal tunnel syndrome surgeries) and the study performed in 2008 on Petitioner's left hand. Dr. Wottowa did not recommend any further surgeries at that time (Petitioner's Exhibit 2).

The next time Petitioner was seen by Dr. Wottowa was on March 20, 2012. At that time, Petitioner complained of numbness/tingling in both hands. Another EMG/nerve conduction study was recommended.

On August 8, 2012, Petitioner completed another "Workers' Compensation Employee's Notice of Injury" form. The date of the injury was stated as March 5, 2012 (the date of manifestation alleged in the Application) and that Petitioner sustained an injury to the left wrist, hand and fingers as a result of "Continuous repetitive motion while typing, sorting and filing." (Respondent's Exhibit 6).

Another EMG/nerve conduction study was performed on October 19, 2012, which revealed that Petitioner had moderately severe bilateral carpal tunnel syndrome which was worse on the left than right. Dr. Wottowa saw Petitioner on October 23, 2012, and reviewed the EMG/nerve conduction study. He noted that the left hand had worsened since the prior EMG/nerve conduction study, but that the right hand had improved. He recommended a revision left carpal tunnel surgical procedure be performed (Petitioner's Exhibit 2).

On November 27, 2012, Dr. Wottowa performed left carpal tunnel release surgery. When Dr. Wottowa saw Petitioner on December 10, 2012, Petitioner's left hand symptoms had improved. In regard to Petitioner's right hand, he still had some pain but no numbness/tingling. Dr. Wottowa subsequently released Petitioner from medical treatment on February 15, 2013.

William Branham, Petitioner's supervisor testified at trial. Branham was Petitioner's supervisor from July, 2007, to February, 2009. Branham completed and signed a "Demands of the Job" form on January 26, 2009. It stated that Petitioner used his hands/fingers for "fine manipulation" four to six hours per day. Branham reaffirmed this when he testified (Respondent's Exhibit 5).

At trial, Petitioner testified that he has a kidney condition which prevents his kidneys from filtering protein correctly. Petitioner was also diagnosed with high cholesterol and diabetes. Petitioner takes medications for these conditions. Petitioner was diagnosed with the kidney condition and high cholesterol approximately 11 years ago, and the diabetes approximately six to seven years ago.

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, an orthopedic surgeon, on June 25, 2013. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records and the "Demands of the Job" form provided to him by Respondent. Dr. Stewart also had a discussion with Petitioner wherein he obtained detailed information from Petitioner regarding his job duties. In regard to Petitioner's medical conditions, Dr. Stewart made note of the fact that Petitioner had diabetes and obesity (Respondent's Exhibit 8).

On examination, Dr. Stewart noted that Petitioner had continuing left hand symptoms of peripheral neuropathy of the left ulnar nerve of which he opined could be related to the diabetic condition. In regard to causality, Dr. Stewart opined that Petitioner's carpal tunnel syndrome was not caused or aggravated by his job duties and that the pre-existing conditions of diabetes and obesity were risk factors for the development of carpal tunnel syndrome (Respondent's Exhibit 8).

Dr. Wottowa was deposed on October 6, 2014, and his deposition testimony was received into evidence at trial. In regard to his diagnosis and treatment of Petitioner, Dr. Wottowa's testimony was consistent with his medical records. When questioned whether Petitioner's work activities caused the carpal tunnel syndrome, Dr. Wottowa testified that they did not, but that they were "...an aggravating factor to a certain degree." Dr. Wottowa did not review Petitioner's job description nor did he inquire of Petitioner how long he performed specific job activities. Specifically, Dr. Wottowa admitted to having no knowledge of how long Petitioner typed or the configuration of Petitioner's work station (Petitioner's Exhibit 5; pp 22-24).

Dr. Wottowa agreed that chronic kidney disease, obesity, hyperlipidemia and diabetes were all aggravating factors in the development of Petitioner's carpal tunnel syndrome. However, he was unable to determine if any of the factors were more aggravating than the others (Petitioner's Exhibit 5; pp 25-27).

Dr. Stewart was deposed on April 28, 2015, and his deposition testimony was received into evidence at trial. Dr. Stewart's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Dr. Stewart also testified regarding his review of Petitioner's job duties including his discussion with Petitioner regarding same. He also noted that Petitioner had diabetes, obesity, renal insufficiency and hypercholesterolemia which he described as a "...plethora of medical issues, all of which place him at an increased risk for developing compression neuropathies and he has job activities which do not." (Respondent's Exhibit 9; pp 9-12, 19).

At trial, Petitioner testified that he still has a little bit of tingling in his left hand especially when he does a lot of work. He also believes that his left hand strength is somewhat less than it was before. In regard to the right hand, Petitioner still has complaints of pain, weakness and numbness/tingling. He does continue to wear a splint on his right hand, depending on the severity of the symptoms.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner did not sustain a repetitive trauma injury arising out of and in the course of his employment for Respondent that manifested itself on November 19, 2008, and that his current condition of ill-being is not related to his work activities.

In support of this conclusion the Arbitrator notes the following:

Petitioner previously underwent bilateral carpal tunnel surgical releases in 2006.

In regard to Petitioner's left hand, Dr. Wottowa diagnosed Petitioner with moderately severe or recurrent carpal tunnel syndrome.

In regard to Petitioner's right hand, Petitioner had no complaints and there was not a diagnosis of right carpal tunnel syndrome made on November 19, 2008.

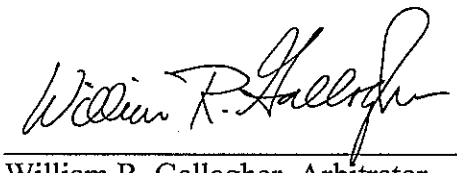
Petitioner's treating physician, Dr. Wottowa, opined that Petitioner's work activities did not cause Petitioner's carpal tunnel syndrome but that they were "...an aggravating factor to a certain degree." Dr. Wottowa arrived at this opinion based upon a minimal amount of information regarding Petitioner's work duties. He had no knowledge as to how long Petitioner performed various job duties including typing.

Dr. Wottowa also agreed that Petitioner's other risk factors of chronic kidney disease, obesity, hyperlipidemia and diabetes were all aggravating factors for the development of carpal tunnel syndrome.

Respondent's Section 12 examiner, Dr. Stewart, discussed Petitioner's job duties with him and reviewed information provided to him by Respondent regarding same. Accordingly, Dr. Stewart had more specific information regarding Petitioner's job activities than Dr. Wottowa.

Based on the preceding, the Arbitrator finds the opinion of Dr. Stewart to be more persuasive than that of Dr. Wottowa.

In regard to disputed issues (J), (L) and (N) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusion in disputed issues (C) and (F).



William R. Gallagher, Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CRUSE, WILLIAM Case# **09WC028300**

Employee/Petitioner

STATE OF ILLINOIS/DEPT OF CMS

Employer/Respondent

On 10/5/2015, 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 0.10% 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:

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

OCT 5 - 2015

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

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

☐ Injured Workers' Benefit Fund (§4(d))
X Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

William Cruse
Employee/Petitioner
v.

Case # **09** WC **28300**

State of Illinois/ Department of CMS
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 Falcioni**, Arbitrator of the Commission, in the city of **Rockford**, on **August 26, 2015**. 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 **Is Petitioner Permanently and Totally Disabled**

FINDINGS

On **July 20, 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 **$55,699.18**; the average weekly wage was **$1,071.15**.

On the date of accident, Petitioner was **61** years of age, ***married*** with **0** dependent children.

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

Respondent ***shall pay*** all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$119,011.84** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of $119,011.84.

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 $714.10/ week for 180 1/7 weeks, for the periods of time from 2/19/2008 – 8/01/2008 and 1/22/209 – 1/31/2009 as provided under Section 8(b) of the Act. In addition to the amounts paid which were calculated on an erroneous AWW of $990.95 and a TTD rate of $660.63, the parties agree the AWW to be $1,071.15 resulting in a TTD rate $714.10/ week. Owed for 180 1/7 weeks is the difference of $53.47/ week for a total of **$9,632.24**.

Medical benefits
Respondent shall pay all medical benefits that are yet unpaid and which are reasonable and casually related to Petitioner's June 20, 2007 accident as provided under Section 8(a) of the Act.

Permanent Total Disability
Respondent shall pay Petitioner Permanent Total Disability Benefits beginning 2/1/2012 in the amount of $714.10/ week for life as provided in Section 8(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund,*** as provided in Section 8(g) 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.

Nerl E M
Signature of Arbitrator

September 30, 2015
Date

OCT 5 - 2015

BEFORE THE WORKERS' COMPENSATION COMMISSION
STATE OF ILLINOIS

WILLIAM CRUSE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No: 09 WC 28300
	)	
STATE OF ILLINOIS,	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OFARBITRATOR

With respect to issue (L) What is the nature and extent of the injury, the Arbitrator finds as follows:

On the date of July 20th, 2007 while in the employment of Respondent as a traveling mechanic repairing large trucks, pieces of equipment and snow plows, Petitioner testified that he injured his right arm, shoulder and person as a whole while installing a starter on a truck. Timely notice was given to his employer of his injury.

Prior to this date, Petitioner testified he had no injury to his right shoulder or arm resulting in any permanency. He testified in 2002, 5 years prior to July 20th, 2007 he injured his right arm, saw a physician 1 time, missed no work, filed no claim and suffered no disability.

After his July 20th, 2007 injury on October 23, 2007, Dr. Hanlon ordered an MRI, without contrast, of Petitioner's shoulder that revealed an intra-substance tear of the supraspinatus tendon with the MRI unable to evaluate full thickness tears. *Petitioner's Exhibit 2 at page 125.*

Petitioner received a right shoulder injection on October 23, 2007 which gave him no relief. *Petitioner's Exhibit 2 at page 125.* Petitioner on the date of February 20th, 2008 was surgically treated by Dr. Shawn Hanlon and orthopedic surgeon who performed an arthroscopic subacromial decompression and open distal clavicle excision of the right shoulder. *Petitioner's Exhibit 2 at page 93.*

After a course of physical therapy from February 25, 2008 to July 23, 2008, Petitioner, on August 1, 2008 was released back to work to do what work he could do. Returning to work caused increased pain in his right shoulder for which he, on September 3rd, 2008, received an injection which gave only short term relief. *Petitioner's Exhibit 2 at page 112.*

On November 10, 2008 another MRI was performed, this time with contrast unlike the earlier MRI performed, and revealed a full thickness, severe rotator cuff injury with retraction of the supraspinatus tendon and associated partial tear of the infraspinatus. Also revealed was a compete tear of the long head of the biceps tendon with retraction. *Petitioner's Exhibit 2 at page 109.*

On January 22, 2009 Dr. Hanlon performed a second surgery, an open anterior acromioplasty of the right shoulder and the correction of impingement with repair of partial thickness tear and thinning of the supraspinatus and subscapularis tendon. *Petitioner's Exhibit 2, page 48*

Petitioner thereafter underwent courses of physical therapy from February 2, 2009 to June 19, 2009. *Petitioner's Exhibit 3, page 326.*

A functional capacity exam accomplished June 17th and 18th of 2009 revealed that the limitations of Petitioner's right shoulder resulting from his work injury did not allow his limited abilities to match his job duties as a truck mechanic. Prior to his injury Petitioner worked a heavy to very heavy job as a traveling truck mechanic. Recommended in the FCE were job modifications and alternate placement away from the heavy job duties. *Petitioner's Exhibit 4, page 4 of the FCE report.* The FCE reports Petitioner taking pain medication at his FCE when he experienced high pain levels. *Petitioner's Exhibit 4, page 9 of the FCE report, page 10 of Exhibit 4.* At the time of his FCE Petitioner was 63 years of age.

Petitioner was told by Respondent there were no modified jobs or alternative placements available to get him away from heavy job duties. He was offered no vocational rehabilitation.

On June 24th, 2009, Dr. Hanlon reviewed the FCE, the physical condition of Petitioner and charted Petitioner as being disabled from truck mechanic work. Dr. Hanlon instructed Petitioner, who was 63 years old, to return as needed. *Petitioner's Exhibit 2, page 62*

In a Vocational Evaluation Report of Petitioner by James Radke, MS, CRC, LCPC, dated November 11, 2013, Mr. Radke found Petitioner right hand dominant and having worked for the State of Illinois from 1986-2012 as a traveling mechanic where "he not only fixed trucks but snowplows, tractors, mowers, bulldozers, etc." *Petitioner's Exhibit 8, page 3.* "He (Petitioner) worked from a heavy to a very heavy level of physical exertion as defined by The United States Department of Labor." *Petitioner's Exhibit 8, page3.* Mr. Radke concluded with a reasonable degree of professional certainty as a Vocational expert that

> "Mr. Cruse does not have any transferable work skills that are consistent with his exertional capabilities and that Petitioner could not use his former skills in light of restrictions and limitations… the skills acquired in becoming an auto or truck mechanic are not applicable to Light or Sedentary work, especially when one considers reaching only to waist level. Therefore, due to these restrictions, Mr. Cruse is currently an unskilled worker… he is on Social Security Disability."
>
> "it is my opinion that Mr. Cruse does not have capability for employment at his former occupation (auto or truck mechanic) or any other skilled or semiskilled occupation at this point and is totally disabled from all work in his regional labor market. There is no reasonable stable labor market for Mr. Cruse." *Petitioner's Exhibit 8, page 3.*

In his evidence deposition Vocational Expert Radke described his extensive experience in attempting to get people back to work who have been on long term disability. *Petitioner's Exhibit 9, page 7.* From 1987 to the date of his deposition, May 30, 2014, he has worked through the organization Associates for Career Transition where he provides vocational rehabilitation services in the area of workers' compensation and long-term disability injuries. He also is a contractor with the Social Security Administration wherein he gave expert opinions in employability evaluations. He has been acknowledged in both Illinois state courts and in federal courts as an expert in the field of employability and the nature and extent of employability. *Petitioner's Exhibit 9, page 9*

Expert Radke found Petitioner experiencing ongoing pain and weakness in his right shoulder with a decreased range of motion. He was assessed right hand dominant. Mr. Radke found Petitioner's. "modality for learning things is not going to be through a standard classroom or typical teaching kind of thing. He was more

an observational learner his whole life." *Petitioner's Exhibit 9, page 15*. He concluded Petitioner to have no portability to his level of (workplace) functioning, especially with using his right arm. *Petitioner's Exhibit 9, 43*. With a reasonable degree of vocational and scientific certainty he concluded "that an unskilled person with lack of function in his right or dominant arm is not going to be able to find employment. There will be no employment that's going to work for this individual." *Petitioner's Exhibit 9, p 17*. Expert Radke testified he familiar with the labor markets in the entire northern Illinois area. *Petitioner's Exhibit 9, page 18.*

In describing Petitioner's failed attempt at using a computer to order parts while employed by the State of Illinois, Mr. Radke noted Petitioner was slow, didn't hit the keys very well and appeared not to have motor control of his upper extremity through his shoulders. *Petitioner's Exhibit 9, page 45.* His testimony was corroborated by Petitioner's testimony wherein he stated that he found it difficult to use the computer when he attempted the job in parts. He could not use the computer because of a lack of dexterity and familiarity. He was moved from the job after 5 weeks and positioned back to his job doing heavy to very heavy work as a traveling mechanic.

After his second surgery Petitioner testified he did attempt to become re-employed by the State of Illinois, initially, at any job after he was released by Dr. Hanlon, June 24th, 2009. There were no jobs for him because of his restrictions.

After being told he was unemployable by the State of Illinois and after his failed attempts at employment at Ace Hardware or fixing things for an insurance company, Petitioner retired to collect his pension to replace benefits he was no longer paid by CME Worker Compensation.

Petitioner testified further that after his worker compensation benefits stopped in February, 2012 and because of his need for income, Mr. Cruse applied for his CME pension. Mr. Cruse was one week short of being employed long enough to qualify for an additional $700/ monthly pension benefit. He attempted to become employed for that one more week. He was told to be present at a CME station in 2012. When the supervisors were asked whether they would employ him for just one more week, Petitioner's previous direct supervisor stated CME would not employ him any capacity for one more week because Petitioner was permanently disabled and not employable.

The State of Illinois, denied Petitioner re-employment in any capacity, and offered Petitioner no vocational training. Because of his physical limitations and his lack of experience, except in very heavy mechanic's work, CME would not employ him in any job.

Petitioner testified he tried getting a job in an ACE hardware store and where insurance repair work was done but was turned down because of right arm disability.

Petitioner testified from June 2009 until the time he testified at hearing on 8/26/2015 his uses greater amounts of narcotics in an attempt to control his increased shoulder pain. He testified he can feel his shoulder pop as many as 300 times a day.

On August 3, 2011 in completing a disability evaluation for State Retirement Systems, Dr. Hanlon declared Petitioner entitled to continuing disability benefits because of his rotator cuff tear resulting from the July 20th, 2007 accident. *Petitioner's Exhibit 1, page 8.*

Dr. Hanlon, on a 3/22/2013 off work slip, took Petitioner off work and "may not return (to work) until further notice" as a result of his right shoulder injury. *Petitioner's Exhibit 10.*

Petitioner testified the continuing shoulder symptoms which have kept him unemployed since his second surgery have worsened and become aggravated by the onset of rheumatoid arthritis and fibromyalgia. Petitioner's activities have been significantly limited. He is unable to put on his belt because of the reaching around his body and the lack of reach of his right arm around his waist. Hanging pictures causes pain in his right arm which, combined with the limitation of how high his right arm can reach, makes picture hanging impossible for him. An attempt to play catch with his grandson creates a directionless throw of the ball because of the popping and pulling of his right shoulder as his right hand moves the ball forward. He has weakness in his right arm and popping sometimes as much as hundreds of times a day. The sport of archery done frequently before the July 20, 2007 injury is limited by the lack of strength in attempting to pull back the bow string with the arrow.

Based on the record as a whole, the Arbitrator finds that Petitioner is permanently and totally disabled, said disablement commencing February 1st, 2012.and that Petitioner is entitled to PTD benefits from February 1st, 2012 and continuing for life with the benefit of $714.10/ week (calculated from the agreed upon AWW of $1071.15) as provided for under Section 8(f) of the Act and with supplementary benefits from the Rate Adjustment Fund provided in paragraph (f) of Section 7 of the Act, such supplementary benefits provided to be paid in paragraph (g) of Section 8 of the Act. Respondent shall pay all medical benefits incurred which are reasonable and causally related to Petitioner's July 20, 2007 accident as set forth under Section 8(a) of the Act as well as all medical benefits remaining yet unpaid that are reasonable and causally related to Petitioner's July 20, 2007 accident as provided for under Section 8(a) of the Act. The parties have agreed Petitioner's AWW to be $1,071.15 which calculates a TTD rate of $714.10. The erroneous AWW used by Respondent was $990.95/week and a TTD rate of $660.63. *Respondent's Exhibit 1, page 5.* Respondent paid Petitioner 180 1/7 weeks of benefits through the date of January 31st, 2012 at the erroneous reduced rate. *Respondent's Exhibit 2.* Owed Petitioner for 180 1/7th weeks is the difference between the TTD rate of $714.10 and the TTD of $660.63 paid him, or $53.47/week for a total of $9,632.24.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ECKSTEIN-WILSON, JOAN Case# **13WC026723**

Employee/Petitioner

SHERMAN HOSPITAL

Employer/Respondent

On 10/21/2015, 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:

0222 GOLDBERG WEISMAN & CAIRO LTD
DEBORAH BAKER
ONE E WACKER DR SUITE 3800
CHICAGO, IL 60601

0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT T NEWMAN
105 W ADAMS ST SUITE 2200
CHICAGO, IL 60603

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

Joan Eckstein- Wilson
Employee/Petitioner

v.

Sherman Hospital
Employer/Respondent

Case # **13** WC **26723**

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 Jessica Hegarty, Arbitrator of the Commission, in the city of **Elgin** , on **October 5, 2015** . 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. [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 **May 31, 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 $**26,677.04**; the average weekly wage was $**513.02**.

On the date of accident, Petitioner was **48** 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 $**10, 456.04** for TTD, $**zero** for TPD, $**zero** for maintenance, and $**zero** for other benefits, for a total credit of $**zero**.

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

ORDER

- **The Arbitrator finds that Petitioner has sustained a 12 ½ % loss of use of the whole person (62.5 weeks).**
- **With respect to the left little finger, Petitioner has sustained a 10% loss (2 and 2/10 weeks).**
- **The total number of weeks for which compensation is awarded is 64 and 7/10 weeks at the rate of $307.81 per week.**
- **The Arbitrator further finds that Petitioner is entitled to four (4) additional weeks of temporary total disability benefits for the period of May 5, 2014 to June 4, 2014 at the rate of $342.01 per week.**
- **With respect to bills issued by the Center for Brain and Spine Surgery (Dr. Herman's practice) the Arbitrator finds the respondent shall pay Illinois Workers Compensation fee schedule amounts for the office visit of April 23, 2014 not to exceed $403.00 and for the office visit of June 4, 2014 not to exceed $317.00; subject to credit for amounts paid by the respondent. With respect to a bill issued by ATI for a functional capacity evaluation of May 28, 2014, the respondent shall pay an Illinois Workers Compensation Commission fee schedule amount not to exceed $1,115.87, subject to credit for amounts paid by the respondent.**

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.

Jessica A. Hegarty **10/14/15**

OCT 2 1 2015

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION

Joan C. Eckstein–Wilson Petitioner,	)	
v.	)	Case No. **13 WC 26723**
	)	
Sherman Hospital Respondent.	)	

THE ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was heard before Arbitrator Jessica Hegarty on October 5, 2015 in Elgin, Illinois. (Arb. 1.) The only issues in dispute are unpaid medical bills, TTD and the nature and extent of Petitioner's injury. (Id.)

The Petitioner at the time of the injury was 48 years of age, employed by the respondent as a Cook. Her average weekly wage was $513.02. (Id.)

Both parties submitted an agreed statement of facts. (Joint Ex. 1)

On May 31, 2013, in the course of her employment duties, the Petitioner was involved in an undisputed accident when she tripped over an open drawer and fell. She sustained injuries consisting of contusions to both knees. The Petitioner also sustained a left little finger injury which was described as a sprain, and as a fracture, in the records of Sherman Occupational Health. (PX. 1, Joint Ex. 1) The Petitioner also sustained a lower back injury that was diagnosed as a herniated disc by Dr. Herman. (PX. 3, Joint Ex. 1) Dr. Anderson opined the lower back injury was not a disc herniation. Dr. Anderson diagnosed lumbar contusion and strain injuries. (RX 3 and 4, Joint Ex. 1)

The Petitioner worked light duty or restricted duty for the respondent from June 1, 2013 to October 3, 2013. (Joint Ex. 1)

The Respondent paid temporary total disability benefits for the time from October 3, 2013 to May 4, 2014. (RX. 2, Joint Ex. 1)

The Respondent's Human Resources Department (Nancy J. Gilbert) sent a letter to the Petitioner on or about December 6, 2013 asking the Petitioner to contact Lisa Knight for a meeting, for the purpose of an individual assessment of the work activities that the Petitioner was capable of performing. (RX. 5, Joint Ex. 1)

The petitioner had epidural steroid injections. (PX. 2, Joint Ex. 1)

Dr. Anderson declared maximum medical improvement as of April 3, 2014. (RX 4, Joint Ex. 1)

Dr. Herman declared maximum medical improvement as of June 4, 2014. (PX 3, Joint Ex. 1)

The Arbitrator finds that the petitioner has reached maximum medical improvement. No further treatments have been recommended by the treating doctors or the Section 12 examining doctor.

On the issue J, what medical benefits are in dispute, the Arbitrator finds:

With respect to bills issued by the Center for Brain and Spine Surgery (Dr. Herman's practice) the Arbitrator finds the respondent shall pay Illinois Workers Compensation fee schedule amounts for the office visit of April 23, 2014 not to exceed $403.00 and for the office visit of June 4, 2014 not to exceed $317.00; subject to credit for amounts paid by the respondent.

With respect to a bill issued by ATI for a functional capacity evaluation of May 28, 2014, the respondent shall pay an Illinois Workers Compensation Commission fee schedule amount not to exceed $1,115.87; subject to credit for amounts paid by the respondent.

On the issue K, what temporary total disability benefits are in dispute, the Arbitrator finds:

The petitioner claims an additional 4 weeks of temporary total disability benefits, beyond the payments by the respondent. These 4 weeks are from the time after the benefits were ended, based on the report by Dr. Anderson, until Dr. Herman released the petitioner from care as of June 4, 2014. The Arbitrator awards these additional 4 weeks of temporary total disability benefits.

On the issue L, what is the nature and extent of the injury, the Arbitrator finds:

The Arbitrator finds that Illinois Workers Compensation Precedent cases guide the Arbitrator to an award of 12 and ½ % of the whole person in consideration of the lower back injury (See Eenigenberg v Allied Tube and Conduit 02 I.I.C. 172) and an additional loss of 10 % of the left little finger for the injury to that finger.

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

BUSCH, TRACY Case# **12WC037539**

Employee/Petitioner

PRAIRIE CENTRAL UNIT #8

Employer/Respondent

On 10/20/2015, 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:

1824 STRONG LAW OFFICES
SEAN OSWALD
3100 N KNOXVILLE AVE
PEORIA, IL 61603

0000 INMAN & FITZGIBBONS LTD
MICHAEL BANTZ
2001 W SPRINGFIELD SUITE 1002
CHAMPAIGN, IL 61820

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)

Tracy Busch
Employee/Petitioner

Case # **12** WC **37539**

v.

Prarie Central Unit #8
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 18, 2015**. 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, **February 27, 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 $**7,331.60**; the average weekly wage was $**140.99**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **1** 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

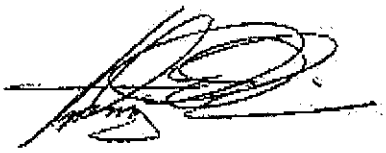
The Petitioner failed to prove that her current condition of ill-being is causally related to the injury of February 27, 2012.

No benefits are awarded herein.

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 14, 2015
Date

OCT 20 2015

FACTS:

The Petitioner sustained undisputed accidental injuries arising out of and in the course of her employment with the Respondent on February 27, 2012 when, while she was lifting the door of a dishwasher, she experienced intense pain in her low back and groin. The Petitioner immediately reported her injury and timely notice of the injury is not disputed.

The Petitioner testified that on February 27, 2012, while she was performing the usual duties of her employment as a cafeteria worker for the Respondent, she attempted to lift up the handle on a dishwasher. She testified that the handle and door to the dishwasher did not move and she attempted to pull it again, after which she experienced low back pain. The Petitioner continued doing lighter work until the end of her shift and she sought treatment the next day at Occupational Health.

On February 28, 2012, the Petitioner was seen at OSFOccupational Health where she gave a consistent history of injury and complained of back pain. The Petitioner was diagnosed with lumbosacral pain chronic versus acute aggravation of lumbosacral pain.

On April 24, 2012, the Petitioner presented to William Chang, physician assistant, at OSF Medical Group. The Petitioner complained of low back pain after lifting something at work and she was noted to have tenderness to palpation around the bilateral SI joints and in a very small amount in the left paraspinals musculature of the upper lumbar region. The Petitioner had a positive reverse straight leg raise bilaterally but also had a negative straight leg raise. There were no gross neurological defects and Mr. Chang recommended that the Petitioner undergo a lumbar MRI. That MRI was performed on April 27, 2012 and was reported to demonstrate no abnormality.

On May 3, 2012, the Petitioner saw Dr. Travis Richardson at OFS Medical and reported that she was doing much better. Dr. Richardson reviewed the MRI and noted that there were no significant changes to explain her condition, diagnosis, and prognosis. No complaints or symptoms of radicular pain were noted. The Petitioner's physical examination was normal neurologically, and also showed normal reflexes and sensation. The radiographic data was noted to be benign. Dr. Richardson opined that the Petitioner's lumbar spine was "essentially normal." The Petitioner was again diagnosed with back pain and was to proceed with pain management..

On May 18, 2012, the Petitioner presented to Dr. Ji Li at Applied Pain Institute. The Petitioner gave a consistent history of the accident and stated that she acutely developed sharp pain in her low back with no radiation of pain to her legs. The Petitioner had no tingling, numbness, or weakness. Petitioner also stated that her physical therapy had helped some. Dr. Li noted that there was no radiation of pain to the Petitioner's legs, she was minimally tender in her back but was normal for her extremities, and she ambulated without difficulty. Dr. Li prescribed Vicodin and intended to review Petitioner's MRI. That same day, Dr. Li authored a letter to Dr. Richardson noting that the MRI of the lumbar spine was noted to show no pathology and physical examination showed very minimal tenderness of the thoracic lumbar and sacral spine, straight leg raise was negative, and Petitioner's neurological examination was normal. Dr. Li opined that the Petitioner's pain was related to a lumbar strain to the muscles in her lumbar spine, and he recomended injections in these muscle areas for therapeutic and diagnostic purposes. Dr. Li recommended additional physical therapy and conditioning and prescribed Vicodin.

On May 25, 2012, the Petitioner underwent bilateral injections to the PSOA and lumbarum muscle areas, performed by Dr. Li. On June 18, 2012, the Petitioner underwent a lumbar epidural steroid injection at L3-4 by Dr. Li. (PX 6).

On July 13, 2012, Petitioner reported to Dr. Li that she did not have any improvement after the second injection. The petitioner complained of low back pain and now complained of pain in her right leg. The Petitioner also complained of mid and low back pain, as well as bilateral hip pain that radiated from the groin. She had occasional electric shooting pains down the leg. Examination showed minimal back tenderness and negative straight leg raising. She was referred to Dr. Schnack for chiropractic treatment and Dr. Gu for acupuncture. Petitioner was directed to return in 3 months.

On November 1, 2012, the Petitioner presented to Dr. Kube and Allison Blood, NP, at Prairie Spine and Pain Institute. Petitioner presented with right buttock, right calf, and left buttock pain present for eight months. The Petitioner gave a consistent history of accident. X-rays were obtained and reviewed which demonstrated minimal loss of disc height in the lumbar spine. No spondylolysis or spondylolisthesis was obvious on review. There were minimal degenerative disc changes. In an addendum authored by Dr. Kube, the doctor wrote that, "She has no pain with palpation of the lumbar spine, either central or paraspinals musculature. At this point, this does not seem to be related to lumbar issues. Certainly internal and external rotation of the hip should not trigger radiculopathy." Dr. Kube recommended that the Petitioner undergo a lumbar MRI and be referred to a hip specialist.

The Petitioner underwent an MRI of the lumbar spine on November 5, 2012 and it was reported to reveal no encroachment on the neural elements, mild degenerative disc disease at L2-L3 and L3-L4 discs with mild disc dessication but no loss of height or disc bulge; and mild bilateral facet artropathy at L4-L5 and L5-S1.

The Petitioner then presented to Dr. Joseph Novotny at McLean County Orthopedics on November 13, 2012 to check for hip pathology. The Petitioner presented with a history of lower back pain, sacral pain, and some pain radiating down the bilateral lower extremities into the calves. Dr. Novotny opined that the Petitioner did not have a hip pathology problem based on her exam and her x-rays obtained on this date. Dr, Novoty recommended that the Petitioner undergo an MRI of her pelvis and then be seen by Dr. Naour.

On November 20, 2012, the Petitioner returned to Dr. Kube who noted that the MRI showed no significant neurocompressive lesion and ordered an EMG/NCV. The Petitioner was released to light duty (frequent lifting of 10 pounds, and limited lifting up to 35 pounds, rare overhead and floor to waist, limited bending and twisting, limited prolonged sitting or standing position). Dr. Kube noted that an EMG/NCV was the best thing to do until he could get a true diagnosis.

The Petitioner underwent an EMG/NCV with Dr. Trudeau on December 4, 2012 and Dr. Trudeau opined that the EMG revealed right L5 radiculopathy, mild to moderate in electroneurophysiologic terms.

On December 13, 2012, the Petitioner presented to Dr. Richard Cummings and complained of pain in her low back and tailbone area. A physical examination, including a straight leg lift and FABER test, was normal, with the exception of tenderness at the junction of her sacrum and coccyx

area. Dr. Cummings noted that they would continue to treat the right L5 radiculopathy to see if it helped the Petitioner's pain and in order to better diagnose her condition.

On December 14, 2012, Petitioner presented to Dr. Cummings and underwent a transforaminal epidural injection on the right side at L5-S1.

At the request of the Respondent, the Petitioner was examined by Dr. Gunnar Andersson on December 20, 2012. Dr. Andersson took a history from Petitioner, reviewed medical records, and performed a physical examination. Dr. Andersson opined that, if the Petitioner's history of the accident is correct, that she suffered a strain. Dr. Andersson agreed that a pelvic MRI was reasonable and related to the February 27, 2012 accident, in order to evaluate the Petitioner's hip joints. Dr. Andersson also opined that further treatment or diagnostics for the Petitioner's back was not necessary as a result of the work-related injury and that the Petitioner could work with restrictions of no lifting more than 50 pounds occasionally and 25 pounds repetitively.

The Petitioner presented to Dr. Alex Cummings at Prairie Spine and Pain Institute on January 4, 2013 and reported that her pain had returned since the injection. The Petitioner indicated she was interested in a spinal cord stimulator trial.

The Petitioner returned to Dr. Kube on January 8, 2013 and he noted that the Petitioner still had radiculopathy pursuant to the EMG and that a dorsal spinal column stimulator trial had been recommended. Dr. Kube agreed with this recommendation but noted that he saw no neural compressive lesion on the MRI. Dr. Kube also recommended a functional capacity evaluation.

On January 30, 2013 the Petitioner underwent an MRI of the pelvis which was noted to be unremarkable. On January 31, 2013, Petitioner underwent a functional capacity evaluation and was deemed to function with restrictions of occasional floor to waist lifting a 50 pounds, waist to shoulder 40 pounds, shoulder to overhead 35 pounds, carrying 55 pounds, pushing 52 ½ pounds, and pulling 69 pounds. She could frequently lift 35 pounds floor to waist, 40 pounds waist to shoulder, 31 ½ pounds shoulder to overhead, and no recommending frequent carrying, pushing 26.25 pounds, pulling 34.5 pounds. Constantly, Petitioner could lift floor to waist 17 1/2 pounds, waist to shoulder 20 pounds, shoulder to overhead 15.75 pounds. Constant carrying was not recommended.

The Petitioner returned to Dr. Kube on February 7, 2013 with "excellent FCE results." She had essentially light–medium to medium level restrictions that were permanent. The Petitioner still complained of pain and Dr. Kube wanted her to work toward a dorsal column stimulator trial. Dr. Kube's work status form, authored that day, indicated that the Petitioner was restricted to light to moderate activity pursuant to her functional capacity evaluation.

On February 14, 2013, the Petitioner saw Dr. Cummings for evaluation for clearance of a spinal cord stimulator trial and, on February 21, 2013, the Petitioner was cleared for a spinal cord stimulator trial trial to be performed by Dr. Kube and Dr. Cummings. On March 11, 2013, the Petitioner underwent a dorsal column spinal cord stimulator trial and it was noted that her condition was chronic pain due to trauma, right leg radiculopathy, and cocyxalgia.

The Petitioner followed up with Dr. Cummings on March 18, 2013 and reported that the spinal cord stimulator trial was great and that she had wonderful results. The trial stimulator was removed and Petitioner was to be scheduled for a permanent spinal cord stimulator. On July 25, 2013, the

Petitioner saw Dr. Kube and it was noted that she had a successful spinal cord stimulator trial and that they were awaiting approval for a permanent spinal cord stimulator. The Petitioner was noted to have continuing severe pain.

In an addendum report issued by Dr. Andersson on September 23, 2013, Dr. Andersson reported that he had reviewed additional medical records, including Petitioner's pelvic MRI, Petitioner's January 31, 2013 FCE, Petitioner's EMG/NCV study, and additional medical records from Dr. Kube and that he diagnosed the Petitioner with a lumbar strain as a result of her February 27, 2012 accident. Dr. Andersson opined that the Petitioner's back treatment after July 13, 2012 was not related to her accident, and that following her hip MRI and Functional Capacity Evaluation on January 31, 2013 the Petitioner had reached maximum medical improvement..

On September 16, 2014 the Petitioner underwent another functional capacity evaluation at Accelerated Rehab in Bloomington. It was reported that the Petitioner was capable of working only at the sedentary level and that, the Petitioner's job required functioning at medium level. Accordingly, the Functional Capacity Evaluator opined that the Petitioner did not demonstrate the physical capabilities and tolerances to perform all of the essential job functions of a cook. On October 7, 2014, Dr. Kube authored a work status form in which he indicated that he agreed with the findings of the functional capacity evaluation and indicated that the Petitioner should be restricted to the activity outlined in the evaluation.

At the request of the Respondent, Dr. David Fardon performed a review of the Petitioner's medical records and issued a report dated August 13, 2015. Dr. Fardon noted that Dr. Andersson had retired, that Dr. Fardon himself had practiced with Dr. Andersson for seven years prior to that, and that Dr. Fardon had taken over on-going care for many of Dr. Andersson's former patients. Dr. Fardon reported that he had reviewed surveillance of the Petitioner, the Petitioner's September 16, 2014 functional capacity evaluation, Dr. Andersson's IME report and addendum, and Dr. Andersson's deposition transcript. Dr. Fardon opined that the Petitioner's treatment after July 13, 2012 was not related to the Petitioner's accident and that the Petitioner suffered a strain as a result of her work accident. Dr. Fardon further opined that the Petitioner's pain had not been explained and that it was probable that the Petitioner could not sustain work that involves heavy and many forms of moderate physical endeavors, but Dr. Fardon did not believe that the information available to him explained why she had pain and limitations of her functions. Dr. Fardon opined that there was no documentation that the Petitioner's pain and limitations were from the effects of the incident described on February 27, 2012.

The December 2, 2013 evidence deposition testimony of Dr. Kube was admitted into the record as Petitioner's Exhibit 17. Dr. Kube testified as to the history of injury provided to him by the Petitioner and the course of treatment that he rendered to the Petitioner. Dr. Kube opined that the Petitioner's February 27, 2012 accident was a causative factor of the Petitioner's condition of ill-being but conceded that "I can't point to a specific thing on her MRI." Dr. Kube prescribed permanent restrictions in the light medium to medium level, pursuant to the functional capacity evaluation, and he opined that those restrictions were related to the Petitioner's work accident of February 27, 2012.

The April 23, 2014, evidence deposition testimony of Dr. Gunnar Andersson was admitted into the record as Respondent's Exhibit 2. Dr. Andersson testified consistently with his examination report and his addendum report. Dr. Andersson opined that the Petitioner suffered a back strain as a result of her work accident and that both of the Petitioner's MRIs were normal. Dr. Andersson opined that

the Petitioner did not have any evidence of radiculopathy and that even taking the EMG study into consideration, her pain complaints were not consistent with any specific radiculopathy. Dr. Andersson further opined that the Petitioner's back treatment, up until July of 2012, and also Petitioner's January 31, 2013 functional capacity evaluation, were reasonable and related to the Petitioner's accident and that, following the Petitioner's functional capacity evaluation, she reached maximum medical improvement as of January 31, 2013. Dr. Andersson also opined that the spinal cord stimulator was not necessary for the Petitioner and was particularly not necessary in relation to the Petitioner's work accident. Dr. Andersson did opine, however, that the Petitioner's medium duty restrictions from her January 31, 2013 functional capacity evaluation were reasonable.

The Petitioner testified that the spinal cord stimulator trial of March 11, 2013 relieved almost all of her symptoms and significantly reduced her pain. She testified that she felt 90% better with the stimulator in place but the when the stimulator was removed all of her pain returned. The Petitioner testified that she currently continues to have pain and that she wants to have the spinal cord stimulator permanently implanted.

Joni Besgrove, the Respondent's Food Services Director, testified as a witness called by Respondent. Ms Besgrove testified that following the Petitioner's accident, the Petitioner's work restrictions were accommodated from February 27, 2012 until August 19, 2014, the beginning of the school year, when the Petitioner did not return to work. Ms. Besgrove testified that the restrictions that were accommodated for the Petitioner are identical to those from the Petitioner's January 2013 functional capacity evaluation. Ms. Besgrove further testified that the restrictions from the Petitioner's January 2013 Functional Capacity Evaluation could be accommodated as of the time of the hearing.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Arbitrator finds that Petitioner's current condition of ill-being is not causally related to her February 27, 2012 accident. The Arbitrator finds that the Petitioner reached maximum medical improvement with regard to work-related injuries as of January 31, 2013, and that no causal connection exists for any further treatment, including but not limited to the spinal cord stimulator recommended by Dr. Kube. In finding that the Petitioner has reached at a point of maximum medical improvement with regard to work-related injuries and that there is no causal connection between Petitioner's injury and her need for ongoing treatment, the Arbitrator adopts and incorporates the opinions of Dr. Gunnar Andersson, Dr. David Fardon, Dr. Travis Richardson, and Dr. Ji Li. The Arbitrator finds the opinions of those doctors to be more persuasive in the instant matter than the opinions of Dr. Kube.

In support of the finding that the opinions of Dr. Gunnar Andersson, Dr. David Fardon, Dr. Travis Richardson and Dr. Ji Li. are more persuasive than those of Dr. Kube, the Arbitrator notes that Dr. Gunnar Andersson, Dr. David Fardon, and Dr. Ji Li. all diagnosed the Petitioner with a work-related lumbar strain and found that the Petitioner did not suffer from radiculopathy as a result of her work accident. Dr. Richardson did not note any symptoms of radiculopathy and was unable to find

any clear diagnosis for the Petitioner besides lumbar pain. Of particular note is the fact that Petitioner underwent two lumbar MRIs, on April 27, 2012 and November 5, 2012, and every physician who reviewed these MRIs, including Dr. Kube, found there was no significant abnormality.

Furthermore, the medical records establish that there were no symptoms or signs of radiculopathy or radicular pain in the Petitioner's initial medical visits and examinations. The Petitioner's medical records indicate that she did not undergo treatment in between February 28, 2012 and April 24, 2012. The Records from OSF, when Petitioner did present for treatment two months after her accident, noted normal reflexes and sensation, and also a lack of neurological defects and radicular symptoms. The Petitioner saw Dr. Travis Richardson, who also could not explain what was causing Petitioner's pain. Dr. Richardson opined that the Petitioner's lumbar spine was "essentially normal" and he referred her to Dr. Li for pain management. When the Petitioner presented to Dr. Ji Li on May 18, 2012, Dr. Li specifically noted that there was no radiation of pain to the Petitioner's legs and then specifically commented in his letter to Dr. Richardson that, "Later this pain developed into chronic, continuous achy pain in her lumbar spine without any radicular symptoms. She has no tingling and numbness of her lower extremities." Dr. Li's physical examination was normal with the exception of "very minimal tenderness" in the Petitioner's thoracic, lumbar, and sacral spine.

Dr. Andersson testified that the Petitioner had a fairly normal physical examination, which is consistent with the Petitioner's earlier physical examinations at OSF and with Dr. Li, where the Petitioner was noted to have normal reflexes, sensory functions, and negative straight leg tests. Dr. Andersson testified that the Petitioner's pain complaints were not consistent with any specific radiculopathy, and, in conjunction with his review of the Petitioner's MRI films and medical records, opined that Petitioner's sole injury was a lumbar stain.

Dr. David Fardon, agreed with Dr. Andersson's opinions that the Petitioner suffered a mere lumbar strain as a result of her work accident and that the Petitioner does not require any further treatment related to her February 27, 2012 work accident. Dr. Fardon also questioned why the Petitioner experienced pain and limitations to her functions and opined that there was no documentation that the Petitioner's pain and limitations were from her work accident on February 27, 2012.

While the Arbitrator notes the opinions of Dr.Kube as well as the temporal sequence of events, the Arbitrator finds Dr. Kube's opinions to be less persuasive than those of Dr. Andersson, Dr. Fardon, Dr. Richardson, and Dr. Li. The Arbitrator notes that after Dr. Kube first saw the Petitioner he wrote, "She has no pain with palpation of the lumbar spine, either central or paraspinals musculature. At this point, this does not seem to be related to lumbar issues. Certainly internal and external rotation of the hip should not trigger radiculopathy."

Essentially, Dr.Kube has opined that as the Petitioner has continued to complain of pain since the date of her injury, those complaints are related to that injury. His recommendation for the permanent implantation of a spinal cord stimulator is, similarly based upon the Petitioner's report of relief of her pain following the temporary implantation of a spinal cord stimulator. The Arbitrator finds it significant, however, that Dr. Kube testified that the Petitioner's lumbar disks all looked relatively reasonable and that nothing on her MRI would explain radicular symptoms. It is also compelling that Dr. Kube had no clear explanation for the Petitioner's pain and he conceded that the only thing that showed any indication of an injury was an EMG that discuses radiculopathy at L5.

The Arbitrator also notes that, with the exception of Dr. Kube, every physician who saw the Petitioner or reviewed her records, Dr. Richardson, Dr. Li, Dr. Andersson, and Dr. Fardon, was all unable to find anything objectively or anatomically wrong with the Petitioner and none of them recommended a spinal cord stimulator for Petitioner.

For the above reasons, and based upon the Arbitrator's review of the medical records and deposition testimony, the Arbitrator finds that the Petitioner failed to prove that her current condition of ill-being is causally related to the work injury of February 27, 2012, and failed to prove a causal connection between the claimed incident of February 27, 2012 and the need for ongoing treatment to her lumbar spine.

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, (K.), Is Petitioner entitled to any prospective medical care, and (L.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

In light of the Arbitrator's findings and conclusion relating to the issue of causal connection, which are adopted and incorporated herein, the Arbitrator finds that the Respondent is not liable for: (i.) medical services provided to Petitioner after July 13, 2012, with the exceptions of Petitioner's hip treatment and the first functional capacity evaluation from January of 2013, which Dr. Andersson agreed with, (ii.) medical services proposed, including but not limited to the spinal cord stimulator, or (iii.) payment of temporary total disability benefits.

The Arbitrator notes that the Respondent has paid for the Petitioner's medical treatment as evidenced in Respondent's payment ledger exhibit. The Respondent is not liable for the medical bills offered into evidence at trial by Petitioner (PX 19), with the exception of any unpaid bills from on or before July 13, 2012 related to Petitioner's lumbar spine, Petitioner's hip treatment, and Petitioner's first functional capacity evaluation from January of 2013, as all other medical bills are not the result of treatment for work-related injuries.

The Arbitrator finds that Petitioner is not entitled to TTD benefits. In support of the finding that Petitioner is not entitled to TTD, the Arbitrator notes that the Petitioner underwent two functional capacity evaluations, one in January of 2013 and another in September of 2014. Both Dr. Andersson and Dr. Kube testified that that the Petitioner's permanent restrictions from this first FCE were reasonable and related to her work accident, however, the Respondent accommodated those restrictions and Jodi Besgrove testified that the Respondent could continue to accommodate the restrictions from the January 2013 functional capacity evaluation. The ere is no evidence that the Petitioner's permanent restrictions related to her work accident are anything other than what is established in her January 2013 FCE.

There is no explanation for why the Petitioner underwent a second functional capacity evaluation in September of 2014 and no physician has testified or opined that the Petitioner's additional work restrictions from that second functional capacity evaluation are related to the Petitioner's February 27, 2012 work accident. The Arbitrator notes that the Petitioner worked from February 27, 2012 until the summer of 2014, and that the first day that the Petitioner missed was at

the start of the 2014 to 2015 school year, which began on August 19, 2014. The record is completely silent as to why, after working for more than two years after her accident, the Petitioner was suddenly unable to work and Jodi Besgrove testified that the Respondent could have continued to accommodate the Petitioner's restrictions.

While Dr. Blair Rhode wrote an off work slip for the Petitioner on October 8, 2014, that off work slip is noted to be for a diagnosis of foot/back and the corresponding office note establishes that the Petitioner saw Dr. Rhode for treatment for her hammertoes and right foot pain. The Petitioner stipulated on the record that the Petitioner was not seeking any benefits with regard to her hammertoe and right foot treatment, or findings related to those conditions.

For the above reasons, the Arbitrator finds that Respondent is not liable for the medical services provided to the Petitioner after July 13, 2012, with the exceptions of Petitioner's hip treatment and the first FCE from January of 2013, the medical services proposed by Dr. Kube, including but not limited to the spinal cord stimulator, or payment of temporary total disability benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ROMAN, FRANCISCO Case# **14WC041123**

Employee/Petitioner

SPEEDWAY

Employer/Respondent

On 10/15/2015, 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 0.08% 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:

1377 PARENTE & NOREM
DAVID A IAMMARTINO
221 N LASALLE ST 27TH FL
CHICAGO, IL 60601

2461 NYHAN BAMBRICK KINZIE & LOWRY
JAMES A MORAN
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Francisco Roman
Employee/Petitioner

v.

Speedway
Employer/Respondent

Case # **14** WC **41123**

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 **Steffen**, Arbitrator of the Commission, in the city of **Chicago**, on **8/11/15**. 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. [x] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **2/18/13**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**24934.52**; the average weekly wage was $**479.51**.

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 $**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.

Respondent is not liable for Penalties

ORDER

Respondent shall pay for medical services with treatment with Dr. Javara ($3250.00) including bill for EMG/NCV test as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary partial disability benefits of $319.67/week for 6 3/7 weeks as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability of $287.71/week for 15 weeks because the injuries sustained caused the 3% loss of use of the person as a whole as provided in Section 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.

Ketki S. Steffen
Signature of Arbitrator Ketki Shroff Steffen

10/14/15
Date

OCT 15 2015

FACTUAL HISTORY

The Petitioner, Francisco Roman, was 54 years old at the time of his alleged work accident. He worked for Respondent, 'Speedway' as a shift manager. His duties included cleaning the store, performing a survey of gas prices, changing the prices on the outdoor sign, and paperwork. Prior to his accident, he worked for nearly a decade for Speedway and as a store manager he did virtually every function in the store.

On February 18, 2013, Petitioner was loading stock into a double-door freezer in the back part of the store. He testified that he was hit on top of his head when a box placed above the freezer fell on top of the head. He described the box as large and containing 32-ounce soda cups. He testified he felt pain in his neck, shoulder and felt a sensation of pain into his left pinky. There was a young female employee working at the time but she did not witness the actual incident. He stated that he did not recall her name. He also stated that he was aware that his employer required that all accidents be immediately reported. He agreed that he continued working a full shift and also worked full days on February 19 and 20, 2013. He reported his accident to his employer on February 22, 2013.

He sought treatment on February 22, 2013 and remained off work from February 22 through April 6, 2013 per his doctor's note. His physician Abelardo Jarava diagnosed a neck and shoulder sprain/ strain and provided conservative medical care including an EMG/NCV test.

Brian Yost, the District Manager testified on behalf of the Respondent. He stated under oath that duties included investigating any claimed accidents. This was a three-step process involving speaking with the site's manager, speaking with the Claimant, and re-enacting the accident for safety reasons. Mr. Yost further testified he attempted to reach the Petitioner, but Petitioner was uncooperative. He testified that he conducted an investigation whereby he placed a box on top of the

freezer and attempted to get the box to fall off the freezer. He stated that he could not get the box to fall off and that the manager told him that there were no overhanging cups or box placed at the edge of the freezer. The photographs from this investigation are placed into evidence as Respondent's group exhibit 4(RX4) Respondent's exhibit 2, page 3 includes a section III filed out by the store manager Christopher M. (spelling of last name is undecipherable) acknowledging that "cups have always been store in location above freezer and we have never had issue"

Petitioner testified that there was a female employee working the cash register during the time of his accident. Petitioner could not recall her name and accident report states that the witness is not at site. Petitioner states that his wife filled out the report on his behalf. Respondent's exhibit 1 shows that Petitioner Francisco and employee Eliada are both scheduled to be working the store on 2/18/13.

With regard 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:

Petitioner testified that a box fell on him as he was loading items at the cooler at work. The photographs introduced into evidence show the area with a box placed above the cooler for demonstrative purposes only. There is no actual picture of the area from the date and time of the accident. Petitioner has testified that on the day of the accident, he was performing his duties and a female clerk was working the cash register at the gas station. There is also uncontroverted testimony that there was a warning sign placed on or about the cooler warning employees not to stack boxes above the cooler. Obviously, this problem must have occurred in the past and caused safety concerns for Speedway and its employees. Also obvious is that while the gas station was operational on the date and time of the accident, someone needs to man the cash station for customer service. The Petitioner testified that there was a female clerk present. The documentary evidence supports his testimony. Respondent's exhibit 1 shows that Petitioner Francisco and employee Eliada are both scheduled to be working the store on 2/18/13. Brian Yost does not interview this employee.

Respondent's exhibit 2, page 3 includes a section III filed out by the store manager Christopher M. (spelling of last name is undecipherable) acknowledging that "cups have always been store in location above freezer and we have never had issue". This also corroborates Petitioner's position that a box from above the freezer fell on his head/neck.

The telling point of this trial is the "investigation" undertaken by Brian Yost, the Speedway Manager who investigated and attempted to re-construct the accident. The Arbitrator finds it peculiar and noteworthy that Mr. Yost omitted the warning sign that was posted at the location. His report does not mention it either. What is doubly noteworthy is that he did not include the name of the clerk who was present in the store at the time of the alleged incident, nor did he take her statement. His testimony, photographs and "investigation" is lacking and somewhat biased due to these glaring errors. Therefore, the Arbitrator finds that the Petitioner's testimony is largely uncontroverted.

Therefore, the Arbitrator finds that Petitioner did suffer an work accident that arose out of and in the course of his employment by Respondent.

In support of (J) has Respondent paid all appropriate charges for medical treatment, the Arbitrator finds as follows:

Having found the Petitioner has meet his burden in proving an accident arising out of and in the course of his employment, the Arbitrator finds the Respondent is liable for payment of any reasonable and necessary medical bills of Dr. Javara. Said bill in the amount of $3250 shall be paid by Respondent subject to the fee schedule.

In support of the Arbitrator's findings related to (K) temporary total disability, the Arbitrator finds as follows:

Having found the Petitioner met his burden of proving an accident arising out of and in the course of his employment; the Arbitrator finds the Respondent is liable for payment of temporary total disability benefits for the period of 2/21/13 to 4/6/13. TTD is awarded for 6 3/7 weeks at rate of 319.67 per week as Petitioner was off work per note from his treating physician or was placed not

accommodated light duty work

In support of the Arbitrator's findings related to (L) the nature and extent of the injury, the Arbitrator finds as follows:

The Arbitrator finds the Petitioner suffered a cervical strain for which he was treated conservatively.

This case arises out of a February 18, 2013 accident, a date after September 1, 2011 amendment of Worker's Compensation Act ("Act"). Post amendment, 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.

In applying the above criteria to the case at bar, the Arbitrator finds that no impairment rating has been submitted for Petitioner who was a 54 year of manager at Speedway. The Petitioner was fired from employment and although he remains unemployed, there is no real evidence presented as to his future earning capacity. The Arbitrator considers all of the above factors to be of somewhat neutral value. Lastly, Petitioner's testimony and complaints were documented and supported by his

reporting the same to his medical providers. He was diagnosed with neck and back strains, had radicular symptoms requiring an EMG/NCV. The Arbitrator assigs moderate weight to these findings.

The Arbitrator finds the Petitioner suffered a neck sprain and is permanently disabled to the extent of 3% loss of use of person under Section 8(d)2.

In support of the Arbitrator's findings related to request for penalties, the Arbitrator finds as follows:

The Arbitrator notes that the Petitioner suffered a relatively minor accident and failed to report it for over two days. He could not provide the name of the employee that he works with and manages although he had been in Respondent's employment for several years. His reporting of accident states the witness was not a site. There is little objective finding to support Petitioner's subjective complaints. Under these circumstances, Respondents denial of the claim is not unreasonable. Therefore, the request for penalties is denied.

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

WAGNER, MIKE Case# **14WC034318**

Employee/Petitioner

FN SMITH

Employer/Respondent

On 10/26/2015, 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:

2489 BLACK & JONES
TRACY JONES
308 W STATE ST SUITE 300
ROCKFORD, IL 61101

5074 QUINTAIROS PRIETO WOODS ET AL
IAN FULLER
233 S WACKER DR 70TH FL
CHICAGO, IL 60606

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

- [ ] 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)

Mike Wagner
Employee/Petitioner

v.

FN Smith
Employer/Respondent

Case # **14** WC **34318**

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 **George Andros**, Arbitrator of the Commission, in the city of **Waukegan**, on **August 31, 2015**. 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. [x] 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 _____

FINDINGS

On the date of accident, **1/31/2014**, 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 $**45,278.46**; the average weekly wage was $**870.74**.

On the date of accident, Petitioner was **36** years of age, ***married*** with **1** 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 $**12,233.52** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**12,233.52**.

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

ORDER

Arbitrator orders Respondent to pay to Petitioner TTD benefits from March 17, 2014 to May 4, 2014 and from July 18, 2014 to August 31, 2015 for a total of 65 2/7 weeks at a weekly rate of $580.49 for a total of $37,897.70. Respondent is entitled to a credit for $12,233.52 already paid leaving a balance owed of $25,664.18. The Respondent shall pay the TTD to the Petitioner and his attorney per Rule 7080.20.

Arbitrator orders Respondent to pay to Petitioner ongoing TTD benefits until such time as he is no longer entitled to benefits under Section 8(b).

Arbitrator orders Respondent to approve and pay for prospective medical treatment with an orthopedic of Petitioner's choosing and any additional treatment recommended by the treating doctors.

Arbitrator orders Respondent to pay to Petitioner & his attorneys Jones and Black unpaid medical bills of $9,027.12 subject to the fee schedule.

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.

George J. Andros #01 Oct. 22, 15

Signature of Arbitrator

ICArbDec19(b)

OCT 2 6 2015

STATEMENT OF FACTS 14 WC 34318

This case was tried before the undersigned, Arbitrator Andros, on August 31, 2015. The issues in dispute were: accident, causal connection, average weekly wage, medical bills, temporary total disability benefits after November 15, 2014, and entitlement to penalties.

Petitioner testified that on January 31, 2014, he was employed with the Respondent as a machinist. He had worked for the employer for approximately eight years. FN Smith is a custom precision machine shop and the petitioner was a journeyman machinist. During the third week of January 2014, Petitioner was working on the Landis OD Grinder. The grinder had retrofitted custom doors that were 6 feet tall by 8 feet long and made of solid steel. Each door weighed around 300 pounds. While trying to load a hundred pound solid steel pole, the petitioner had to open the doors of the machine. He demonstrated how he would open the doors. With his arms at chest level, grasping the handles at the level above the solar plexus, Petitioner pulled the doors apart by pulling his hands apart from each other to slide the doors open in a "fly" weight lifting motion. Petitioner testified that he felt pain in his left shoulder and neck while doing this maneuver. He reported it to his supervisor Bill Smith and continued to carry out his work for the rest of the day. (emphasis added)

Because the symptoms did not entirely go away, Bill Smith and the petitioner's supervisor Joe Stevens asked him to move to the surface grinder machine. He ran this machine for approximately four days. On January 31, 2014 he was working the surface grinder machine. He had to take metal totes with 100-150 metal parts and move them onto a cart to be transported to the shipping and receiving department. These parts had already been machined by the second shift but had not yet been delivered to shipping and receiving. Joe Stevens asked Petitioner to move these parts prior to running new ones. Each tote was approximately 18" x 1' in length x 1' deep. He demonstrated grasping the metal tote in the front and the back of the tote by reaching his left arm over the tote and grabbing the rear handle while his right hand grasped the front handle. The bench the tote sat on was approximately chest level. Petitioner reached out his arms at chest level, grasped the tote, lifted it up above the solar plexus level, twisted to the left and loaded the tote onto the cart. Petitioner testified that while doing this, he felt a pop and tear in his left shoulder with pain shooting up into his neck. He tried to continue to finish the job, but he couldn't because he could not raise his left arm over the magnet in the machine to load it. He reported the incident to his supervisor Bill Smith and was sent to the emergency room at KSB hospital.

Petitioner was seen in the emergency room on March 31, 2014. PX 3. A history was obtained that patient "complaints of pain shooting from neck since lifting something at work at 9 o'clock today. FN Smith patient states last week was pulling apart 300 pound doors and felt pain in low neck that went into left scapula. Today around 9 AM lifted a bin that is 100 pounds and immediately got low neck pain into left scapula down left shoulder and arm." PX 3 p. 193. He was diagnosed with cervical radiculopathy. PX 3 p. 199. Petitioner was told to follow up with Dr. Mohammed for a follow-up visit on February 6, 2014. Dr. Mohammed discussed the need for an MRI of his cervical spine at that time. PX 3. He then followed up with Dr. Rozman on February 25, 2014. PX 1 p. 000019. Dr. Rozman took a history "that the petitioner was injured on January 31, 2014, while at work he felt a popping sensation in his neck pain radiating to his left upper extremity and immediate weakness with numbness and tingling." Dr. Rozman noted the patient continued to suffer from pain and weakness in the left upper extremity. It was noted he had pain with palpation to the left shoulder and pain in his neck. The diagnosis was cervicalgia, cervical disc disease, cervical radiculopathy. PX 1 p. 000019. Dr. Rozman also recommended physical therapy and an MRI of the cervical spine. The MRI was carried out on March 7, 2014. Dr. Rozman then ordered an EMG that was done on March 12, 2014, the results of which were normal.

Importantly, when he began physical therapy, the therapist recorded a history that "patient expressed concern that when he originally hurt himself that he tore something in his shoulder and no one has really looked at his shoulder?" PX 3. He was then referred to Dr. Howard Weiss for a cervical epidural steroid injection and a trigger point injection to the left shoulder. PX 2 p. 000051. Dr. Rozman then referred him to Dr. Alexander for a surgical consult regarding his neck. Dr. Alexander opined on April 28, 2014 that Mr. Wagner was not a surgical candidate. RX 7. Thereafter, Dr. Rozman ordered physical therapy which was done at KSB hospital. PX 3. Petitioner continued to follow up with Dr. Rozman and began work conditioning on September 19, 2014.

Respondent then arranged a Section 12 exam with Dr. Soriano on October 14, 2014. Dr. Soriano diagnosed a left upper extremity strain without evidence of electric diagnostic or physical exam radiculopathy. RX 1. Dr. Soriano opined that the diagnosis of the strain was directly related to the work injury of January 31, 2014. He stated that the "mode of injury would require trapezius muscle movement as well as shoulder muscle movement." He also opined that there were "no non-occupational conditions that existed that would be the actual cause of the injury."

Based on Dr. Soriano's report, temporary total disability benefits were terminated on November 14, 2014.

Petitioner continued to treat with Dr. Rozman following the Section 12 exam. On October 17, 2014 Dr. Rozman noted that Petitioner was adamant to finish his work conditioning. PX 1 p. 06.

On November 17, 2014, Dr. Rozman noted that work conditioning and prior treatment had not alleviated all of the symptoms, the patient was frustrated, and he continued to have pain in his shoulder. PX 1 p. 032. Dr. Rozman suspected that his problem was not cervical but instead was related to his shoulder.

In December 2014 Dr. Rozman ordered an MRI of the left shoulder. Due to lack of insurance approval, the MRI was not carried out until May 28, 2015. PX 1 p. 042. The radiologist interpreted the MRI is showing a "glenoid labrum anterior superior tear at the 1 o'clock position with communicating paralabral cyst coracohumeral ligament." Based on the MRI showing a labral tear. (emphasis added)

Dr. Rozman referred the petitioner to an orthopedic surgeon for evaluation of his shoulder on June 1, 2015. PX 1 p. 041. As of the time of hearing, the petitioner had not seen an orthopedic doctor for actual treatment as it was not authorized by the insurance company. As to lost time, Petitioner testified that he was off of work from March 17, 2014 through May 4, 2014 and again beginning July 18, 2014 through the date of hearing per Dr. Rozman. PX 1. However he was only paid temporary total disability benefits through November 14, 2014.

As of the hearing, Petitioner testified that he had not yet seen an orthopedic surgeon, his left shoulder symptoms were still severe enough that Dr. Rozman had not released him to go to work, and that he still wanted to see an orthopedic and consider having surgery. He testified he was not receiving any income from any source.

During well prepared, insightful cross-examination Petitioner testified that although he had been treating with Dr. Rozman prior to the work injury going back to 2007, that treatment was exclusively for his low back for which he had undergone an L5 – S1 lumbar fusion. And although he was taking medication, Petitioner testified that he had never had any prior complaints, symptoms, or treatment to his left shoulder or neck before the work injury of January 31, 2014.(emphasis added)

Respondent did not offer any witnesses (including Mr. Smith above) at hearing to refute petitioner's testimony on accident/body mechanics, assigned tasks, weight of objects, presentations to the ER and alike. However, most issues were put in dispute. Petitioner presented as a very forthright, long term employee and skilled craftsman. He was very articulate and specific and demonstrative on the body mechanics of his moving of the objects above. He answered well proposed questions from the defense quickly and with assurance.

CONCLUSIONS OF LAW

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

Based upon the totality of the evidence, the Arbitrator finds as a matter of law and fact that Petitioner sustained an accidental injury that arose out of and in the course of his employment with Respondent on January 31, 2014 as alleged in the case at bar.

In support thereof, the Arbitrator adopts all of the evidence including testimony from the petitioner, histories contained in the medical records, and the history contained in the Section 12 report which is all consistent.

Specifically, Petitioner describes two separate incidents that caused his pain in his neck and left shoulder. The first occurred when he was trying to pull apart to solid stainless steel doors weighing 300 pounds each by grasping the handles and pulling apart or outwards at chest level. Petitioner testified that that mechanism caused pain in his left shoulder and neck. A week later on January 31, 2014 the petitioner testified that he was reaching with his arms at chest level to grasp a metal tote weighing approximately a hundred pounds, lifted the tote up to above the solar plexus level of his body, twisted to the left, and felt pain in his left shoulder and neck. Petitioner testified that he felt a popping or tearing sensation during this maneuver. Given these activities I make the inference that Mr. Smith would have agreed with the worker in that setting and working on the assigned tasks as per this long time craftsman / worker's testimony.

The histories in the medical records all support Petitioner's testimony as to how the injury occurred. The initial ER report noted that same history of an injury when he was seen on January 31, 2014. PX 3 p. 0193. When the petitioner was first seen by Dr. Rozman on February 25, 2014, the report contained the same history of injury. PX 1 p. 000019. When Petitioner was examined under Section 12 by Dr. Soriano, the same history was obtained. RX 1. Based on all of the above, the Arbitrator finds that the Petitioner did sustain an accident that arose out of and in the course of his employment with the respondent on January 31, 2014.

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

Based upon the totality of the evidence, the Arbitrator finds as a matter of law and fact that Petitioner's current condition of ill being in his neck and left shoulder is causally related to the work injury of January 31, 2014, as alleged in the case at bar.

Based on the chain of events in this case, as well as the opinion of Dr. Soriano, it is clear that Petitioner's left shoulder condition (strain per Dr. Soriano without the benefit of the later MRI) is directly related to the injury that occurred at work.

Petitioner testified that he told each and every doctor he saw that he felt like he had a hot poker in his shoulder shooting pain up into his neck.

The initial ER visit clearly references neck pain and left shoulder pain. PX 3 p. 000193. Initially the doctors did a workup assuming that the symptoms were related to a cervical radiculopathy.

Petitioner even voiced his concerns that his shoulder may be the problem while he was doing physical therapy

. On March 24, 2014, the therapist noted "Patient expressed concern that when he originally hurt himself that he tore something in his shoulder and no one has really looked at his shoulder." PX 3.

After extensive conservative treatment and diagnostic testing, Dr. Rozman determined that his problem was not due solely to the neck. It wasn't until Dr. Rozman's visit of November 17, 2014 that he felt it was likely that his shoulder had damage which needed to be addressed. As such Dr. Rozman ordered an MRI of the left shoulder which revealed a glenoid anterior labral tear. Dr. Rozman referred Petitioner to an orthopedic for consultation regarding the left shoulder tear.

Although not every record with Dr. Rozman clearly records in haec verba states that pain was in the left shoulder, the Arbitrator finds that it was overwhelmingly clear that Mr. Wagner's pain was <u>both</u> in the shoulder and the neck. It was also clear that the doctors didn't simultaneously work up both the neck and the shoulder at the same time but instead worked up and ruled out the neck prior to evaluating the shoulder. Prior IWCC Decisions are replete with the system of differential diagnosis in such shoulder and neck manifestations and referred pain cases. Petitioner's complaints of his shoulder and his concerns that it was his shoulder, and not his neck, that needed further workup were evident almost immediately-based upon a close reading of the record. PX 3.

Furthermore, Dr. Soriano found that as of October 14, 2014, the Petitioner's condition was a left upper extremity or shoulder strain. RX 1. Dr. Soriano opined that the mechanism of injury was the cause of the left shoulder condition. Giving him the benefit of the doubt in his diagnosis without a radiographic MRI, Dr. Soriano lacked the benefit of the diagnostic testing that was carried out subsequently on May 28, 2015 by way of that MRI.

The fact that Dr. Soriano did not have the MRI to review, explains why he felt, at the time he saw Petitioner that he had suffered only a shoulder strain.

However, once the MRI results were available the Arbitrator must decide if the conduct of the Respondent in still denying benefits and treatment was reasonable under the circumstances. In other words, Respondent can not hold to the denial based upon strain when the later focused radio graphics showed otherwise, and, could have been obtained and sent to Dr. Soriano himself for review, or a second section 12 exam requested given the change in available evidence. Diagnoses evolve based upon a continuum of treatment and diagnostics that can not be ignored. This ignoring of the MRI is troubling the Arbitrator in terms of determining if the denial on the old, pre MRI evaluation by Dr. Soriano is unreasonable under the case law.

The Arbitrator finds based on the totality of the evidence, that the cervical condition and tear in the left shoulder is directly caused by the injury at work on January 31, 2014.

G. What were Petitioner's earnings?

Based upon the totality of the evidence, the Arbitrator finds as a matter of law and fact that Petitioner's total earnings including overtime at straight rate was $45,278.46 for the 52 weeks preceding the injury of January 31, 2014. This results in an average weekly wage of $870.74. Respondent offered a wage statement which Petitioner confirmed accurately portrayed his wages during the relevant period of time. RX 5. Based on the wage statement, it is clear that Petitioner's regular work week was more than the standard 40 hours. Over the 52 week period, Petitioner worked a total of 442 hours of overtime averaging 8.5 hours of overtime per week. (emphasis added)

The only weeks that he did not receive overtime pay were when he took vacation time. As such, the overtime was not only consistent and regular but Petitioner's regular work week was 48.5 hours. His hourly pay rate was $17.19.

Therefore, his regular earnings, including overtime at $17.19/hour totaled $45,278.46. His average weekly wage then is $870.74. His corresponding TTD rate is $580.49 and his PPD rate is $522.44.

J. Has Respondent paid all appropriate charges for all reasonable medical services?

The Arbitrator finds that Respondent has not paid all appropriate charges for reasonable medical services associated with the work injury. The Arbitrator notes that medical bills were disputed by the Respondent based on liability for accident and causal connection only. According to Petitioner's exhibits, there are outstanding medical bills totaling $9,027.12. This includes $412.51 to Forest City Diagnostic. It also includes $7,323 to KSB Hospital. And finally it includes $1,291.61 to Rockford Medical Rehabilitation. PX 4.

Based upon the totality of the evidence and the holdings above, the Arbitrator finds as a matter of law and fact the outstanding bills are for causally related conditions, and are for necessary treatment to relieve the conditions of ill being.

Thus, the Respondent is herby ORDERD to pay or to satisfy forthwith the related medical bills outlined in Petitioner's Exhibit 4 pursuant to Sections 8(a) and 8.2, the fee schedule.

K. Is Petitioner entitled to any prospective medical care?

Based upon the totality of the evidence, the Arbitrator finds as a matter of law and fact, that Petitioner is entitled to prospective medical care, as alleged and sought in the case at bar.

Most specifically the arbitrator adopts in part as persuasive and probative, the actual results of the MRI, it is clear that the Petitioner has a glenoid labral tear. (emphasis added)

Dr. Rozman referred him to an orthopedic physician for evaluation who specializes in shoulder conditions. To date the Petitioner has not been seen by a treating orthopedic surgeon. As of the hearing, Petitioner testified that his shoulder was still symptomatic and that he wanted to be evaluated by the orthopedic to discuss the potential surgery to repair the problem.

Based upon the totality of the evidence, The Arbitrator ORDERS prospective medical care. The Arbitrator ORDERS the Respondent to authorize in writing an evaluation with an orthopedic surgeon as chosen by the Petitioner and orders Respondent to authorize any ongoing medical treatment relative to the neck and left shoulder conditions, subject to the provisions of the Act.

L. What temporary total disability benefits are due?

Based upon the totality of the evidence, the Arbitrator finds as a matter of law and fact that Petitioner is entitled to temporary total disability benefits based on the opinion of Dr. Rozman who has continued to keep the Petitioner off of work related to the injury.

The parties stipulated that the Petitioner was off of work and entitled to TTD benefits from March 17, 2014 through May 4, 2014 and from July 18, 2014 through November 15, 2014 for a total of 24 weeks. The only dispute was entitlement to TTD benefits from November 15, 2014 through the date of trial and ongoing. This would be an additional 41 2/7 weeks.

Based upon the MRI and its consistency with the clinical impressions of Dr. Rozman as opposed to the "strain" diagnosis of Dr. Marc Soriano, the Petitioner's adopted condition of the rotator cuff tear by radiograph and diagnosis is the foundation for the Award for TTD post IME by Dr. Soriano.

Based on the fact that the Petitioner's treating physician had him off of work subsequent to November 15, 2014 and that the Petitioner was not receiving any benefits, the Arbitrator awards TTD benefits from March 17, 2014 through May 4, 2014 and from July 18, 2014 through the hearing date at a weekly rate of $580.49 for a total owed through the date of hearingl of August 31, 2014 of $37,897.70.

The Arbitrator notes that the respondent is entitled to a credit for TTD benefits already paid in the amount of $12,233.52. Respondent is ordered to pay to the Petitioner and his attorney, Black & Jones, the balance owed of $25,664.18.

The Arbitrator also orders Respondent to pay ongoing temporary total disability benefits until such time as medical condition stabilizes and or his work status changes according to his medical providers.

M. Should penalties or fees be imposed upon Respondent?

Petitioner is seeking penalties for Respondent's failure to pay medical benefits and TTD benefits under Sections 19(k), 19(l), and attorneys fees under Section 16. Section 7110.70(d) of the Rules Governing Practice Before the Industrial Commission, 50 Ill. Admin. Code Ch. II § 7110.70, states that "Where an employer denies liability for payment of the cost of all or part of an employee's medical care ... the employer shall promptly notify the employee with a written explanation of the basis for the denial of liability or further responsibility."

Section 19(l) of the Illinois Workers' Compensation Act (IWCA) entitles Petitioner to an award of penalties "of $30 per day for each day that a weekly compensation payment has been so withheld or refused." "A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay." 820 ILCS 305/19(l). Under Section 19(k) of the IWCA, Petitioner is entitled to an award of penalties "equal to 50% of the amount payable at the time of such award" for unreasonable or vexatious delay of payment of compensation payable under the Act. 820 ILCS 305/19(k). This applies to both medical compensation under 8(a) and TTD compensation under 8(b), even if not yet awarded by an arbitrator or the Commission. McMahan v. The Industrial Commission, 183 Ill. 2d 499, 508 (1998).

Finally, under Section 16 of the IWCA, Petitioner is entitled to an award of attorneys fees whenever there has been a finding that Respondent has been guilty of unreasonable or vexatious delay within the purview of Section 19(k) of the Act. 820 ILCS 305/16. This applies to TTD compensation under Section 8(b).

Here, Respondent refused to pay for medical bills in the amount of $9,027.12. Respondent also refused to state the basis of their denial of said bills in writing to Petitioner as required by 7110.70(d). Although at trial Respondent claimed they were denying liability for accident and causal connection as their basis for denial, their denial was unreasonable and vexatious based on the evidence submitted at trial. There was absolutely no evidence submitted at trial upon which the Arbitrator can point to which would justify a denial of medical benefits in this case, even a bad basis for denial.

Petitioner's testimony about the accident was not refuted. Each and every medical provider noted the same and consistent history in the records of how the accident occurred. Respondent has no evidence to suggest that Petitioner did not sustain a work related accident. After Respondent obtained a Section 12 exam with Dr. Soriano, they still did not have a basis for denying payment of the medical bills or TTD. Dr. Soriano opined that Petitioner's left shoulder condition was directly related to the mechanism of injury.

Since he did not have any diagnostic films to state otherwise, his opinion that the shoulder was only strained was reasonable at that moment of time. But the shoulder injection provided temporary relief of pain and Dr. Rozman clearly thought the ongoing symptoms warranted further workup.

Once the MRI was ordered, Respondent should have approved the testing. Even if the Arbitrator assumes that Respondent denied the testing based on Soriano's report, it was questionable to do so. Claims management never took the step to resolve any possible open issue on the shoulder by sending the MRI to Dr. Soriano, or , with more logic, to a doctor specializing in sports medicine shoulder conditions.

The Act's purpose is to expedite such matters in a simple and summary matter. Given the clear MRI results never sent to the IME doctor, the Arbitrator herein attempts to expedite the shoulder treatment by not writing penalties avoiding an issue to appeal.

Arbitrator George J. Andros #01

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

AUSTIN, DONNELL Case# **14WC015438**

Employee/Petitioner

KANKAKEE POLICE DEPARTMENT

Employer/Respondent

On 10/14/2015, 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 0.08% 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:

1836 RAYMOND M SIMARD PC
221 N LASALLE ST
SUITE 1410
CHICAGO, IL 60601

0075 POWER & CRONIN LTD
JACOB R SCHNEIDER
900 COMMERCE DR SUITE 300
OAK BROOK, IL 60523

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

- [ ] 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

Donnell Austin
Employee/Petitioner

v.

Kankakee Police Department
Employer/Respondent

Case # **14** WC **15438**

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 **Kankakee**, on **August 18, 2015**. 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. [ ] 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 January 28, 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 as explained *infra*.

In the year preceding the injury, Petitioner earned $94,172.00; the average weekly wage was $1,811.00.

On the date of accident, Petitioner was 42 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 $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 for all medical paid through group medical plan under Section 8(j) of the Act. *See* AX1.

ORDER

As explained in the Arbitration Decision Addendum, the Arbitrator finds that Petitioner has established a causal connection between his low back condition with radiculopathy and his accident at work on January 28, 2014.

Permanent Partial Disability: Person as a whole (Low Back)

Respondent shall pay Petitioner permanent partial disability benefits of $721.66/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

October 12, 2015
Date

OCT 14 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*

Donnell Austin
Employee/Petitioner

v.

Kankakee Police Department
Employer/Respondent

Case # **14** WC **15438**

Consolidated cases: **N/A**

FINDINGS OF FACT

The issues in dispute at this hearing include causal connection 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 is employed by the Kankakee Police Department as a Police Officer and has been so employed for 15 years. Petitioner is currently a Sergeant and explained that 85% of his shift is spent out in the field. He drives a patrol car, responds to calls, makes arrests, and assists other patrolmen. Petitioner also explained that there is a physical component to dealing with subjects when responding to calls. On average, Petitioner estimated handling about 15-20 incidents stemming from domestic disturbances to theft to armed violence. Prior to becoming a police officer, Petitioner contributed 14 years to military service and had been deployed throughout the world on several tours. He testified that he had sustained no low back injuries prior to or after his accident at work on January 28, 2014.

On this date, Petitioner testified that he was engaged in S.W.A.T. training. While walking from a locked, vacant building back to the S.W.A.T. truck to sit down and stay warm, he slipped on ice. Petitioner explained that he lurched back and felt a sharp pain after which he laid down. Petitioner further explained that he felt a shooting pain from his low back radiating down his right leg to the right calf. Another officer, Michael Sneed, helped him.

Thereafter, Petitioner testified that his symptoms did not abate and he experienced difficulties including getting up and down from a seated position and walking in general. Petitioner was placed on light duty work and sat at a desk. On cross examination, Petitioner testified that he worked full duty from January until February.

Medical Treatment

On February 26, 2014, Petitioner sought medical treatment from his primary care physician Jordan Goodman, M.D. ("Dr. Goodman"). PX1; RX3. Petitioner reported constant, but waxing and waning pain in the lumbar spine, gluteal area and sacroiliac area. *Id.* He reported moderate pain that was aggravated by bending and twisting with stiffness present all day. *Id.* Petitioner underwent x-rays and Dr. Goodman noted tenderness in the lumbar spine on physical examination. *Id.* He diagnosed Petitioner with lumbar pain, prescribed Tramadol, and referred Petitioner to physical therapy. *Id.*

[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. Exhibits attached to depositions will be further denominated with "(Dep. Exh. _)."

Dr. Goodman's assistant noted a telephonic report by Petitioner on March 10, 2014 that he was still in a lot of pain and that the Tramadol was not helping much. PX1; RX3. Dr. Goodman ordered a lumbar MRI on the same day, which Petitioner underwent on March 13, 2014. *Id.* The interpreting radiologist noted which a global disc bulge with superimposed rightward disc protrusion/annular tear at L3-4 that might be causing right L3 radiculopathy, mild left and moderate right sided neural foraminal stenosis narrowing with mild central stenosis, and no other evidence of disc herniation or extrusion. *Id.* Dr. Goodman then referred Petitioner to a neurosurgeon, Juan Jimenez, M.D. ("Dr. Jimenez"), on March 17, 2014. *Id.*

On March 26, 2014, Petitioner self-referred to Edwin Ramos, M.D. ("Dr. Ramos") at the University of Chicago Medical Center. PX2. He reported a consistent mechanism of injury at work followed by pain in the right lower lumbar area. *Id.* On physical examination, Dr. Ramos noted tenderness to palpation in very close proximity to the right posterior superior iliac spine and SI joint region. *Id.* Petitioner also had positive straight leg raise testing on the right and some proximal right leg weakness. *Id.* Dr. Ramos reviewed Petitioner's MRI noting a right-sided L3-L4 annular tear with disc bulging that caused foraminal stenosis at that level as well as mild foraminal narrowing at L4-L5 by some diffuse disc bulging and mild facet hypertrophy that at level. *Id.* He diagnosed Petitioner with right-sided L3-L4 lumbar radiculopathy in the setting of a lumbar disc herniation. *Id.* Dr. Ramos recommended physical therapy and an evaluation by pain management for consideration of lumbar epidural injections if appropriate. *Id.*

On March 31, 2014, Petitioner saw Dr. Jimenez for an initial evaluation. PX1. He reported low back pain and radicular symptoms since his fall at work. *Id.* Dr. Jimenez reviewed Petitioner's recent MRI and noted positive clinical testing for right sided sacroiliac joint dysfunction on physical examination. *Id.*

Petitioner underwent physical therapy through May 5, 2014. PX3; RX2. In a progress report, the evaluating physical therapist noted that Petitioner had responded significantly to treatment, but there were still residual signs and symptoms that may require physical therapy. *Id.*

On May 14, 2014, Petitioner returned to Dr. Jimenez reporting some improvement with physical therapy, but constant low back pain and right buttocks pain that wrapped around to the anterior thigh stopping at the knee. PX3. Dr. Jimenez noted a strong correlation on examination for right L3 radiculopathy that was likely symptomatic from the right far lateral L3-4 herniated disc. *Id.* Dr. Jimenez referred Petitioner to Dr. Santiago-Palma for a right L3-4 selective nerve block. *Id.*

On June 2, 2014, Petitioner saw Juan Santiago-Palma, M.D. ("Dr. Santiago-Palma") for an initial evaluation reporting low back pain with numbness into the anterior thigh. PX4. On examination, Dr. Santiago-Palma noted tenderness to palpation along the lumbar paraspinals as well as limited active and passive flexion and extension. *Id.* He diagnosed Petitioner with a prolapsed lumbar intervertebral disc and recommended an epidural steroid injection. *Id.*

The medical records reflect that on June 27, 2014, Petitioner underwent the recommended right-sided L3-L4 transforaminal epidural steroid injection. PX4. He returned to see Dr. Santiago-Palma on July 18, 2014 reporting 80% improvement after the injection. *Id.* Dr. Santiago-Palma diagnosed Petitioner with displacement of lumbar intervertebral disc without myelopathy. *Id.* However, Petitioner returned on August 18, 2014 reporting continued low back pain and fatigue symptoms. PX4. After an examination, Dr. Santiago-Palma recommended a second epidural steroid injection. *Id.* Petitioner completed physical therapy on August 26,

2014 after approximately 28 sessions. PX3; RX2. He then underwent the recommended injection on September 3, 2014. PX4.

Petitioner continued to see Dr. Santiago-Palma through December of 2014. PX4. On October 30, 2014, Dr. Santiago-Palma noted continued tenderness to palpation along the lumbar paraspinals and limited active and passive range of motion testing, and ordered Mobic. *Id.* As of December 4, 2014, Petitioner continued to have symptoms noted on physical examination. *Id.* However, Dr. Santiago-Palma noted that Petitioner's symptoms appeared stable at that point and he released Petitioner from care. *Id.*

Lieutenant Jay Etzel

Lieutenant Jay Etzel ("Lt. Etzel") testified that he has been a Police Officer for 24 years. He is Petitioner's supervisor, but not while he was working on S.W.A.T. Lt. Etzel testified that while he and Petitioner discussed the injury at work, Petitioner has made no formal complaints after returning to work about any inability to perform his job activities.

Petitioner testified that he never reported any ongoing minor issues. He explained that he would not formally report such issues due to police culture.

Additional Information

Regarding his current condition, Petitioner testified that he returned to his regular job after completing treatment. He continues to be a shift supervisor, performs the same type of work and drives about six hours per day. However, Petitioner testified that if he sits in the car for more than 15-20 minutes, he starts to feel pain going down his leg and numbness in his right foot that primarily starts in his right buttocks and goes down the right side of his leg. Petitioner also testified that he experiences pain and numbness in his right foot and has to regain functionality in his right leg when getting out of his car, which is difficult when he has to get out of the car in a hurry to run or move quickly.

Petitioner testified that he continues to do home exercises and stretches. He explained that he bought a rubber band to perform various exercises and stretches on a daily basis. Petitioner also testified that he was prescribed Meloxicam most recently last year, but he does not prefer to use this medication so he uses over-the-counter Aleve every day.

On cross examination, Petitioner testified that he currently supervises others' traffic stops and sometimes does DUI details with about 50 tickets per year. Regarding his physical abilities, Petitioner testified that he works out at a YMCA, but does so using a lumbar support belt. At work, he carries an equipment belt, runs, climbs objects, and uses his firearm as needed at work. Petitioner testified that he feels he can perform[2] all of these activities. He also testified that he was, and remains, on the S.W.A.T. team as an entry team member. Petitioner explained that the department is currently developing standards to allow an officer to be on this team generally. He does carry a high impact vest, Kevlar helmet, long gun, side arm, and ammunition while working on S.W.A.T.

[2] Respondent offered into evidence a Fitness for Duty policy identifying the police department's physical and other requirements. RX1.

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 hearing as follows:

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:

The Arbitrator finds that Petitioner's current condition of ill-being in the low back with radiculopathy is causally related to the injury sustained at work on January 28, 2014. In so concluding, the Arbitrator relies on the credible testimony of Petitioner which is consistently corroborated by contemporaneous medical records. Moreover, no contrary medical opinion was offered into evidence to rebut the findings of Petitioner's treating physicians about Petitioner's ongoing condition. Thus, the Arbitrator finds that Petitioner's current condition of ill-being is causally related the work accident he sustained on January 28, 2014.

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.

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 by either party. Thus, the Arbitrator considers the parties to have waived their right to do so and assigns no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner was employed as a Police Officer at the time of his injury and finds Petitioner's testimony regarding the physical demands of his work on the date of the accident and thereafter to be credible. This evidence is uncontroverted. As a result, the Arbitrator gives significant weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 42 years old at the time of the accident. As a result, the Arbitrator gives significant weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there is evidence introduced regarding any diminishment in Petitioner's future earning capacity because of his injury at work. As a result, the Arbitrator gives significant 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's orthopedic and pain management physicians, Dr. Jimenez and Dr. Santiago-Palma, noted Petitioner's ongoing symptoms in the low back and right leg correlated by objective medical evidence. Petitioner's second opinion orthopedist at the University of Chicago, Dr. Ramos, had also reviewed Petitioner's lumbar MRI and diagnosed a right-sided L3-L4 lumbar radiculopathy in the setting of a lumbar disc herniation. Ultimately, Petitioner's pain management physician, Dr. Santiago-Palma, diagnosed displacement of lumbar intervertebral disc without myelopathy for which Petitioner underwent two transforaminal epidural steroid injections at L3-L4 after completing months of physical therapy.

While no further treatment was recommended after August 18, 2014, Petitioner did continue to report low back pain and fatigue symptoms at this time for which he was prescribed Mobic. Petitioner credibly testified about his inability to perform certain physical activities required of a police officer with the same ease or ability as before his accident at work. His testimony is supported by the ongoing symptoms noted by his physicians, which correlate to their clinical findings and in view of objective medical evidence. No contrary medical evaluation or opinion from any physician was offered into evidence. As a result, the Arbitrator gives significant weight to this factor.

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 has established that his injury at work resulted in permanent partial disability to the extent of 10% loss of use of the person as a whole pursuant to §8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

RIVERA, AWILDA Case# **08WC036709**

Employee/Petitioner

SOUTHWEST AIRLINES

Employer/Respondent

On 10/8/2015, 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 0.06% 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:

1

0154 KROL BONGIORNO & GIVEN LTD
RANDALL W SLADEK
120 N LASALLE ST SUITE 1150
CHICAGO, IL 60602

1

0766 HENNESSY & ROACH PC
QUINN M BRENNAN
140 S DEARBORN 7TH FL
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Awilda Rivera
Employee/Petitioner

v.

Southwest Airlines
Employer/Respondent

Case # **08** WC **36709**

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 **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **September 21, 2015**. By stipulation, the parties agree:

On the date of accident, **5/8/2008**, 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 $**38,050.48**, and the average weekly wage was $**731.74**.

At the time of injury, Petitioner was **42** years of age, ***single*** with **1** dependent children.

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

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-**.

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 permanent partial disability benefits of $439.04 /week for 2.15 weeks, because the injuries sustained caused the 1 % loss of the left leg, as provided in Section 8(e) of the Act.

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.

David A. Flore
Signature of Arbitrator

October 7, 2015
Date

OCT 8 2015

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Awilda Rivera	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 08 WC 36709
	)	
Southwest Airlines	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

STATEMENT OF FACTS

The Petitioner is a 49-year-old female who is presently employed with Southwest Airlines as a Center Operations Associate. She has been employed by Respondent for approximately 15 years. She describes her job as an administrative liaison. Her job responsibilities include taking care of Reservations Agents, such as scheduling and programming. She testified that her job responsibilities are clerical in nature.

At the time of all three of the Petitioner's accident dates, she was employed as a Customer Service Agent. Those job responsibilities included checking passengers into flights, and transferring customer luggage from check-in to the conveyor belt. The Petitioner received permanent work restrictions as a result of the 7/18/2015 work accident, which prevented her from returning to work for Respondent in the same capacity. She was subsequently placed into the new position as a Center Operations Associate at a lesser rate of pay. The new position is within said restrictions and the Petitioner continues to work in that capacity as of the trial date.

May 8, 2008 Accident

The Petitioner testified that on May 8, 2008, that she struck her left knee on the conveyor belt while unloading luggage. The Petitioner went to the company clinic at the Clearing Clinic where she was diagnosed with a left knee contusion. The Petitioner was given light duty restrictions and underwent physical therapy. She was released from care on June 17, 2008. She missed no time from work. She has not received any medical treatment for her left knee since that time. She testified that her left knee is "fine."

CONCLUSIONS OF LAW

IN SUPPORT OF THE ARBITRATOR'S DECISION REGARDING THE NATURE AND EXTENT OF THE PETITIONER'S INJURIES SUSTAINED AS A RESULT OF THE WORK ACCIDENT, THE ARBITRATOR FINDS THE FOLLOWING:

In regard to the left knee injury sustained as a result of the May 8, 2008 work accident (08 WC 36709), the Petitioner was diagnosed with a left knee contusion. She missed no time from work. The Petitioner was released from care approximately one month following the work accident, and she has received no medical treatment since her release. The Arbitrator finds that the medical evidence considered in conjunction with Commission precedent, that the Petitioner incurred a permanent and partial disability to the extent of 1% loss of use of the left leg (2.15 weeks) under Section (e) of the Act.

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

MARSHALL, OWEN Case# **14WC029395**

Employee/Petitioner

WALQUIST FARM PARTNERSHIP

Employer/Respondent

On 10/2/2015, 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 0.10% 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:

5404 LAW OFFICE OF FOLEY & DENNY
TIMOTHY D DENNY
PO BOX 685
ANNA, IL 62906

5657 MORROW-WILLINAUER-KLOSTERMAN
KIM PARKS
500 N BROADWAY SUITE 1420
ST LOUIS, MO 63102

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)

Owen Marshall
Employee/Petitioner

v.

Walquist Farm Partnership
Employer/Respondent

Case # **14** WC **29395**

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 7, 2015**. 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. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On the date of accident, **March 5, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**34,840.00**; the average weekly wage was $**670.00**.

On the date of accident, Petitioner was **48** 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 $**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** for medical bills paid by its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Petitioner sustained an accident on March 5, 2014 but failed to prove that his condition of ill-being in his back is causally connected to that work accident. Petitioner's claim for compensation 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

September 30, 2015
Date

ICArbDec19(b)

OCT 2 2015

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner alleges an injury to his low back on March 5, 2014 while helping to move a barrel of iodine. The issues in dispute are accident, causation, medical expenses, prospective medical care and temporary total disability benefits. Respondent tendered no exhibits.

The Arbitrator finds:

Medical records from Rural Health Vienna Medical Clinic were offered into evidence as Petitioner's Exhibit 1. These records date back to June 7, 2007 and reflect treatment to Petitioner for a variety of unrelated issues except for the following. There is an x-ray from Massac Memorial Hospital dated October 17, 2011 reflecting moderate degenerative disc disease at L2-4, moderate to moderately severe degenerative disc disease at L4-S1 and anterior osteophytosis diffusely throughout the lower thoracic upper lumbar spine. At the March 28, 2012 office visit Petitioner was noted to have some arthritis of his back and a previous surgery in 2004. Petitioner was noted to be a farmer with lots of twisting and climbing and he reported some aching in his low back. Petitioner was started on Naproxen. As of July 25, 2012 Petitioner was requesting narcotics for his chronic back pain as the Naproxen hadn't helped. Advil did and the doctor encouraged him to continue using it but not to go on naproxen due to the nature of his work activities (heavy equipment). Petitioner did not return to see his doctor at Rural Health until April 17, 2013 at which time no back complaints were noted. Similarly, no complaints were noted on May 5, 2013 and December 4, 2013. (PX 1)

Petitioner next presented to Rural Health, Inc. on March 7, 2014 regarding an "acute visit." He was seen by Amanda Endrizzi, PAC, and Dr. Ribbing Petitioner complained of numbness in his feet of three months' duration, primarily in his right foot. Petitioner described difficulty walking

and he was having a little bit of back pain. The office note records Petitioner's history of back surgery in 2004 and imaging done in 2011 showed moderate degenerative disc disease at L2-4 and moderate to moderately severe degenerative disc disease L4 to S1. Petitioner's history of alcoholism was also noted with the doctor reporting that Petitioner had recently had another bout with it and was having a difficult time coming off of it because of symptom withdrawal. Petitioner also had a history of manic depression but didn't wish to take any medication for it. Petitioner was diagnosed with alcohol withdrawal and foot numbness. An MRI of his back was ordered to see if it could be causing the foot numbness. No mention of a work accident was noted. Petitioner was to return thereafter. (PX 1)

Petitioner underwent an MRI on March 18, 2014 as a result of bilateral foot numbness. (PX 1) It revealed: neural foraminal narrowing (moderate to severe) at L5-S1 bilaterally; no significant spinal canal narrowing; disc desiccation throughout the lumbar spine with disc height loss greatest at L5-S1 which is moderate to severe: and subtle grade 1 retrolisthesis of L4 on L5 and L5 on S1.

Petitioner followed up with Rural Health, Inc. on March 21, 2014 and he and the doctor reviewed the MRI. Petitioner's complaints included his right foot (described by Petitioner as "pretty much dead") and left back pain radiating down his left leg. Petitioner had some feeling in his left foot that would come and go. Standing made it worse. Petitioner was also reportedly working on his alcohol issue. He was referred to Dr. Grubbs, a neurosurgeon, "as soon as possible" for his back pain. No mention of a work accident was made. (PX 1)

Petitioner presented to the office of Dr. Fonn on April 16, 2014. As part of the examination Petitioner completed a Patient Medical History form in which he gave an accident date of March 5, 2014 when he was helping lift a 55 gal. drum of iodine at work. Petitioner also referenced "farm related work due to lifting." He listed Dr. Thomas Wilson as a doctor he had seen. Petitioner complained of being unable to be on his feet for any period of time and experiencing pain in his

lower back and the bottom of his feet and toes with numbness and sharp shooting pains. Petitioner claimed he was unable to work and had work restrictions from a doctor. (PX 3)

According to Dr. Fonn's office note of April 16, 2014 Petitioner had a history of undergoing a microdiscectomy in September of 2004 at the L3/4 level with good relief of his left-sided symptoms. Petitioner reported that on March 5, 2014 he was working around livestock, rolling a 55 gallon drum and bent over and twisted while lifting it and felt a popping sensation in his back and developed more severe back pain. Initially his back pain was more severe than his leg pain but now it was just the opposite and Petitioner was having a difficult time walking. Petitioner reported the pain radiated into his right calf and all five toes, "right a little worse than the left." Petitioner reported undergoing physical therapy but no injections. Dr. Fonn recommended a course of lumbar epidural steroid injections at L5/S1 bilaterally and noted Petitioner might be a candidate for a fusion surgery pending the results of a CT myelogram and discogram of lumbar spine. Dr. Fonn took Petitioner off work at that time. (PX 3, p. 24)

Petitioner followed up with Rural Health, Inc. on May 21, 2014. Petitioner reported seeing Dr. Fonn, a neurosurgeon, and that he was waiting for injections but was having complications with workers' compensation which would not pay. No mention of a work accident was noted. (PX 1)

Petitioner underwent lumbar epidural steroid injections beginning on July 30, 2014. (PX 3, pp. 29-50)

Petitioner signed his Application for Adjustment of Claim herein on August 2, 2014. (AX 2)

Petitioner returned to Dr. Fonn on August 20, 2014 reporting minimal relief in his symptoms. Dr. Fonn planned to proceed with surgical intervention as he recommended a PLIF L5/S1 pending the results of the CT myelogram. (PX 3, p. 51). That procedure was performed on September 4, 2014. (PX 3, pp. 52-53). The discogram was performed on

September 11, 2014 noting concordant pain at L5/S1. (PX 3, p. 55). On September 25, 2014 Dr. Fonn re-examined Petitioner and again recommended surgical intervention at L5-S1. (PX 3, p. 57).

After additional follow-up visits Petitioner underwent surgery on October 31, 2014 at St. Francis Medical Center. The procedure consisted of L5-S1 bilateral laminectomies with decompression and fusion. (PX 3, p. 60). The operative note also notes broad based disc herniations. (PX 3, p. 61)

A January 5, 2015 CT of Petitioner's lumbar spine showed the instrumentation was in place and fusing had begun. Petitioner also reported falling out of bed a week and a half earlier with increasing pain down his legs. (PX 3, p. 64)

Ms. Endrizzi (Rural Health) prepared a note dated January 21, 2015 indicating Petitioner did state on March 7, 2014 that he was injured while working on the farm. The note also indicates he stated he would be filing a work comp claim. (PX 1)

As of February 11, 2015 another CT showed good fusion occurring with placement and instrumentation with no migration subluxation or fracture of the instrumentation. (PX 3, p. 65) Petitioner was advised to begin physical therapy, aquatic therapy, and trigger point injections. (PX 3, p. 65) As of May 14, 2015 Petitioner was hoping to return to work and advised he was retraining for a different field. Through the last office note offered into evidence on June 22, 2015 Petitioner was continuing in physical therapy under the direction of Dr. Fonn. Petitioner's recovery continued to be satisfactory and without complication. (PX 3, p. 69)

The evidence deposition of Dr. Sonjay Fonn, taken on July 8, 2015, was offered into evidence as Petitioner's Exhibit 5. Dr. Fonn has been a practicing neurosurgeon for approximately 8 years. (PX 5, p. 4) He focuses primarily on disorders of the spine but, also

does some cranial work as well as peripheral nerve work. (PX 5, p. 4) He is currently licensed to practice neurosurgery in the state of Missouri. (PX 5, p. 5)

Dr. Fonn testified that Petitioner was first seen in his practice on April 16, 2014 on referral by Dr. William Jerald Ribbing from Anna IL. (PX 5, p. 6) He confirmed that Dr. Ribbing was Petitioner's family physician at Rural Health. (PX 5, p. 7) The petitioner reported an injury that occurred on March 5, 2014 while he was working on a farm rolling a 55 gallon drum and felt a popping sensation in his back while lifting and had severe pain. (PX 5, p. 7). Upon physical examination Dr. Fonn noted weakness in the extensor halluces longus and the right side was greater than the left side. He also noted decrease sensation in the L5 distribution. (PX 5, p. 8). After review of the MRI, Dr. Fonn formulated a diagnosis with lumbar radiculopathy and spine spondylolisthesis at L45, 5/S1. (PX 5, p.9). Dr. Fonn initially recommended conservative treatment consisting of off work pain medications muscle relaxers and epidural steroid injections. (PX 5, pp. 9-10) Dr. Fonn noted the goal of injections is to decrease inflammation in the nerve that might be caused by stenosis or compression and the injection might become diagnostic in nature if the patient reports relief post injection. (PX 5, p. 10) The steroid injections calmed some of Petitioner's inflation and confirmed the initial diagnosis which was a problem of lumbar radiculopathy L5/ S1 level. (PX 5, p. 11) He recommended possible surgical correction pending results of a myelogram and discogram. (PX 5, p. 11) That study gives a lot of information regarding the boney structure and is useful when one considers a fusion and the placement of instrumentation. (PX 5, p. 12) The CT myelogram in this case confirmed a disc osteophyte primarily L5/S1 levels causing stenosis. (PX 5, p. 12). On October 31, 2014 Dr. Fonn proceeded with an L5/S1 decompression and stabilization with instrumentation as he felt the L5-S1 level was the cause of Petitioner's back and leg pain. (PX, p. 13)

Dr. Fonn offered the opinion within a reasonable degree of medical certainty that the work- related accident on March 5, 2014 was a cause of the pathology and symptoms that he diagnosed at the L5/S1 level and the conservative treatment, surgery, and post-operative care. (PX 5, p. 17). Dr. Fonn further clarified that in his experience he frequently treats patients that have performed labor and specifically farm labor. (PX 3, p.17). A part of that practice involves observing what are the limits that one person can reasonably be expected to do. (PX 5, p.17). He confirmed that a 55 gallon drum of liquid would weigh 450 pounds. (PX 5, p. 17). In his experience it would seem very unlikely that one person would be able to unload a 55 gallon drum of iodine out of the back of a truck alone. (PX 5, p. 18).

On cross-examination Dr. Fonn noted that Petitioner had a history of an antalgic gait for two months prior to his initial exam. (PX 5, p. 21). Dr. Fonn acknowledged that the note was made by his assistant and while he did not note the two months history in his note he did reference Petitioner had difficulty walking. Dr. Fonn also acknowledged he had seen no records from Rural Health Clinic. When asked regarding documentation or a referral from Dr. Ribbing at Rural Health Dr. Fonn noted that a referral is usually placed onto the online system by the receptionist and the referral does not necessarily make it to the actual physical chart. (PX 5, p. 23)

Dr. Fonn testified that his physician's assistant sometimes examines the patients and Petitioner was last seen by him personally on February 11, 2015. He confirmed that on January 5, 2015 the note indicates that Petitioner had fallen out of bed a week and a half earlier and had increased pain radiating into both legs. (PX 5, p. 32). However he noted that the physical examination was unchanged from the December 3, 2014 exam. (PX 5, p.33).

Dr. Fonn confirmed that although his notes may not specifically read that there are restrictions, the restrictions remain as previously dictated and that he had not changed the

restrictions as previously given through February 11, 2015. (PX 5, p. 34-35). Dr. Fonn was asked multiple times during cross-examination about the lack of physical examination results in his notes to which he responded that the notation of resolution of pain, or unchanged from prior visits, denotes an exam was performed and those were the essential findings. (PX 5, p. 35). He also noted that it is common for him to recommend trigger point injections post-operative before surgery because a patient commonly has muscle spasms after a fusion surgery. (PX 5, p. 36). Dr. Fonn confirmed that he had reviewed medical records from Petitioner's prior surgery in 2004. (PX 5, p. 38). Dr. Fonn also testified that his opinions in this case were based upon Petitioner's history to him as to how he hurt himself and his opinion could change if that history was inaccurate or incomplete. (PX 5, pp. 42-43)

On redirect examination Dr. Fonn noted that his common practice is to carbon copy the referring physician on patient notes and in this case he was carbon copying Dr. Ribbing. (PX 5, p. 45). Dr. Fonn also confirmed that he not only relies on the patient's history, but he also "evaluates" whether the patients account of the accident is a "plausible one." (PX 5, p. 45). For instance if someone had reported they lifted something beyond what one could reasonably expect one person to lift it would "raise a red flag in his mind." (PX 5, pp. 45-46). He also clarified that it is usual and customary for patients to follow up with the physician's post-operatively for care. (PX 5, p. 46). He reiterated that the current restrictions for Petitioner are based upon the procedure he performed, his experience, and the fact that he is ultimately responsible for his patient's care. (PX 5, p. 46). He confirmed none of the questions on cross-examination altered his opinion regarding Petitioner's injury as pertaining to this work accident. (PX 5)

The form 45 Employer's First Report of Injury was offered into evidence as Petitioner's Exhibit 6. It confirms that Petitioner reported that he was injured on March 5, 2014 and claimed a back injury two days later. (PX 6)

Petitioner's case proceeded to arbitration on August 7, 2015. Witnesses included Petitioner, Aric Walquist (Respondent's representative) and Eric Unverfehrt.

Petitioner testified he was employed as a farm hand by Respondent for approximately five years before the alleged date of accident. He testified his job duties include milking cows, feeding cows and a little bit of everything.

Petitioner testified he was working on March 5, 2014 and he was physically able to do his job. He testified a vendor was at the farm because a special order for iodine had been called in. Petitioner testified that he was inside with Aric Walquist when the vendor arrived. Mr. Walquist was on the telephone and the vendor needed assistance. Petitioner testified he went out to see if he could help and when the vendor explained he needed assistance getting the drum off the truck, Petitioner told him he didn't think he could do that. Petitioner then returned to Mr. Walquist's office to get him but he was still on the phone. Since Mr. Walquist had already been on the phone for over an hour Petitioner decided to go back out and help the vendor. Petitioner testified he helped the vendor get the tailgate off the truck, laid the barrel down and pulled it out of the truck and set it on the ground.

Petitioner testified the iodine was in a 55 gallon plastic drum and weighed approximately 450 pounds. He testified as he was helping to unload it and when they slid it off of the tailgate, it jerked and was very heavy. He testified he jerked his back "out of whack." He testified the pain came on hard later and he began having pain down the back of his leg and into his feet. Since he was already running late he put the tailgate on and went back to running the heifers when he noticed the problems with leg pain then the back of his left leg into his feet. The pain is down the left leg

around his buttocks area. Petitioner testified he had not had that type of pain for years. Petitioner testified that Aric then came out, noticed the vendor's truck was stuck, and went to help the vendor get the truck out.

Petitioner testified he had experienced that type of pain years ago and while working on the farm his back hurt him off and on. Petitioner testified he had back surgery in 2004 and he testified he had not been to any spine doctors or sought treatment for his back since that time. Petitioner testified a day or two after the alleged incident he went to his doctor and she ordered an MRI and then referred him to a neurosurgeon.

Petitioner testified when he first saw the physician's assistant, after the accident, he told her about the incident. He testified although it was not mentioned in the initial note he did discuss it with her and that she issued a supplemental note correcting the history.

Petitioner also testified he talked with Aric Walquist about the incident the day after it happened.

Petitioner testified he worked Monday, Tuesday, half a day on Wednesday, and Thursday the week of the alleged incident. He testified the accident happened on Thursday and he worked half a day on that day. He testified he did not work a full day because his back was hurting. He testified he talked to Aric's son, Andy, to see if he would milk for him and Andy indicated he would. He testified he told Andy he was having problems and he had already had three work injuries and he did not want to lose his job over something he did not know was going to be as serious an illness as it was.

Petitioner denied that he told Andy that he was battling demons. When asked if he told Andy he was fighting alcohol problems he admitted he does have alcohol problems. He testified he did not tell Andy he was going back into rehab. He then testified he was considering it but he did not go.

Petitioner testified he paid for the initial visit with Amanda Endrizzi on March 7, 2014 himself. He testified he had a $10.00 co-pay. He testified he did turn that visit in as workers' compensation. Petitioner has undergone low back surgery at St. Francis Hospital which has helped his left side problems and improved his pain. As of the day of arbitration Petitioner was still under the care of Dr. Fonn and still unable to work. Petitioner testified he was on the sliding scale at Rural Health which is why it was listed as self-pay. He also testified that he attempted to see Dr. Grubs who would not take Illinois Medicaid so he was referred to Dr. Fonn.

After his surgery in 2004 Petitioner's back pain was managed with over-the-counter medication. Petitioner does not take narcotics unless he has to because they don't agree with him. When he went to Rural Health on March 7th he was still hoping to go back to work the next week and his physician advised him he could work if he was physically able.

Aric Walquist, testified on behalf of Respondent. Mr. Walquist is a dairy and grain farmer and one of the partners of Walquist farms. He confirmed that Petitioner had worked for them for approximately five years and was employed by Respondent on March 5, 2014. He also confirmed that he was not present when the barrel of iodine was unloaded as he was in the office signing Petitioner up for Obama Care. Mr. Walquist explained that when he went outside the barrel of iodine had already been moved into the supply room. Mr. Walquist agreed that since water weighs 8.6 gallons that the barrel of iodine would weight approximately 450 pounds. He also agreed that a tractor was not used to unload the barrel and the only two people present were the vendor and Petitioner. He was unable to recall how much a barrel of iodine cost. Mr. Walquist confirmed he had no first-hand knowledge how the alleged accident occurred or how the barrel got off the truck onto the ground. The truck used to deliver the iodine is a standard pick-up truck. Although he conducted an investigation, he did not have anyone write down any statements regarding the

incident. Mr. Walquist agreed that farm work is pretty hard work and one gets a lot of bumps, bruises, and strains on a day to day basis. Mr. Walquist testified the delivery person who was present from the vendor was Eric Unverfehrt.

Mr. Walquist testified Petitioner never mentioned to him he had hurt his back or was having problems on that day. Mr. Walquist testified he did receive a telephone call from Petitioner on Friday and on that day Petitioner told him he hurt his back.

Mr. Walquist testified that in investigating the incident he talked to his son Andy. He testified he had talked to Andy about his conversation with Petitioner and that investigation did not show anything that indicated Petitioner had hurt his back. When asked if he was aware Petitioner had problems with his back before March 5, 2014 Mr. Walquist indicated Petitioner had constant nagging problems with his back the whole time he worked there. When asked how he knew, he indicated Petitioner would tell him and they had agreed he would stay away from heavy objects and mostly he was able to do that.

Mr. Walquist testified that prior to his conversation with Petitioner he received a telephone call from Petitioner's sister. He testified Petitioner's sister called pleading for Petitioner's job and he told her Petitioner no longer had a job. At the time of the conversation with Petitioner's sister, Mr. Walquist had no idea Petitioner was alleging a workers' compensation injury. Mr. Walquist then testified that Petitioner had missed work on Monday and he called in on Tuesday, but Mr. Walquist insisted he come in to milk. Petitioner then showed up on Wednesday "and the incident happened" and then Petitioner left. Mr. Walquist testified he called Petitioner at some point and he said he had alcohol problems again. Mr. Walquist testified the alleged injury had nothing to do with him telling Petitioner's sister he no longer had a job because he was not aware of the alleged injury at the time of the conversation with Petitioner's sister.

The second witness to testify on behalf of Respondent was Eric Unverfehrt. He testified he is employed by Unverfehrt Farm Supply in sales. He testified it is a family business and he was previously in the service end but now he is getting more into sales.

Mr. Unverfehrt testified he was working for Unverfehrt Farm Supply on March 5, 2014. He testified he is familiar with Walquist Farms and knows them as customers. He denied being related to the Walquists in any way. He testified when his sales guy could not make his route or could not go somewhere, he would help him out delivering chemicals. He testified iodine is considered a chemical and was something he delivered.

Mr. Unverfehrt testified he did make a delivery to Walquist Farms on March 5, 2014. He testified it was 55 gallons of pre-drip or post-drip and then some 15 gallon barrels of chlorine and some towels. He testified he was by himself that day for the delivery. He testified he had a Chevy 1500 pick-up truck and he unloaded the items by hand. He testified there was one item that he went to ask for a skid loader but they were busy so he just unloaded it by himself. He testified he went to ask Aric for a skid loader but Aric was in the office. He testified while he was unloading the 55 gallon drum Petitioner stood next to the truck but that was it. He testified at no point did he get in the back of the truck and unload the drum. He testified Petitioner did not assist in any way with putting the tailgate down, taking it off, or doing anything like that.

Mr. Unverfehrt testified he did not know exactly how much a 55 gallon drum of iodine would weigh but he would say approximately 400 pounds. Mr. Unverfehrt testified he would not be able to lift that amount by himself but if it is tipped over you can always pick it back up or you can roll it on its side and move it around. He testified he was able to maneuver the drum by himself. When asked how he got the drum off the truck, he indicated one takes the tailgate off and places a rubber mat down so it does not puncture, then you tilt the barrel up, and you let it slide down and hit the mat. He testified he had done that before March 5, 2014. He testified he did take the tailgate

off on that day. He testified no one came out to help him put the tailgate back on. Mr. Unverfehrt testified he did not have any conversation with Petitioner that day about any injury or pain in his back.

Mr. Unverfehrt testified the drums are not normally put on a pallet when they deliver them.

Petitioner's medical bills are set forth in Petitioner's Exhibit 4. They include the following:

Rural Health Inc. -- $333.85

Cedar Court Imaging -- $1691.00;

Dr. Fonn -- $145,119.00;

St. Francis Medical Center -- $222,704.66;

The Arbitrator concludes:

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

Petitioner sustained an accident on March 5, 2014 that arose out of and in the course of his employment with Respondent. The Arbitrator bases her determination on Petitioner's testimony and the histories included in the medical records which were consistent with Petitioner's testimony. Petitioner claims he was injured in the course of his employment with Respondent on March 5, 2014 while he was assisting the vendor unloading a 55 gallon drum/barrel of iodine. Respondent disputes that Petitioner assisted the vendor (Eric Unverfehrt) in unloading the 55 gallon drum out of the back of a Chevy 1500 pick-up and injured his back at that time. All witnesses testifying in the case confirmed that the 55 gallon drum of iodine would weigh approximately 450 pounds. Mr. Unverfehrt agreed that he had requested the use of a tractor/skid loader to assist in unloading this barrel confirming that he did not believe he could have reasonably unloaded it alone. The Arbitrator finds it highly unlikely that a person of Mr. Unverfehrt's size could successfully unload a 55 gallon drum of iodine out of a

pick-up truck by himself. Petitioner's account of what happened at the time of the accident was generally believable.

The Arbitrator further notes that Petitioner testified he spoke with Aric's son, Andy, about the accident. Andy Walquist did not testify and the Arbitrator did not find Aric Walquist's testimony about his investigation and speaking with his son, Andy, about the matter sufficient to overcome Petitioner's testimony concerning the events of the day. Mr. Walquist did not testify about any specific conversation between Petitioner and Andy; however, Petitioner credibly testified that he did so. The person in the best position to refute any conversation with Petitioner was Andy Walquist. Additionally, she notes Aric Walquist's testimony on cross-examination wherein he testified that Petitioner showed up on Wednesday, "the incident happened," and then Petitioner left. This testimony, and the manner in which he spoke, appears to suggest Mr. Walquist's belief that an incident did occur on Wednesday March 5, 2014 and that after the incident Petitioner left work. This is also consistent with Respondent's form 45 indicating the date and time of the accident was March 5, 2014 and that the employee claimed a back injury two days later.

While Eric Unverfehrt failed to corroborate Petitioner's account of the accident, Mr. Unverfehrt's testimony wasn't altogether believable by virtue of the business relationship between Respondent and Mr. Unverfehrt's employer (also his family).

While Petitioner testified that he told the nurse at Rural Health about the accident at work, her January 2015 statement doesn't corroborate Petitioner's testimony regarding the details of an accident on March 5, 2014 involving a barrel of iodine. It simply refers to work at the farm – a history found in earlier records of Rural Health also. Petitioner did, however, mention the accident to Dr. Fonn and this occurred before he had signed his Application for Adjustment of Claim herein. Therefore, given the totally of the evidence the Arbitrator gives

Petitioner the benefit of the doubt on the issue of accident and concludes that Petitioner met his burden of proof on that issue.

F. **Is Petitioner's current condition of well-being cause related to the injury?**

While Petitioner may have sustained an accident at work on March 5, 204 he failed to prove that his current condition of ill-being in his back, or the need for surgery, was/is causally connected to that work accident. In light of Petitioner's pre-existing back problems and the interesting history[1] contained in the March 7, 2014 Rural Health Clinic records, a chain of events analysis won't establish causal connection herein. Petitioner relies upon the opinions and testimony of Dr. Fonn in support of causal connection; however, Dr. Fonn readily admitted that if the history provided by Petitioner was inaccurate or incomplete, his opinion might change. He further acknowledged he had never seen or reviewed the Rural Health Clinic records.

Petitioner testified, and the records reflect, that he suffered from a back injury and underwent surgery in 2004. While Petitioner received no significant treatment for is low back between his surgery in 2004 and his accident in March of 2014, Petitioner did have occasional office visits with his family physician reporting back pain associated with his lifting duties as a farm hand. He also presented on March 7, 2014 with a very specific history of numbness in his feet for the previous three months. This would pre-date the accident. An MRI was ordered in light of Petitioner's degenerative back condition (as noted in 2011) in an effort to see if that had any causal relationship to his feet complaints. Again, Petitioner did not mention the March 5th accident nor did PAC Endrizzi address it in her 2015 statement. None of that history was provided to Dr. Fonn. Furthermore, when Petitioner presented to Dr. Fonn he gave him two sources of his back pain – the March 5th accident and his overall farm

[1] A 3 month history of foot numbness which would have pre-dated the accident.

duties. Dr. Fonn did not address this in his deposition whatsoever. Additionally, Dr. Fonn was unaware of Petitioner's prior treatment at Rural Health Clinic and did not consider that history in rendering his opinion. Finally, the Arbitrator notes Petitioner's reference to treatment for his back with Dr. Wilson. No records or testimony regarding Dr. Wilson was provided. Of additional concern was Petitioner's own testimony that he initially told the delivery guy he didn't think he could help him. The Arbitrator reasonably infers from the testimony that Petitioner didn't believe he could help him because of ongoing back issues which both he and Mr. Walquist acknowledged. Petitioner failed to meet his burden of proof on the issue of causal connection.

J. **Has Respondent paid all appropriate charges for reasonable and necessary medical services?**

The parties agreed that Respondent has not paid any of the medical bills. (AX 1) Respondent did not dispute the reasonableness and necessity of the treatment provided to Petitioner, but simply disputed liability. Consistent with her causation determination, Petitioner's request for payment of medical bills is denied. Although Petitioner did sustain an accident he failed to prove that the treatment at Rural Health, the MRI, or any of the treatment with Dr. Fonn was causally connected to the work accident.

K. **Is Petitioner entitled to prospective medical care?**

Consistent with her causation determination, prospective medical care is denied. Additionally, the Arbitrator notes that Petitioner did not seek any specific prospective medical care. He continues under the care of Dr. Fonn while he recovers from back surgery; however, none of that treatment is causally related to the accident. Prospective medical care is denied.

L. **What temporary total disability benefits are in dispute?**

Respondent did not dispute the period of temporary total disability benefits, only liability for them. Consistent with the Arbitrator's causation determination Petitioner's request for temporary total disability benefits is denied. No doctor or PAC took Petitioner off of work as a result of his March 5, 2014 accident.

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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FARAGOI, TARA Case# **14WC012836**

Employee/Petitioner

PLAINFIELD SCHOOL DISTRICT #202

Employer/Respondent

On 10/22/2015, 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:

2221 VRDOLYAK LAW GROUP LLC
MICHAEL P CASEY
741 N DEARBORN ST 3RD FL
CHICAGO, IL 60654

2461 NYHAN BAMBRICK KINZIE & LOWRY
DEIDRE A CHRISTENSON
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

- [ ] 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

TARA FARAGOI,
Employee/Petitioner

Case # **14 WC 12836**

v.

Consolidated cases:

PLAINFIELD SCHOOL DISTRICT #202,
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 **GERALD GRANADA**, Arbitrator of the Commission, in the city of **NEW LENOX**, on **October 2, 2015**. 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. [ ] 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 **8/10/2012**, 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 $**56,992.00**; the average weekly wage was $**1,096.00**.

On the date of accident, Petitioner was **39** 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 $**7,835.57** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**7,835.57**.

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

ORDER

Respondent shall pay reasonable and necessary medical services of Radiologist Joliet $108 and Community Orthopedics $427.50 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 pay Petitioner temporary total disability benefits of $730.66/week for 10 4/7 weeks, commencing 8/14/12 through 10/26/12, as provided in Section 8(b) of the Act. Respondent shall be given a credit for two days of overpayment of temporary total disability benefits.

Respondent shall pay Petitioner permanent partial disability benefits of $657.60/week for 51.25 weeks, because the injuries sustained caused the 30% loss of the left hand, 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

10/21/15
Date

OCT 2 2 2015

FINDINGS OF FACT

Petitioner testified that on August 10, 2012 she was working in her classroom before the start of the new school year. Petitioner testified that she was standing on a chair putting a box of supplies away and when she stepped off the chair, lost her balance and fell onto her left upper extremity, injuring her left wrist.

Medical records of Provena St. Joseph Hospital were admitted into evidence as Petitioner's Exhibit 1. X-rays of the left wrist were completed at that time. (PX 1). Following the diagnosis of acute left distal radius fracture, Petitioner underwent a closed reduction of her fractured left distal radius. (PX 1). Petitioner was prescribed medication, and referred to Dr. Michael Murphy, an orthopedic surgeon. (PX 1).

Petitioner testified that she presented to Dr. Michael Murphy on August 13, 2012. Dr. Murphy diagnosed unstable distal radius fracture for which he recommended surgery. (PX 2). Dr. Murphy took her off of work and prescribed medication. (PX 2).

On August 14, 2012, Petitioner testified and the records reflect that Petitioner underwent open reduction, internal fixation of her left wrist with a post-operative diagnosis of displaced distal radius fracture. (PX 2). Petitioner testified and the medical records of Premier Dermatology showed that she underwent treatment for a blistering rash of her left wrist post-surgically. (PX 3). Petitioner testified that the rash resolved.

Petitioner continued to follow-up with Dr. Murphy. On August 23, 2012, an x-ray of the left wrist showed near anatomic alignment; ulnar styloid fracture not significantly displaced. (PX 2).

Petitioner testified and the medical records reflect that Petitioner continued to follow-up with Dr. Murphy and began physical therapy at Midwest Hand Care. (PX 3).

Petitioner testified that she continued to follow-up with Dr. Murphy and undergo physical therapy during October and November, 2012.

The last medical record from Dr. Murphy is dated December 28, 2012. It notes that Petitioner stated that her wrist was feeling really good and the x-rays demonstrated a healed fracture. Petitioner was instructed at that time to return as needed. (PX 2). Petitioner testified that she returned to work on October 26, 2012. She testified that she continues at this time to work for Plainfield School District. Petitioner testified that she has modified the way she performs her job duties, specifically with lifting and carrying paper and books. She testifies she uses her dominant right hand to assist when she uses her left hand. Petitioner testified further that she has returned to all of her regular activities at home and at work with some modification of the way she performs certain functions.

Petitioner testified that she does not take any prescription medication for her left wrist. Medical records indicate that the last appointment with Dr. Murphy was December 28, 2012.

Petitioner testified that when she returned to work she did not suffer any lowering of her salary. Petitioner further testified that she is right hand dominant.

CONCLUSIONS OF LAW

1. With regard to the issue of causation, the Arbitrator finds that the Petitioner has met her burden of proof.

This finding is supported by the Petitioner's credible testimony and the medical evidence which undeniably show that the Petitioner suffered a fracture to her left wrist as following her undisputed fall at work on August 10, 2012. There was no evidence presented to the contrary. Accordingly, the Arbitrator concludes that the Petitioner's current condition of ill-being, specifically the fracture and retained hardware in her left wrist, is related to her August 10, 2012 work accident.

2. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment following her undisputed August 10, 2012 work accident was reasonable and necessary to alleviate her work-related injury to her left wrist. Therefore, the Arbitrator awards all the related medical expenses incurred as a result of the Petitioner's undisputed work accident, including: the medical services provided by Radiologist Joliet in the amount of $108; by Community Orthopedics in the amount of $427.50; and by Premier Dermatologists in the amount of $276 subject to the provisions of Section 8(a) and Section 8.2 of the Act with credit for payments made by respondent as stipulated by the parties.

3. Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (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. Applying this standard to this claim, the Arbitrator notes the following:

(i) Level of Impairment – there was no reported level of impairment presented in the evidence, and therefore the Arbitrator places no weight on this factor;

(ii) Occupation – Petitioner is a grammar school teacher and continues to do this job with no medical restrictions, but with some modifications requiring her to use her non-injured, dominant hand more – a factor on which the Arbitrator places some weight;

(iii) Age – Petitioner was 39 years old at the time of the injury and her age did not play a significant factor in assessing her permanent disability;

(iv) Future Earning Capacity – there was no evidence of the Petitioner's injury affecting her future earning capacity, and therefore the Arbitrator places no weight on this factor;

(v) Evidence of Disability – there was evidence of disability corroborated by the medical evidence, which showed that Petitioner underwent open reduction, internal fixation of her left wrist with a post-operative diagnosis of displaced distal radius fracture, followed by the development and treatment of a skin rash at the site of her surgery and resulting in the Petitioner's complaints of residual pain and the need to modify her activities by using her non-injured, dominant right hand more often – a factor upon which the Arbitrator places great weight.

Based upon all of the above factors, the Arbitrator concludes that the Petitioner has sustained permanent partial disability to the extent of 30% loss of use of the left hand under Section 8(e) of the Act.

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

BENDER, KENNETH Case# **13WC032398**

Employee/Petitioner

SOUTHWIRE COMPANY LLC

Employer/Respondent

On 10/8/2015, 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 0.06% 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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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)

Kenneth Bender
Employee/Petitioner

v.

Southwire Company, L.L.C.
Employer/Respondent

Case # **13** WC **032398**

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 **Michael Nowak**, Arbitrator of the Commission, in the city of **Mount Vernon** , on **5 March 2015**. 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. [ ] Should penalties or fees be imposed upon Respondent?

N. [x] Is Respondent due any credit?

O. [ ] Other _____

FINDINGS

On the date of accident, **5 August 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 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 $**36,097.20**; the average weekly wage was $**694.18**.

On the date of accident, Petitioner was **54** years of age, ***single*** with **0** dependent children.

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

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

Respondent is entitled to a credit of $**4,751.95** under Section 8(j) of the Act.

ORDER

Because Petitioner failed to meet his burden of establishing that an accident occurred which arose out of and in the course of his employment with Respondent, and further failed to prove that his current condition of ill-being is causally related to his employment, 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.

Signature of Arbitrator

10/5/15

Date

ICArbDec19(b)

OCT 8 2015

FINDINGS OF FACT

Petitioner worked for Respondent as a Cable Rewind Operator for thirteen years. He worked the day/swing shift for all but his first six months as an employee of Respondent, during which time he worked the third shift. Petitioner testified that his hours would vary, but, on average, he would work approximately 48 hours a week with overtime considered mandatory. As a Cable Rewind Operator he was primarily responsible for the set-up and operation of a cable rewind unit. The machine produces reels of cable for shipment and distribution. He also makes necessary repairs to non-conforming cables before they are approved for shipment. Non-conforming cable may be damaged or poorly laid, and the cable rewind unit corrects these mistakes before the cable is shipped to customers. During the process cable is mechanically transferred from a Payoff reel to the shipment reels. Petitioner testified he was required to make all necessary payoff and shipment reel changes. Petitioner introduced photographs depicting the reel. The reel shown in the photographs is an S300 reel, which stands about eight feet tall. Petitioner testified that while the reels used by Respondent can vary in size, the unit he operated for the last five years of his employment was only compatible with the S300 reel. Petitioner testified that while an empty S300 reel weighs approximately 1,200 pounds, a fully loaded S300 reel can weigh more than 21,000 pounds.

Operation of the cable rewind unit required placing the reel to be rewound in the payoff using an electric magnetic crane. The payoff would go into the center of the reel, pick it up and allow it to spin to unload wire. Petitioner would then take the end of the cable to be rewound and feed it into the unit. The unit would then rewind the cable and place it on a shipment reel. Once the cable was completely rewound onto the shipment reel, the machine operator would lower the loaded reel onto a set of ramps by using a hydraulic lift. Petitioner testified that the platform at the top of the ramps develops a depression over time and you have to push the reels to get them started down the ramps. Once out of the depression gravity takes over and the reels roll ten (10) to fifteen (15) feet to the area where they would be picked up for shipment. The reels would stop when they hit chalks placed on the concrete. The operator would then place chalks behind the reels as well. Petitioner testified he would push the reels out of the depression to start them down the ramps by using his right leg as a lever to rock the reel until it began to roll. Petitioner testified he would rewind approximately four reels in an eight hour shift and five to six reels in a twelve hour shift.

Petitioner testified that while the unit he was operating rewound the cable, he would continuously walk forty or fifty feet back and forth between the payoff reel and the shipment reel and spray oil onto the wire as required. In addition to working with and changing the reels as necessary to keep the rewind unit running, he was also responsible for making all necessary repairs to broken cables including "kold welding" any splintered wires as necessary. Petitioner testified the Cable Rewind Operator position allowed for little to no downtime other than scheduled breaks. He would be up on his feet walking around his entire shift. Petitioner also testified that the position required lifting as much as forty to sixty pounds of cable.

Apex Network Physical Therapy completed a task analysis of the Cable Rewind Operator position which was admitted into evidence as Respondent's Exhibit 3. (RX C).The analysis rated the position at the light work demand level. The analysis found the essential functions of the job required occasional lifting of ten pounds above the waist level, occasional carrying of ten pounds, occasional pushing of up to 28 pounds and occasional

pulling of up to eight pounds. (RX C, p.1). The task analysis found that every twelve hour shift involved two (2) hours of walking, three and a half (3.5)hours of dynamic standing, two and a half (2.5) hours of static standing,, and four (4) hours of sitting. (RX C, p.5). Petitioner did not agree with this assertion, suggesting that while it was possible a shift would require three and a half hours of dynamic standing or two and a half hours of static standing, a shift required more than two hours of walking and did not allow four hours of sitting.

Richard Barnett, Petitioner's direct supervisor at Southwire testified on behalf of Respondent. Mr. Barnett testified that operation of the cable rewind unit did not require the operator to forcibly push fully loaded reels as the incline of the ramps allowed the reel to roll forward without any additional force. Mr. Barnett testified that once the shipment reel is completely loaded with the rewound cable, a hydraulic lift drops the finished shipment reel onto the inclined ramps, which allow the reels to naturally, with the force of gravity alone, roll down the ramp and to the stop point. The operator will merely walk behind the reel as it rolls down to the endpoint and throw wooden chalks behind the reel as it reaches the endpoint to keep it from rolling back. Mr. Barnett testified that not much effort is required to roll the reels down for shipment. Mr. Barnett testified the ramps do the job almost all of the time. He did acknowledge, however that they become bowed with time. Mr. Barnett agreed with the details of the job task analysis marked Respondent's Exhibit C.

On August 5, 2013 about 11:00 am, Petitioner reported a work injury to Respondent when he felt his right hip give out, forcing him to grab onto a nearby guard rail to keep from falling. Petitioner testified the incident occurred when he was returning to his machine from lunch around 11:00 am. Specifically, Petitioner testified that, after starting his machine he began walking back to talk to his supervisor when he felt his right hip give out. Petitioner testified that he began to fall, but was able to grab onto the cable guard rail for support and hold himself up. He did not fall to the ground or hit any machinery. Petitioner testified that his supervisor saw this happen and immediately told him to take a seat for the time-being. Petitioner wanted to finish the reel he was working on, however he said that his Safety Coordinator, Jeremy Gaddy, came over and told him to shut down his machine and go home for the day. Petitioner testified that prior to August 5, 2013 he has never injured nor received treatment for his right hip.

Petitioner first sought medical treatment on August 7, 2013 at Clay County Hospital. (PX 1). Petitioner visited Nurse Practitioner Susan Mack reporting severe hip pain. A CT scan of Petitioner's right hip revealed evidence of avascular necrosis of the right femoral head. (PX 1, p.9). X-rays of the right hip revealed no fracture or dislocation with mild degenerative changes, but increased density sclerosis of the femoral head in line with a diagnosis of avascular necrosis. (PX 1, p.8).

On August 29, 2013 an MRI of Petitioner's right hip was taken at Advanced Open MRI which showed avascular necrosis of the head of the right femur with the lesion involving more than 75% of the articular surface with areas of marrow edema in the neck and intertrochanteric region of the right femur and right acetabulum. (PX 2 p.4). On follow up at Clay County Hospital, Susan Mack recommended Petitioner see an orthopedic surgeon for further treatment of his right hip symptoms. (PX 1, p.13).

On October 7, 2013, Petitioner visited Dr. Timothy Gray at the Bonutti Clinic with continued complaints of right hip pain. (PX 3, p. 7). The initial intake sheet filled out by Petitioner on 12-7-2013 indicated he had pain in the right hip at a level of 9. The intake sheet further indicated that Petitioner was having severe pain in

the right hip that was stabbing and constant while at "rest/sitting/with activity/at night and when sleeping." (PX 3, p. 7; RX B, p. 1) Dr. Gray diagnosed Petitioner with hip pain as the result of avascular necrosis of the femoral head of the right hip. (PX 3, p. 14). Records from this visit indicate Dr. Gray's opinion that Petitioner's "symptoms are at least aggravated if not caused by his work activities". (PX 3, p 14). Dr. Gray could not pinpoint any significant risk factor for the development of avascular necrosis. Dr. Grays' records indicate: "I think this is work related". (PX 3, p.14). Dr. Gray did not testify live or by deposition to elaborate on this opinion. Dr. Gray referred Petitioner for an evaluation with Dr. Frank Lee. (PX 3, p.8).

Petitioner was evaluated by Dr. Lee on October 23, 2013, who noted extensive avascular necrosis of the right femoral head as well as avascular necrosis of the right hip with slight collapse. Dr. Lee recommended a total hip replacement.

Petitioner sought treatment from Dr. James Stiehl on November 11, 2013 reporting continued right hip complaints. Dr. Stiehl diagnosed Petitioner with chronic synovitis of the right hip and a possible early case of avascular necrosis that would progress with time. Dr. Stiehl recommended a right hip cortisone injection, which the Petitioner received November 25, 2013. (PX 4).

On follow up with Dr. Stiehl on December 17, 2013, Petitioner reported great results for a few days following the injection, however his right hip pain quickly returned. Dr. Stiehl found that Petitioner appeared to be suffering from an impingement problem in his hip, possibly a labral entrapment. Dr. Stiehl indicated Petitioner was a candidate for right hip arthroscopy and issued a referral to Dr. Ryan Nunley for further treatment. (PX 4, p. 2).

On January 20, 2014 Dr. James Burke, Jr. performed a §12 evaluation of Petitioner. Dr. Burke also diagnosed Petitioner with stage three avascular necrosis of the right hip. (RX A, p.7; attachment 1, p 4). Dr. Burke testified that "avascular necrosis is a disruption of the blood supply... where blood supply in the bone is disrupted. When the bone loses its blood supply that area of the bone dies, as does the cartilage on top of it." (RX A, p. 8) He indicated dead bone causes swelling and pain and can, over time, as the bone continues to progress in its "deadness" eventually collapse. (RX A, p. 8) Dr. Burke noted that most of the time the cause of avascular necrosis is unknown. (RX A, p.8). "It's an idiopathic condition 80% of the time." (RX 1, p. 8). It can be caused by a closed dislocation of the hip, excessive alcohol use, steroid use, or blood dyscrasia such as sickle cell anemia, but most of the time the cause is unknown. (RX A, p. 8). Dr. Burke noted that Petitioner was under the impression his condition was caused by being on his feet and walking on concrete for twelve hours a day. (RX A, p.10). Dr. Burke testified that he had no knowledge and could not find any literature showing any association between standing and walking on concrete floors and the development of avascular necrosis. (RX A, p. 10-11). He testified that standing and walking do not cause an acceleration of avascular necrosis even if done 10-12 hours a day. He did indicate that weight bearing would cause some increasing pain when you are weight bearing on an area of dead bone in your hip, but it would not accelerate the disease process. The damage was done at the moment of the disruption of the blood supply. He further indicated the size of the lesion and severity of it is defined at the time of the blood flow disruption. (RX A, p11-12). Dr. Burke testified that any weight bearing activity would cause increased symptoms, but would not aggravate or contribute to the condition

of avascular necrosis itself. (RX A, p. 11-13). Dr. Burke analogized the condition to that of having a tumor in the proximal head of the femur. He testified:

> Of course, weight bearing on a tumor, a pathology in the proximal femur, of course it's going to hurt more, but again, that weight bearing has nothing to do to make that tumor worse or better or make it progress any faster. The same can be said about avascular necrosis; not that it's a tumor, but it's a pathologic condition on the main weightbearing surface of the hip. (RX A, p. 25)

Dr. Burke also indicated Petitioner will continue to have worsening symptoms with weight bearing, or any activity, with the natural progression of the condition over time, regardless of whether he is at work or at home. (RX A, p.13).

Petitioner continued to receive treatment for his right hip complaints at the Orthopaedic Center of Southern Illinois with Nurse Practitioner Devin Haertling through March of 2014. (PX 5).

On July 30, 2014, Petitioner returned to Clay County Hospital to visit Nurse Practitioner Susan Mack and was released to return to work full duty without restrictions. (RX D). Petitioner testified the reason he wanted to return to work and secured the release to do so was in order to receive a severance package as part of Respondent's upcoming workforce reduction. Petitioner testified that if he did not return to work when his medical leave ran out on August 5, 2014, he would be terminated and therefore not entitled to a severance. Therefore, in order to receive a severance, Petitioner secured a work release from Susan Mack with no restrictions and returned to work on August 5, 2014 after his medical leave ran out. Upon his return, Petitioner was placed in a special operations unit as his previous position as Cable Rewind Operator had been filed during his absence. Petitioner worked from August 5, 2014 to September 2, 2014 in a desk job as part of the special operations unit filing and performing other sedentary tasks. On September 2, 2014 Petitioner was laid off as part of Respondent's workforce reduction and Petitioner received a monetary severance package.

Petitioner testified that since being laid off in September of 2014, he has applied for employment elsewhere, and was hired on at North American Lighting Company. Petitioner testified that following two days of orientation at North American Lighting he was only able to work for two days because of right hip pain caused by walking around and being up on his feet all day. Petitioner testified that he has received one additional right hip injection since he was released to return to work full duty and is scheduled to receive another injection.

Petitioner expressed complaints of continued right hip pain, testifying that he experiences symptoms with any activity, including standing, walking, and even sleeping. Petitioner testified that he experiences right hip symptoms with any activity, regardless of whether at work or not, noting it is very hard for him to get comfortable.

CONCLUSIONS OF LAW

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?

These issues are somewhat overlapping, therefore the Arbitrator will address them jointly. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961 (1999) A claimant must prove by the preponderance of credible evidence all elements of the claim in order to receive compensation under the Act. *Orisini v. Industrial Commission*, 509 N.E.2d 1005 (1987)

The Petitioner in this case is relying upon a repetitive trauma theory rather than one of traumatic injury. The Petitioner must still show the injury arose out of and in the course of his employment. *Peoria County Bellwood Nursing Home v. Industrial Commission*, 505 N.E.2d 1026 (1987) In such cases the claimant generally relies on medical testimony to establish causal connection between the claimant's work duties and the condition of ill-being. *Id.* When the question at issue is one specifically within the purview of experts, expert medical evidence is required to show that the work activities caused the condition of which the employee complains. See, e.g., *Nunn v. Industrial Commission*, 157 Ill. App. 3d 470, 478 (4th Dist. 1987). A claimant need not establish that work activities are the sole or even the primary cause of his or her condition. It must be proven, however that work activities are at least a cause of his or her condition. The right to recover benefits cannot rest upon speculation or conjecture. *County of Cook v. Industrial Commission*, 68 Ill. 2d 24 (1977)

Petitioner relies on two brief mentions of causation contained within the treatment records of Dr. Gray to establish a causal connection between avascular necrosis and his job activities. The records however do not provide any explanation of the medical condition of avascular necrosis or how any job duties caused or contributed to the condition. Records from Petitioner's October 7, 2013 visit state that Petitioner's avascular necrosis is work related as it was at least aggravated, if not caused by his work activities, without any additional explanation as to how Dr. Gray came to this conclusion. It does not detail any job activities or duties with an explanation regarding the mechanism of injury or how the duties caused or contributed to Petitioner's avascular necrosis. The statement from Petitioner's November 25, 2013 visit is even more equivocal. Dr. Gray indicates that he is unable to rule out Petitioner's employment as at least an aggravating factor of his condition. Again without any further explanation of this "causation opinion". The records are unclear as to whether Dr. Gray thinks underlying condition itself, avascular necrosis, was caused or aggravated by job duties or if Petitioner simply experienced an increase in his symptoms.

Dr. Burke found the work activities, even as described to him by the Petitioner himself, could not cause, aggravate or contribute to Petitioner's condition as avascular necrosis is a pre-existing idiopathic condition. Dr. Burke was not only provided a job description from Petitioner, but was also able to review the job task analysis completed by Apex Networks Physical Therapy.

Dr. Burke credibly explained that most of the time the cause of avascular necrosis is unknown. (RX A, p.8). Risk factors for the development of this condition include excessive alcohol abuse, steroid use and blood dyscrasia, but "most of the time the cause is unknown. It's an idiopathic condition 80% of the time." (RX A, p.

8). Dr. Burke also reasonably explained that while weight bearing activity will undoubtedly cause increased symptomatology, "the pathology was defined at the moment the blood disruption happened." (RX A, p 11). Dr. Burke indicated that over time the dead bone will become soft like butter and collapse. (RX A, p.12). Dr. Burke explained the diagnosis of avascular necrosis and his opinion as to causation and the rationale behind it in great detail. The Arbitrator finds the opinions Dr. Burke more persuasive than those in the office notes of Dr. Gray.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner failed to prove his right hip condition arose out of and in the course of employment. Petitioner further failed to meet his burden of proving that his avascular necrosis was causally related to his employment with Respondent. Therefore benefits are denied.

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?

There is no evidence in the record to refute the reasonableness and necessity of the treatment Petitioner has received to date as a result of his avascular necrosis. Likewise, the proposed future treatment is reasonable and necessary. However, because Petitioner failed to prove that he sustained accidental injuries which arose out of and in the course of his employment or that his condition of ill-being is causally related to his employment, benefits are denied.

Issue (L): What temporary benefits are in dispute?

The parties stipulated that Petitioner was temporarily and totally disabled from 8/6/13 through 8/5//14, and 9/3/14 through 3/5/15, the date of hearing. However, because Petitioner failed to prove that he sustained accidental injuries which arose out of and in the course of his employment or that his condition of ill-being is causally related to his employment, benefits are denied.

Issue (N): Is Respondent due any credit?

The parties stipulated that Respondent is entitled to $4,751.95 credit for medical bills which were paid through the group carrier.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WAUKEGAN

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICK DUNNE,

Petitioner,

vs. NO: 12 WC 29647

KMK CONSTRUCTION,

Respondent,

ORDER PURSUANT TO SECTION 19(f) OF THE ACT

This cause comes before Commissioner Michael J. Brennan pursuant to Petitioner's "Motion for Approval of Rider to Lump Sum Petition and Order."

The Arbitrator approved the attached Settlement Contract Lump Sum Petition and Order on August 12, 2015. Counsel for the Petitioner filed the above Motion on August 27, 2015. Pursuant to the Motion, Petitioner's counsel advised that spread language was inadvertently omitted from the Lump Sum Petition and Order dated August 12, 2015.

Pursuant to the "Rider to Lump Sum Petition and Order:"

> **The Petitioner is 49 years and 10 months of age and therefore has a remaining life expectancy of 30 years and 7 months. After deducting attorney fees of $27,000.00 and litigation expenses of $184.52, the sum of $107,815.48 represents compensation for the loss of bodily function as contrasted to the periodic benefits within the meaning of 424(a) of the Social Security Act and should be reasonably deemed to represent the amount of $293.77 per month and $67.89 per week for the balance of the Petitioner's expected lifetime of 30 years and 7 months for loss of bodily functions.**

The above rider was filed with the Commission on August 27, 2015 and was signed by both attorneys and the Petitioner himself.

Pursuant to Section 19(f) of the Act:

> [T]he Arbitrator or Commission may on his or her own motion, or on the motion of either party, correct any clerical error or errors in computation within 15 days after the date of receipt of any award by such Arbitrator or any decision on review of the Commission and shall have the power to recall the original award on arbitration or decision on review, and issue in lieu thereof such corrected award or decision.

IT IS THEREFORE ORDERED BY THE COMMISSION, that the above Motion filed August 27, 2015 is hereby granted pursuant to Section 19(f) of the Act. The Settlement Contract Lump Sum Petition and Order filed August 12, 2015 is hereby modified to include the following language:

> **The Petitioner is 49 years and 10 months of age and therefore has a remaining life expectancy of 30 years and 7 months. After deducting attorney fees of $27,000.00 and litigation expenses of $184.52, the sum of $107,815.48 represents compensation for the loss of bodily function as contrasted to the periodic benefits within the meaning of 424(a) of the Social Security Act and should be reasonably deemed to represent the amount of $293.77 per month and $67.89 per week for the balance of the Petitioner's expected lifetime of 30 years and 7 months for loss of bodily functions.**

IT IS FURTHER ORDERED BY THE COMMISSION, that the heretofore approved Lump Sum Settlement Contract, as was approved by Arbitrator Robert Falcioni on the 12th day of August, 2015 remains in full force and effect, and shall be read in concert with the attached "Rider to Lump Sum Petition and Order."

DATED: OCT - 5 2015
D: 10-5-15
MJB/tdm
052

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF MOTION AND ORDER

ATTENTION. Attach the motion form to this notice. If the motion is not attached, this form may not be processed.

Patrick Dunne
Employee/Petitioner

Case # **12** WC **29647**

FILED
2015 AUG 27 AM 9:52
ILLINOIS WORKERS' COMPENSATION COMMISSION

v.

KMK Construction
Employer/Respondent

Commissioner Brennan
Illinois Workers' Compensation Commission
100 W. Randolph Street, Suite 8-200
Chicago, IL 60601

Marya Savich
Holecek & Associates
161 N. Clark Street, Suite 800
Chicago, IL 60601

On October 16, 2015, at 9:30 **AM / PM** or as soon thereafter as possible, I shall appear before the Honorable **Commissioner** Brennan, or any arbitrator or commissioner appearing in his or her place at Lake County Courthouse Waukegan ~~**100 W. Randolph Street, Suite 8-200, Chicago,**~~ Illinois, and present the attached motion for:

___ Change of venue (#3072)
___ Consolidation of cases (#3071)
___ Dismissal of attorney (#3052)
___ Dismissal of review (#3085)
___ Fees under Section 16 (#1600)
___ Fees under Section 16a (#1645)
___ HearingunderSect.19(b)(#1902)
___ Penalties under Sect.19(k)(#1911)
___ Penalties under Sect 19(l) (#1912)
___ Reinstatement of case (#3074)
___ Request for hearing (#R33)
___ Withdrawal of attorney(3073)
✓ Other (explain)

Motion for Approval of Rider to Lump Sum Petition and Order

Signature Petitioner ✓ Respondent ___

300 South Ashland Avenue, Suite 101
Street address

Matthew J. Leonard **#926**
Attorney's name and IC code # (please print)

Chicago, **IL** **60607**
City State Zip cod

Leonard Law Group, LLC.
Name of law firm, if applicable

(312) 226-8273
Telephone number

ORDER

The motion is set for hearing on _____

Signature of the arbitrator or commissioner

Date

ORDER

The motion is ✓ Granted ___ Withdrawn ___ Dismissed

___ Denied ___ Continued to ____/____/____

Signature of arbitrator or commissioner

10, 05, 2015
Date

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION

PATRICK DUNNE,	)	
	)	
Petitioner,	)	12 WC 29647
	)	
KMK CONSTRUCTION,	)	Arb. Falcioni
	)	
Respondent.	)	

FILED
2015 AUG 27 AM 9:52
ILLINOIS WORKERS' COMPENSATION COMMISSION

NOW COMES, the Petitioner, PATRICK DUNNE, by and through his attorneys LEONARD LAW GROUP LLC. and prays the Commission approve by its authority this Rider To Lump Sum Petition and Order and in support of said prayer alleges and states as follows:

MOTION FOR APPROVAL OF RIDER TO LUMP SUM PETITION AND ORDER

1) Application 12 WC 29647 was filed August 28, 2012.
2) Application 12 WC 29647 was settled via lump sum petition and order on August 12, 2015 via agreement of the parties. Accordingly Arbitrator Robert Falcioni lost jurisdiction over the application at the time of approval. (see attached lump sum petition and order marked as Petitioners A.)
3) Said lump sum of $135,000.00 represented a compromise wage differential.
4) Petitioners counsel Mr. Matthew J. Leonard, because of a clerical error, forgot to include spread language in the lump sum petition and order.
5) Petitioners counsel prays for the Commission to approve this Rider to Lump Sum Petitioner and Order.
6) Petitioners counsel in no way seeks to delete, add, modify or otherwise alter the terms as reflected in Petitioners A, other than to add spread language.
7) The approval of said Rider to Lump Sum Petition and Order in no way prejudices Respondent or its client.

WHEREFORE, the Petitioner, PATRICK DUNNE prays the Commission approve said Rider to Lump Sum Petition and Order.

Respectfully Submitted,

Leonard Law Group LLC.

LEONARD LAW GROUP LLC.
300 South Ashland Ave., Suite 101
Chicago, IL 60607
Tel. 312 226 8273
Atty No. 926

847 516 8071 815 455 0711

ILLINOIS WORKERS' COMPENSATION COMMISSION
SETTLEMENT CONTRACT LUMP SUM PETITION AND ORDER

ATTENTION. Please type or print. Answer all questions. File four copies of this form. Attach a recent medical report.

Workers' Compensation Act ☒ Occupational Diseases Act ☐ Fatal case? No ☒ Yes ☐ Date of death _____

EXHIBIT A

Patrick Dunne
Employee/Petitioner

Case # **12** WC **029647**

v.

KMK Construction
Employer/Respondent

Setting **Waukegan**

To resolve this dispute regarding the benefits due the petitioner under the Illinois Workers' Compensation or Occupational Diseases Act, we offer the following statements. We understand these statements are not binding if this contract is not approved.

Patrick Dunne
Employee's name

P.O. Box 151
Street address

Island Lake, IL 60042
City, State, Zip code

KMK Construction
Employer's name

701 W. Lamm Rd.
Street address

Freeport, IL 61032
City, State, Zip code

State Employee? Yes ☐ No ☒ Male ☒ Female ☐ Married ☐ Single ☒

Dependents under age 18 **0** Birthdate **11/16/1965** Average weekly wage $ **830.77**

Date of accident **5/24/2012**

How did the accident occur? **Struck by falling debris**

What part of the body was affected? **Left shoulder/head**

What is the nature of the injury? **Rotator cuff tear/surgery**

The employer was notified of the accident orally ☒ in writing ☐ Return-to-work date _____

Location of accident **Helena, AR** Did the employee return to his or her regular job? Yes ☐ No ☒
If not, explain below and describe the type of work the employee is doing, the wage earned, and the current employer's name and address.

Looking for employment

TEMPORARY TOTAL DISABILITY BENEFITS: Compensation was **All paid** weeks at the rate of $ **553.85**/week.
The employee was temporarily totally disabled from **04/02/2013** through **Present**.

MEDICAL EXPENSES: The employer has ☐ has not ☒ paid all medical bills. List unpaid bills in the space below.

_____

PREVIOUS AGREEMENTS: Before the petitioner signed an *Attorney Representation Agreement*, the respondent or its agent offered in writing to pay the petitioner $ **0** as compensation for the permanent disability caused by this injury.

An arbitrator or commissioner of the Commission previously made an award on this case on **NA** regarding

TTD $ **NA** Permanent disability $ **NA** Medical expenses $ **NA** Other $ **NA**

BEFORE THE ILLINOIS WORKERS COMPENSATION COMMISSION

PATRICK DUNNE,	)	
	)	
Petitioner,	)	12 WC 29647
	)	
KMK CONSTRUCTION,	)	Arb. Falcioni
	)	
Respondent.	)	

FILED
2015 AUG 27 AM 9:53
ILLINOIS WORKERS' COMPENSATION COMMISSION

RIDER TO LUMP SUM PETITION AND ORDER

The Petitioner is 49 years and10 months of age and therefore has a remaining life expectancy of 30 years and 7 months. After deducing attorney fees of $27,000.00 and litigation expenses of $184.52, the sum of $107,815.48 represents compensation for the loss of bodily function as contrasted to the periodic benefits within the meaning of 424(a) of the Social Security Act and should be reasonably deemed to represent the amount of $293.77 per month and $67.89 per week for the balance of the Petitioner's expected lifetime of 30 years and 7 months for loss of bodily functions.

8/26/15

Matthew J. Leonard – Pet. Atty

Patrick Dunne - Petitioner

Marya Savich – Res. Atty

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

BRYAN FRIEMAN,

Petitioner,

vs. NO: 11 WC 33020

STATE OF ILLINOIS,
PINCKNEYVILLE
CORRECTIONAL CENTER,

15IWCC0778

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, causal connection, prospective medical, notice, Statute of Limitations, and evidentiary rulings, 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. 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 Commission notes that the evidence deposition of Robert Schuchert and Dr. Anthony Sudekum were taken for and tendered for use in other cases. The deposition of Robert Schuchert was taken in the case of Jimmy Phillips, a/k/a "Correctional Officer," et.al., v. SCI/Pinckneyville C.C., 10 WC 23567. The deposition of Dr. Sudekum was taken in the case of James Bauersachs a/k/a "Correctional Officer," et.al., v. State of Illinois/Menard Correctional Center, 10 WC 27503, et. al.

The Commission finds that the deposition testimony is inadmissible hearsay as it relates to the case at bar. The exhibits and purported testimony from the above depositions is stricken

from the record and reference to said is stricken from the Arbitrator's decision. Despite having found the aforesaid testimony inadmissible and striking same from the record, the Commission affirms the Arbitrator's decision, and finds sufficient other evidence of record in support of the Arbitrator's decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 16, 2015, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses as outlined in Petitioner's group exhibit. Respondent shall have a credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount for which it is receiving this credit, pursuant to §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for prospective medical treatment as recommended by Dr. Paletta, including but not limited to surgery, as provided in §8(a) 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.

DATED: OCT 2 2 2015

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
O: 9-21-15
052

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

FRIEMAN, BRYAN
Employee/Petitioner

Case# **11WC033020**

15IWCC0778

SOI/PINCKNEYVILLE CORR CTR
Employer/Respondent

On 1/16/2015, 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 0.08% 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:

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

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITYAVE SUITE 102
CARBONDALE, IL 62901

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

1350 CENTRAL MANAGEMENT SYSTEMS
WORKERS' COMP MGR
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

JAN 16 2015

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

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

- [ ] 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)

Bryan Frieman
Employee/Petitioner

v.

State of Illinois, Pinckneyville Corr. Ctr.
Employer/Respondent

Case # **11** WC **33020**

Consolidated cases: _____

15IWCC0778

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 **Herrin**, 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. [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. [x] Other **Statute of Limitations**

FINDINGS

On the date of accident, **September 12, 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 $**57,866.00**; the average weekly wage was $**1,112.81**.

On the date of accident, Petitioner was **46** 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 $- for TTD, $- for TPD, $- for maintenance, and $- for other benefits, for a total credit of $-.

Respondent is entitled to a credit of $**any benefits paid through group** under Section 8(j) of the Act.

ORDER

Respondent shall pay the reasonable and necessary medical expenses as outlined in Petitioner's group exhibit. Respondent shall have credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount for which it is receiving this credit, pursuant to §8(j) of the Act

Respondent shall authorize and pay for any medical treatment recommended by Dr. Paletta, including but not limited to surgery, as provided in §8(a) 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.

Edward Cee
Signature of Arbitrator

1/12/15
Date

JAN 16 2015

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BRYAN FRIEMAN
Employee/Petitioner

v. Case # 11 WC 33020

SOI/PINCKNEYVILLE CORR. CTR.
Employer/Respondent

15IWCC0778

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner's Testimony – Part 1 of 3: Menard Correctional Center

Petitioner began his career with Respondent at its Menard Correctional Center in March of 1995 as a Correctional Officer. (T.11-12). Petitioner testified that he worked in both general population and segregation while at Menard. (T.15). He testified that working in segregation was more intensive because he had to use chuckholes to cuff and uncuff inmates, deliver food and pass all supplies. (T.15). Petitioner testified that the doors at Menard Correctional Center were heavy sliding doors, either solid or with bars, that frequently jammed. (T.13). Petitioner testified that it took "quite a bit" of effort to open up these doors, and that he had to "jerk them open." (T.13). He testified that Menard Correctional Center utilized Folger Adams or "big keys" that did not work easily. (T.13). He testified that it also took significant force to turn these keys, and as he turned the key, he had to pull on the sliding door to open it. (T.14). Petitioner reviewed the CorVel documentation summarizing the duties of a Menard Correctional Officer and agreed with the descriptions therein. (T.14).

Menard Correctional Center Job Site Analysis (PX22).

Respondent's Job Site Analysis provides a narrative description of the job duties of a Correctional Officer at Menard. (PX22). It classifies the strength demand of the job as frequent lifting and/or carrying up to 25 pounds. *Id.* Correctional Officers are required to frequently pull open doors from 2 ½ hours to 5 ½ hours per day, up to 66% of the time, or up to 200 times per day. *Id.* This includes pulling open chuckhole doors as needed during lockdowns for dining, and cuffing and uncuffing residents. *Id.* Wrist turning is required 34-66% of the time, 2 ½ to 5 hours per day, or 33 to 300 times per day. *Id.*

Menard Correctional Center DVD (PX23)

Petitioner introduced a DVD produced at Respondent's direction which depicts the duties of a Correctional Officer at Menard Correctional Center. (PX23). The DVD depicts various job tasks, assignments, areas, equipment and mechanisms demonstrated by a variety of Correctional Officers. *Id.* Depictions included the armory, shakedown officer, bar rapping, double gate door, double gate walkway, opening cell doors, turning gallery cranks, receiving control house, control room, receiving door, shower door segregation, shower door, segregation unit, segregation door, chuckholes, double gate, and tower. *Id.* Each area requires opening and closing multiple doors and using multiple keys, mostly Folger Adams keys. *Id.* These tasks were briefly shown. *Id.*

Bar rapping was simulated in the DVD and the officer explained that, depending upon the shift, all open bars will be rapped for security purposes. *Id.* Officers are to listen to the sound to ensure that the bar is solid and that the inmates have not tampered with the cell doors. *Id.* The officer held the bar with his right hand and struck the bars approximately 60 times to demonstrate bar rapping on 1 cell (5 to 6 bars vertically in 12 separate sections, each bar struck 1 time). *Id.* Bar rapping is conducted on the 7-3 and 3-11 shifts. *Id.* Officers perform bar rapping at the beginning of each shift on the gallery where they are assigned. *Id.* There are 55 cells per gallery. *Id.* While some galleries have half solid doors and half open bars, Correctional Officers will also be assigned more than one gallery shift per day. *Id.*

The Correctional Officers demonstrating these areas and job duties on the DVD used both hands to complete tasks. In fact, when the videographer asked a Correctional Officer if he always turned keys with his left hand, the officer switched hands and stated, "You learn to use both hands in here because you need about four of them." *Id.* On another occasion, when the videographer requested a Correctional Officer to demonstrate the unlocking maneuver in slow motion, the officer tried to do so and the lock stuck. *Id.* He had to turn it multiple times to get it to work and explained that the locks were difficult to turn in slow motion. *Id.* The DVD was stopped when a Correctional Officer struggled to open a cell door and yanked on it repeatedly with both hands. *Id.* There appeared to be a mechanical problem. *Id.*

Opinion of Dr. Sudekum in re Menard Correctional Officer (PX24-25)

Respondent retained Dr. Sudekum to review the written and videotaped job descriptions and the job analysis provided by Respondent for a Correctional Officer at Menard Correctional Center. (PX24). He also visited Menard Correctional Center where he directly observed job sites and experienced many of the tasks and manual activities performed by Correctional Officers. *Id.* Dr. Sudekum opined that the job activities of a Correctional Officer were an aggravating factor in the development and/or progression of upper extremity repetitive trauma injuries. *Id.* Dr.

Sudekum did not evaluate any specific cases or provide any medical opinion regarding any specific employee. *Id.*

Petitioner took the deposition of Respondent's records reviewer, Dr. Sudekum, pursuant to a Dedimus order. (PX25). Dr. Sudekum testified that he believed that the duties of Correctional Officers were causing symptoms and physiological changes that would constitute a work-related injury. *Id. at* 6-10. He toured Menard Correctional Center and found it to be very old and opined that Correctional Officers there performed tasks that were more strenuous than those performed by officers at more modern correctional facilities. *Id. at* 10-11. Specifically, he believed that bar rapping, where the officer holds onto a metal baton and drags it across the bars of each cell on each floor, was significant due to the vibration produced. *Id. at* 11-13. He further testified that the sliding cell doors were quite heavy and by themselves would vibrate. *Id. at* 12-13. Dr. Sudekum commented that he was aware that the DVD recording was stopped when there was difficulty opening a cell door. *Id. at* 12. He concluded that the vibration of bar rapping and opening and closing of heavy cell doors was most significant in aggravating carpal and cubital tunnel in Correctional Officers at Menard Correctional Center. *Id. at* 15-18.

Position Description in re Menard Correctional Officer (PX26)

The Post Description for Cellhouse Officers that was prepared by Respondent describes duties including pulling cell doors twice to ensure that cells are securely locked, random checking of all locks on the gallery, checking cell locks prior to moving inmates into respective cells, performing actual body (skin) counts by looking in or opening the cells, removing inmates from cells for escort, monitoring all movement, searching cells prior to placement of inmates, checking all locks, doors and restraints to ensure they are in proper operational order and secured, shaking down workers and inmates, keying in and out inmates from cells for all movement that is not a mass line movement, searching inmates entering and leaving the gallery, and securing grill and front doors. (PX26).

Petitioner's Testimony – Part 2 of 3: Pinckneyville Correctional Center

Petitioner began working at Pinckneyville Correctional Center in January of 1999. (T.10-11). When Petitioner transferred to Pinckneyville, he continued to work as a Correctional Officer until November 1, 2014, at which time he became a Transport Officer. (T.15-16). Petitioner estimated that he spent 90% of his career working as a segregation officer. (T.24). Petitioner testified that he spent the overwhelming majority of his tenure at Pinckneyville Correctional Center, 9 out of 15 years, working in Respondent's R5 segregation. (T.21-22, 23). While Petitioner testified that he also spent time in the general population houses 3 and 4, he testified that he spent the majority of his remaining 6 years in R6 or "little segregation," where bar rapping is performed on the shower doors. (T.23-24, 76, 83). Respondent submitted a staff

assignment history covering only two-and-a-half years of Petitioner's 15 years of employment, which reflected time in R6 and time in R5 as a Property Officer. (RX2).

Petitioner testified that inmates in R5 received their food, laundry and supplies through their chuckholes. (T.22). Petitioner testified that the doors in Pinckneyville's segregation are heavy swinging doors made of steel. (T.24). These are opened with a medium key, smaller than a Folger Adams key but larger than small or average keys. (T.25, 67). Petitioner testified on cross-examination that he had never seen the hinges on any doors oiled since he had been employed there. (T.66). He testified that both the doors and the locks on the doors stick. (T.67).

Respondent's chuckholes are opened with the large Folger Adams keys. (T.25). Petitioner described Folger Adams keys as 4 to 5 inch brass keys that require force and grip to turn. (T.25, 26). He testified:

> Some locks you can't hardly turn them. I mean, some turn easy, some turn hard. And some of them don't even – you got to jitter them to get them to open the chuckhole. You got to shake them and push them in farther, pull them out, kind of shake them around to get them to where they actually work. (T.25-26).

Petitioner also testified that the chuckholes do not work smoothly because food, juice and other substances or fluids spill and cause them to stick. (T.26). Petitioner testified that there is a locksmith on duty and has put in work orders before. (T.26, 27). He testified, however, that if he shook or turned them enough or tried a different key, he could open them. (T.26, 27). Petitioner testified that he has also hit them with his hands, kicked them and jimmied them to get them open. (T.27).

Petitioner testified that he performed wing checks every 30 minutes where he walked his wing and pulled on each door to make sure the door was secure and the inmates were alright. (T.27-28). Petitioner also performed shakedowns, which involved removing and lifting inmate property boxes from underneath bunks and searching their property as well as the entire cell for contraband. (T.28, 29). Petitioner testified that he cuffed and uncuffed inmates. (T.29). When the inmates resisted restraint, additional pressure was placed on his arms and hands. (T.29). He estimated that this occurred once per month or more. (T.65). Petitioner testified that he works the 7 to 3 morning shift, the shift during which there is the most movement. (T.30).

Petitioner testified that his job duties increased in varying degrees when the facility went on lockdown. (T.31-32). Petitioner testified that, depending on the level of the lockdown, he would have to do everything that inmate porters would be assigned to do, such as picking up trash and sweeping, in addition to his assigned duties. (T.32). Additionally, all inmate movement would be cuffed/restricted. (T.32, 33).

Petitioner testified that he reviewed the materials pertaining to Pinckneyville Correctional Center created by or at the request of Respondent such as the CorVel Job Site Analyses, the CorVel videos, and the "Demands of the Job" form. (T.30, 40-41). He testified that these did not accurately reflect the pace or frequency of the activities demonstrated. (T.40-41). He also noted the absence of details concerning the difficulties faced by officers such as "sticking doors." (T.41).

Demands of the Job Form (RX1)

Respondent submitted a "Demands of the Job" form within its Workers' Compensation Documentation Log, which is a form that is designed to quantify Petitioner's arm and hand usage in the performance of his job duties. (RX1). The form never does any lifting, from 1 pound to 100 pounds, "without intermittent rest." *Id.* The form indicates that Petitioner uses his hands for gross manipulation such as grasping, twisting and handling for up to 2 hours per day, and uses his hands for fine manipulation such as typing and good finger dexterity for up to 2 hours per day. *Id.* The form makes no indication whatsoever as to how much weight is lifted with or without carrying or with intermittent rest. *Id.* The Arbitrator notes that this form is directly at odds with the independent Job Site Analyses performed by CorVel.

Pinckneyville Correctional Center Job Site Analyses (RX3)

The CorVel Analyses indicate that 70% of the key turning is done by Wing Officers. (RX3). Both of Respondent's Job Site Analyses categorizes the strength demands Petitioner's job as "Medium" which is defined as "lifting 50 pounds maximum with frequent lifting and/or carrying up to 25 pounds. *Id.* "Frequent" is defined as 2.5 to 5.5 hours per day, 34% to 66% of a day, or 33 to 200 repetitions per day. *Id.* Correctional Officers also engage in "frequent" wrist turning and "frequent" finger manipulation. *Id.* The wrist turning was associated with the opening of doors and chuckholes up to 150 times per shift in the housing unit. *Id.* More keys would be turned during lockdown. *Id.* The hand-and-arm usage evaluations in the Analyses quantify a substantially greater amount of activity than what is indicated in Respondent's "Demands of the Job" form, despite its omissions as revealed in the testimony of Melanie Welch. (RX1; RX3).

Deposition of Melanie Welch (PX18)

Respondent's analyses and videos were created by Melanie Welch. (PX9). Ms. Welch is an employee of CorVel, which is a national corporation providing services to employers, third party administrators, insurance companies, and government agencies. (PX9, p.44). When asked if she had ever done a Job Site Analysis for an injured worker, the following interchange took place:

Q: As far as performing a job site analysis for an injured worker, have you ever done that?
A: Yes.

Q: Ma'am, I took your deposition on—in the case of Darin Hathaway versus IYC, State of Illinois on June 9, 2011, and I specifically asked you on line 14 through 18 on page 23, "As far as performing job site analysis for an injured worker, have you ever done that?" Your answer under oath at that point, ma'am, was, line 16 through 17, "For the employer. The injured worker did not call us, no." Do you remember that answer, ma'am? Have you done one since June 9, 2011?
A: Since June 9, 2011. Oh, you mean requested by an injured worker.

Q: No, ma'am. My question was pretty clear, and I caught you in a lie right out of the box. Now, my question now is very simple. Have you performed a job site analysis for an injured worker since June 9?
A: Not requested by an injured worker, but when I do, like, an ergonomic assessment, I consider that to be for the injured worker, for their behalf.

Q: Well, was this done on behalf of the employees at Pinckneyville Correctional Center or was it requested by the State of Illinois?
A: It's requested by the State of Illinois.

Q: I see.
A: For the injured worker.

Q: I don't think it's very funny, ma'am.
A: Okay.

Q: I note for the record you're laughing, but I consider that a sign of disrespect for all parties involved. *Id.* at 44-45.

Ms. Welch received her training in Job Site Analysis from ErgoRehab Incorporated. *Id.* at 45-46. This certification was obtained by mail and through the Internet, and was paid for by Corvel. *Id.* at 47-48.

Ms. Welch could not remember the last time she did any work on behalf of an injured worker, did not know the age of Pinckneyville Correctional Center, did not know that during the 5 to 7 years prior to the video being shot that the facility was short staffed, and admitted that the video was edited. *Id.* at 50-51.

Ms. Welch also believed that it was a requirement that 20% of the entire staff rotate every 90 days, despite the consistent testimony from other witnesses that some Correctional Officers stay in their positions for years. *Id.* at 55. She did not take into account overtime and she mistakenly believed that the segregation unit was contained in the video that she filmed. *Id.* at

56-58. The video did not show any of the locks that would not open, did not show how hard the locks were to open, did not show any bending or breaking of keys, did not show any new keys which were hard to put into the locks, and did not show the heaviness or the weight of the wing doors. *Id.* at 58-59.

Ms. Welch testified that she had neither seen nor lifted a property box, and was completely unaware that they contained TVs, radios, books, paperwork, computers, clothing. *Id.* at 63-64. She further acknowledged that the video showed nothing about Correctional Officers having to carry crates filled with cartons of milk or juice weighing hundreds of pounds up flights of steps to feed inmates. *Id.* at 66. When asked whether it would be important in consider whether a Correctional Officer had to carry a milk carton and/or food tray and simultaneously open and close difficult chuckholes that often stick, Ms. Welch answered, "I don't know, I didn't try it." *Id.* at 67. She also believed that restraining a combative inmate at a Respondent's Pinckneyville Correctional Center would fall in the "medium" category of job requirements. *Id.* at 64.

She further acknowledged that there was nothing in the Job Site Analysis or video about keying and un-keying doors for moving of inmates through the housing units in passes run on any given day; nothing about the transfer box, writs, medical furloughs, medical and furlough bags. *Id.* at 68-69. Nothing was contained in the video about keying out passes for clothing, barber shop, and commissary, or weapons and tactical training. (RX4; RX5).

She did not videotape or observe any cell shake downs and, in fact, believed that shake downs were performed on Correctional Officers themselves when they entered the prison. *Id.* at 76. She did not video tape the Correctional Officers having to push buttons and operate toggles to open doors, which required the officers to hold down the button with their thumb and toggle the switch with their little and pinky fingers at the same time. *Id.* at 77-78. She had no idea that this happened almost 250 times in an hour and thousands of times in a day. *Id.* at 78. After going through all this information, Ms. Welch testified that whether Correctional Officers are constantly and repetitively using their arms and hands in a forceful manner depended on their post. *Id.* at 88-89.

Live Testimony of Jason Thompson

Respondent called Jason Thompson, who testified that he worked at Pinckneyville Correctional Center as a Correctional Lieutenant until 2011. (T.85). He testified that he performed the key estimation study at the request of Warden Davis. (T.86).

Mr. Thompson testified that while he believed the doors in general population worked fairly well, he testified that all of the doors in R5 segregation were harder to open due to the fact that a rubber barrier was installed on the bottom of all the doors which creates friction and

prevents the doors from swinging open on their own. (T.89). He believed that the hinges rather than the locks on the doors were generally bad. (T.89-90). He testified that one would have to hold the lock longer and forcefully open chuckholes. (T.89-90). He felt, however, that only 2% of the doors locks were problematic. (T.89-90).

When asked to describe the difference between segregation and general population, he testified, "Segregation is segregation by design. We keep the worst inmates segregated from the rest of the population." (T.96). He testified that the rubber strips were added to the bottom of the doors to keep water out of the general walkway because inmates would stuff things into their toilet and flush it until their cell was flooded. (T.96).

Deposition of Testimony of Jason Thompson (PX14)

On cross-examination by counsel from the State during his deposition, the following exchange took place with regard to the condition of the chuckhole locks:

Q: Do you use keys as a lieutenant?
A: Yes.

Q: Do you have any difficulties with keys?
A: Sometimes.

Q: How often?
A: Chuckholes stick all of the time, and the reason they stick is because food and stuff gets – you're passing trays through it, so food would drip down in the lock and gum it up. On top of that, every now and then, you get an inmate try to sabotage a unit. It doesn't happen very often that way, but a lot of the chuckholes are sticky. And when I say "sticky," I just mean what they're supposed to do is you just should be able to turn it like that. (Indicating.) [Sic]. When they're brand-new, they're really easy to use. Ours are more difficult. (PX14, p.32-33).

With regard to the doors, his deposition testimony revealed that sometimes the pins in the door become loose and caused problems. (PX14, p.33). When asked to describe the cell doors, the following exchange took place:

Q: Comparing it to like your front door at home --
A: Uh-huh.

Q: -- the key -- is it more smooth than that, or less smooth, as long as your house key or house door is in functioning -- it's --
A: I would say in general it's comparable to a front door, except for the fact that it -- there's more constant tension on some of ours, whereas with a house key it's only when the lock engages and disengages. But yes. Similar.

Q: Are the cell doors -- are they heavy?

A: They're heavy, but they're on fairly stout hinges. I mean, the doors themselves are very heavy.

Q: Are they easy to open?
A: Comparatively speaking, like with a house door -- they're harder than your average house, like your civilian residence. They're -- you have to be -- get more momentum to open them, because they're heavy.

Q: Would they be comparable to like a hospital door?
A: Well, luckily, I haven't spent much time in a hospital, so I --
Q: Or is there a door that -- outside of a prison -- that you can say it would be comparable to?
MR. RICH: Look, Ms. Hagan, what you're doing is you're asking this witness for opinions. Unless you want to lay some foundation as an expert, then I need to start objecting. That's my objection.
Q: (By Ms. Hagan) You can answer.
A: Is it comparable to the outside door on the prison?

Q: Any outside door.
A: Let me try and think of one it would be comparable to. I can't really -- they're heavy doors. They're a lot harder than most doors you're ever going to come across in the civilian world. *Id.* at 33-35.

Lieutenant Thompson testified that keying cells and chuckholes, opening and closing doors, cuffing and un-cuffing inmates, turning difficult keys, opening difficult doors, pulling on bars, checking cell doors, weapons training, working mandated double shifts, performing extra duties on lock down, opening and closing chuckholes, lifting property boxes, carrying trays upstairs, restraining inmates, guiding inmates through lines, and performing various amounts of paperwork were the duties of a Correctional Officer. He further agreed that there was hardly a single part of the job that did not involve using one's arms, hands, or elbows. *Id.* at 38. In addition, he acknowledged that these activities involved force and stress. *Id.* at 40.

Post Description and Key Usage Estimate (RX3; RX6).

Respondent submitted a Post Description for a Housing Unit Wing Officer which enumerates the job duties of a Correctional Wing Officer. (RX3). Pertinent job duties involve:

- Restricting the activity of inmates and ensuring that they do not move from wing to wing;
- Searching inmates leaving and returning to the Unit on call passes or schedule movement;
- Completing cell searches every 60 days and logging the results on a form; Officers are required to shakedown all areas of the unit;
- Completing cell condition checks when inmates are assigned to different cells, noting any irregularities on a form and completing disciplinary reports if any damage has occurred;

- Performing inmate counts and inventory counts and completing count and inventory logs;
- Monitors the issue and use of caustic/toxic substances used in the cleaning area;
- Checking I.D. Cards when passing inmate mail;
- Make constant rounds checking all doors to inmate rooms and ensure that all security doors are closed and locked at all times, except when allowing authorized persons to pass through;
- Check all windows, doors and screens in the housing units in accordance with established procedures;
- Complying with D.R.'s, A.D.'s, I.D.'s, Warden's Bulletins, or special order bulletins, and performing other duties as required or assigned, which are reasonably within the scope of the duties enumerated in the Post Description. *Id.*

The key usage estimate indicates that general population Wing Officers turn 55 large keys and 50 small keys per shift by totaling the key usage estimate under the categories of wing checks, inmate traffic, laundry, utility closet, shakedowns, property box checks, and miscellaneous wing traffic. (RX6). Segregation and/or Receiving Segregation Officers turn between 90 to 245 large keys and between 15 to 70 small keys each shift. *Id.* However, the estimate contains disclaimers regarding its inadequacies and cautionary statements regarding the combing of posts and resulting usage increases:

> It must be stressed that these are estimations based on visual observations, average inmate movement experienced on the post, estimated amount of staff movement during the shifts, and the assumption that the institution is not on lockdown. Lockdown situations will increase these estimations considerably for posts that are normally open for inmate movement . . . [Emphasis Original].
>
> There are several posts, especially on the 3-11 and 11-7 shifts, in which the duties of two or more posts are combined into one post. An example of this is the 11-7 post 1250, in which the R1 A WING officer is also responsible for R1 B WING. This is a combined post. These posts are identified on the rosters in the same manner as the split posts. A regular post can become a combined post at any time by closing a non-mandatory post and placing the responsibility for the closed post on the mandatory post officer. This can be done on any shift, and when it occurs, the affected post will see usage increase by the amount of usage on the closed post. (RX6).

Deposition of Robert Schuchert – Pinckneyville Correctional Center Locksmith (PX8)

Mr. Schuchert was employed at Respondent's Correctional Center as the facility's locksmith. (PX8, p.4). He also operates an outside business called Schuchert's Lockshop in Chester, Illinois. *Id.* at 4. He began working for the State of Illinois in 1981 at Menard Psychiatric Center, and transferred to Pinckneyville Correctional Center on August 16, 1998. *Id.*

at 5-6. He served as a Correctional Officer, like Petitioner, from 1998 until January 2004. Since 2004, he has been a locksmith at Pinckneyville. *Id.* at 6. Schuchert viewed the videos from Menard Correctional Center and Pinckneyville Correctional Center. *Id.* at 7. He also reviewed the Job Site Analysis. *Id.* at 7-8. He testified that while employed as a locksmith at Pinckneyville, he developed bilateral compression neuropathies and filed a Workers' Compensation Claim that was accepted by Respondent. *Id.* at 8. He was voluntarily paid for his time off and received a settlement. *Id.* at 8, 33-34. He attributed his injuries to his repetitive work at Menard and Pinckneyville Correctional Centers. *Id.* at 9-10. He testified that his problems began while working in the segregation at Menard and progressed while performing his job duties at Pinckneyville. *Id.* at 9-10. He testified that, "It got to the point where if I had a tool box full of locks I couldn't carry them with my left hand, especially from one cell house to the next. I had to keep switching hands because it hurt so bad." *Id.* at 9-10. When asked to describe the difference between the locks in the segregation unit and the general population, he stated:

> The seg unit—the difference between the locks in the seg unit and general pop over there is they have a mogul key—a bigger electronic lock in their unit over there than general pop. General pop has a Medeco lock, which is a smaller key, which is compared to your house key. The mogul keys that are over in the seg unit—they're a bigger key. I would say probably about that big on the head. The length of the key is probably about that long. (Indicating.) *Id.* at 10.

He acknowledged that all Correctional/Wing Officers had to key open chuckholes, cell doors, cabinets, and medical cabinets; and diary each item that had to be keyed out, logged out, keyed back in, and logged back in. *Id.* at 11-12. The same requirements existed in medical. *Id.* at 12. When asked to describe the locks at Pinckneyville, he stated:

> They have gotten worse, naturally, through the years. When we first arrived, the inmates had their own keys to their locks, so there was a lot of wear and tear. I was trying to remember last night how long it's been since we got rid of the—we pulled the inmate keys out over there. *Id.* at 12.

He testified that approximately 7 to 8 years ago, the inmates had their own keys. *Id.* at 13. However, the keys were taken away due to the atrocious wear and tear on the locks from constant inmate traffic. *Id.* at 13. He described the current condition of the locks as fair to poor. *Id.* at 13-14. When asked to describe the locks where Petitioner has worked the last 5 years, he stated:

> . . .We had a lot of wear on the locks then, and it's been—the chuckhole locks have got a lot of wear, especially in the seg, because they get keyed all the time. You're feeding them three meals a day, plus you're transporting them in and out, if you're—if they're going to – they're going to the yard; they're going to passes, and right now, you're—in warm

> weather, pass ice, mail, anything else—you got to open that chuckhole. *Id.* at 13.

He acknowledged that Respondent's witness, Lieutenant Thompson, was correct when in stating that the locks and the chuckholes were very difficult to open. *Id.* at 16-17. The difficulty stemmed not only from the locks, but from the food spilled in them. *Id.* at 18. He estimated that he switched out between 2 to 5 locks per week, or at times, 4 or 5 locks will go out in a day. *Id.* at 22.

Petitioner's Medical History and Treatment

Petitioner testified that he does not suffer from gout, hypothyroidism or rheumatoid arthritis. (T.17). He testified occasionally engages in hunting and fishing. (T.19). He testified that although he purchased a motorcycle in April of 2011, he does not ride it very much. (T.21). Petitioner candidly testified that he suffers from diabetes; however, it is controlled through medication and diet. (T.16-17). He is not insulin dependent. (T.17). Petitioner testified that he has been diabetic for 6 or 7 years. (T.17-18). Petitioner began experiencing symptoms, however, long before he developed diabetes. (T.33). Petitioner testified on direct examination that he had symptoms of numbness and tingling in his hands starting around the year 2000 which he reported to his family physician. (T.33).

The records of Petitioner's family physician note that Petitioner obtained paperwork to file a workers' compensation claim; however, Petitioner did not file a workers' compensation claim until 2011, nor could he recall indicating any intent to file a claim. (T.34-36). Petitioner testified that he was evaluated by electrodiagnostic testing, but no physician advised him that his condition was related to his employment. (T.36-37). When asked why he did not file a claim sooner, he testified, "Because I didn't think it was bad enough to deal – I mean, I just figured deal with it. It wasn't bad enough." (T.36-37).

Petitioner testified that as he continued to work at Pinckneyville Correctional Center, his condition progressively worsened. (T.37, 39). Petitioner eventually finally filed a workers' compensation claim and sought further treatment for his condition on September 12, 2011, with Dr. George Paletta, who took the following history:

> This is the first visit for this 45-year-old right-hand dominant white male. He works as a prison guard. He is currently at the Pinckneyville Facility. Prior to that, he worked at Menard. He worked at Menard from 1995 to 1999. He then moved to the Pinckneyville Facility where he has been since 1999. His job requires all the typical duties of a correctional officer. This includes bar rapping, keying cell doors, opening and closing cell doors, handcuffing and un-handcuffing inmates, and at times, restraining inmates. He also has to do some writing of tickets and some data entry. He has a long history of some left wrist and hand issues dating back to 2002. In fact, at that time, he underwent

> EMG and nerve conduction studies that documented a mild carpal tunnel syndrome. He was treated with night splints at that point in time, but states those did not really help him. He never underwent any surgical decompression. Over the intervening years, he has had intermittent symptoms, but recently over the last year to two, those have become progressively worse. He now has a lot of nocturnal symptoms with numbness and tingling involving particularly the first three digits, but at times the whole hand. He also notes that the hands tend to go to sleep if he has to drive for an extended period of time. For example, he states he has to drive a van at the correctional facility and often times, with his hands in the driving position, his fingers go numb. He denies any fixed numbness, but states it is intermittent and seems to be positional or activity related. He is not currently taking any medications specifically for the wrist. He did have recent EMG and nerve conduction studies, which were made available for my review today.
>
> Past medical history, past surgical history, medications, allergies, review of systems, family history and social history are as per the intake questionnaire, which I have personally reviewed. (PX3).

Petitioner's new nerve conduction studies completed that day demonstrated moderately severe bilateral carpal tunnel syndrome. (PX3; PX4).

Dr. Paletta noted that there had been a clear progression of Petitioner's condition since his electrodiagnostic testing back in 2002. (PX3). He also noted that, given the progression of Petitioner's condition, it was extremely unlikely that a second trial of splinting would improve Petitioner' condition. (PX3). Petitioner testified at Arbitration that he wore the splints for three or four months with no beneficial effects, only loss of sleep. (T.82). Consequently, he recommended surgery. (PX3). Dr. Paletta stated that it was his opinion, based on Petitioner's subjective complaints, his physical examination findings, and his electrophysiologic studies, that Petitioner's bilateral wrist condition and his need for treatment to same was related to work. *Id.*

Petitioner's Testimony – Part 3 of 3: Manifestation of Injury

Petitioner alleged September 12, 2011, the first day a physician related his complaints to his employment, as his manifestation date. (T.37-38, 45). Petitioner testified on cross-examination that he suspected his injuries were work-related on August 23, 2011, the date he spoke with Dr. Paletta prior to his office visit; however, he testified to uncertainty about his suspicion (T.48, 51-52):

> Q: Okay. So even before you saw Dr. Paletta you knew you were there for a work-related injury?
> A: Well, I wasn't a hundred percent sure. I didn't know.
>
> Q: On the form you said you were there for that, true?
> A: Well, that's what I assumed. I'm not a doctor.

Q: And you were considering a lawsuit at that time or a Workers' Compensation case?
A: I didn't know. (T.52).

Petitioner testified at Arbitration that his symptoms of numbness, tingling and pain persist and that he would like to receive the intervention recommended by Dr. Paletta. (T.38-39).

Deposition of Dr. Daniel Phillips

Dr. Phillips is a clinical electrophysiologist, board certified in neurology and electrical diagnostics, whose practice is exclusively devoted electrical diagnostic work. (PX5, p.4). Dr. Phillips testified that his background as an electrical engineer with a subspecialty of biomedical engineering led to his career as a clinical neurologist and assistant professor of neurology at Washington University. *Id.* at 4-5. He is a diplomate of the American Academy of Neurology and a fellow in the American Association of Neuromuscular and Electrical Diagnostic Medicine. *Id.* at 5. As a fellow, he serves on the accreditation committee, which reviews the work of other laboratories and determines if they are of sufficient quality to be accredited by the organization. *Id.* at 6. He also serves on the Missouri State Liaison Committee and educates the legislature, insurance companies and interested public groups concerning issues of quality in electrical diagnostic medicine. *Id.* at 6. The Missouri administrative law judges recently requested that he lecture on the subject of how to identify quality electrodiagnostic studies. *Id.* at 11. He testified that his lab was one of the first eight to be accredited with exemplary status. *Id.* at 9. He does not and cannot play a part in accrediting labs in his own area. *Id.* at 9.

Dr. Phillips testified that he runs a consultative electrical diagnostic practice and performs all of his own diagnostic testing and work himself. *Id.* at 9-10. He testified that an EMG or electromyography is a study that involves inserting a small electrode into the muscle to record the electrical potentials from the muscle at rest and with activity, which paints a view of the morphology or formation and pathology of the muscle. *Id.* at 12-13. He testified that it is an anatomical nerve test that tells a physician what the nerve looks like, analogous to an electrical biopsy without removing any of the nerve. *Id.* at 12-13. A nerve conduction study is a functional test that tells a physician how the patient's nerve is responding to stimuli at different points in comparison to an established norm. *Id.* at 13. These tests allow a physician to determine the cause of a patient's symptoms and are nationally recognized tests relied upon in the scientific and medical communities. *Id.* at 13-14. The NeuroMetrix test, on the other hand, is unreliable and has been widely discredited by many sources. *Id.* at 26-29. He testified that he has done at least 45,000 electrodiagnostic studies over a span of 30 years and is thoroughly familiar various neuropathic patterns. *Id.* at 49.

Dr. Phillips explained that there are both relative and absolute values for comparison scales to determine any abnormality within the nerves. *Id.* at 19-20. Contrary to popular belief, "relative" values are not subjective. *Id.* at 21. While there are absolute cutoff levels for "average"

patients, these levels would change for patients with various morphologies or patients who are obese, have cold limbs, or suffer from diabetic neuropathies, which would have different cutoffs values. *Id.* at 19-20. He testified that there are different values for "somebody who is a four-foot-11 petite woman" and a "six-foot husky guy." *Id.* at 52. In these patients, a *fixed* relative value is compared to the actual distance between the motor and distal latencies to determine entrapment neuropathy. *Id.* at 20, 52. He testified, for example, that during tests performed over the median and ulnar nerves at the same distances, the median nerve distal latency should not be longer than the ulnar nerve distal latency by more than 1.4 milliseconds. *Id.* at 20. The 1.4 milliseconds is a fixed relative value between the distal latency of the nerve going through an entrapped area and the distal latency of the nerve that is not. *Id.* at 20. If the delay is more than 1.4 milliseconds, the latency of the nerve conduction is abnormal. *Id.* at 20.

Dr. Phillips testified that testing and comparison with relative values allows him to make a distinction between a compression neuropathy or a systemic condition such as diabetes. *Id.* at 22. Hence, he testified that the relative comparison scale is as equally valid as the absolute scale and vital to the diagnosis of patients who have underlying conditions or deviant anatomical structures. *Id.* at 20.

Dr. Phillips testified that he performed a physical examination of Petitioner and took a clinical history in addition to performing a nerve conduction study. *Id.* at 23-24, 32. He noted that although Petitioner had diabetes, he did not have any numbness in his feet. *Id.* at 24. He testified that this was significant because this was an indicator that Petitioner's diabetes was not clinically significant for neuropathy. *Id.* at 24-25. Dr. Phillips testified that clinically-significant diabetic neuropathy typically begins in the feet. *Id.* at 25. Dr. Phillips further testified that there was neither evidence of a generalized neuropathy nor evidence of diabetic neuropathy in the upper extremities during Petitioner's electrodiagnostic studies. *Id.* at 25-26. When asked during cross-examination how he was able to distinguish Petitioner's compression neuropathy from any potential diabetic neuropathy, he provided an illustration of his previous explanation of how a fixed relative value is used to determine compression related abnormality:

> Well, again, you look at the comparison between the median and ulnar interlatency differences. It's based upon comparative values. So for example, the diabetic neuropathy will have a prolonged ulnar motor or ulnar sensory terminal latency. There will be slowing of the conduction velocities in general in the entire test, and they'll be potentiated across points of selective points of vulnerability; okay?
>
> So you'll see, for example, that the ulnar nerve – in a diabetic, if you took the first page of the report – okay – that I did on September 12th – okay – I'll give you an idea what it looks like. Okay? So his right median motor terminal latency would typically be prolonged; okay? So – in absolute terms. So it might be 4.6.

> His ulnar, as opposed to being 2.6, probably 3.4; okay? His conduction velocity, as opposed to being in the 50s, are usually in the 40s; okay? 42, 46, 48 – that type of thing; okay? His conduction velocity across his elbow – okay – which is 58 across his elbows, usually drops in comparison to the distal velocity, so where it might be 50 in the forearms, it'll be 44 across the elbows, because the elbow represents another point of selective vulnerability that the diabetic neuropathy will show up at.
> . . . Now, you can still diagnose carpal tunnel in those people and you use relative values to do it, so for example, even if they have an underlying neuropathy but the median motor terminal latency is more than 1.4 milliseconds greater than the ulnar, they've got relative slowing across the elbow consistent with it.
>
> Similarly, you would compare the radial to median going to the thumb at the same distance. Even if both of them are delayed, if the difference is greater than .5 or .6 milliseconds between the median and radial going to the thumb, again it's a relative slowing in the counts. You do the same process with the orthodromics. They're very different-looking studies. *Id.* at 46-47, 48.

Dr. Phillips noted, however, that Petitioner's selective points of vulnerability showed relatively normal values:

> His ulnar sensory response are [sic] usually borderline or low voltage. His are well within the range of normal or – well – within the range of normal. I'd have to look back at the waveforms to see which one I was reading off of – the 21 or the 17.
>
> The radial sensory responses are typically diminished and they're slowed. Not the case. It's a general – the whole pattern – you don't have ulnar sensory orthodromics of 1.7 millisecond peak latencies in the diabetic neuropathies.
>
> The whole pattern of the study just looks different. All right? It looks like the pattern of a generalized nerve disease. . . *Id.* at 47-48.

Dr. Phillips testified that the characteristics of diabetic neuropathy were prolonged terminal latency, slowing of conduction velocities, diminished sensory amplitudes, as well as slowing of the sensory responses and prolongation of their peak latencies with axonal damage as it progresses. *Id.* at 61-62.

When asked to explain his diagnosis of right carpal tunnel, Dr. Phillips testified that while Petitioner's right median-to-ulnar distal latency was within 1.4 milliseconds, Petitioner's right radial sensory peak latencies and median-to-*radial* sensory latencies were prolonged and fell into the severe category. *Id.* at 53-54. Dr. Phillips also testified that Petitioner's 2002 nerve

conduction studies showed *bilateral* abnormalities based upon the recorded values, seven years before he was diagnosed with diabetes. *Id.* at 59, 65-66.

Deposition of Dr. George Paletta

Dr. Paletta, who evaluated Petitioner and referred him for diagnostic studies, testified that he has reviewed the materials pertaining to the job duties of a Menard Correctional Officer and those of a Pinckneyville Correctional Officer. (PX6, p.5-6). He testified that in addition to being a treating physician, he performs examination for and treats patients on behalf of insurance companies, employers and third-party administrators. *Id.* at 9-10. He testified that he frequently sees patients from Continental Tire, Walgreens Distribution Center and American Steel. *Id.* at 10. He has also treated Correctional Officers. *Id.* at 9.

Dr. Paletta testified that carpal tunnel is a peripheral compression neuropathy that results from compression of the nerve at the carpal tunnel and produces pain, numbness, tingling and in severe cases weakness or dysfunction of the hand. *Id.* at 11. He acknowledged that Petitioner was borderline obese and diabetic, but noted that Petitioner was non-insulin-dependent. *Id.* at 12-13.

Dr. Paletta testified that repetitive injuries such as carpal tunnel syndrome have a latency period, or a period of time that elapses between exposure and the development if the condition and/or symptoms. *Id.* at 14. He testified that since there are a wide variety of tolerances to repetitive injury among individuals, the latency periods and thresholds for individuals vary greatly. *Id.* at 14.

Dr. Paletta testified that Petitioner's job duties at both Menard Correctional Center and Pinckneyville Correctional Center contributed to the development of Petitioner's condition. *Id.* at 14-15. While Dr. Paletta testified that it would be impossible to parse out per se which facility was primarily responsible; he testified that examining a patient's history and what activities to which the patient attributed an onset or worsening of symptoms was important, as those are activities which are likely a factor in the development or progression of the patient's condition. *Id.* at 15. However, he noted that the 3-year latency period between Petitioner's employment at Menard and his manifestation of symptoms in 2002 was entirely within reason. *Id.* at 31.

Deposition of Dr. Williams – April 10, 2014

Respondent had Petitioner examined pursuant to §12 by Dr. Williams. (RX9; RX10, p.8). Dr. Williams testified that he performed approximately 200 independent medical examinations over the last year, 90% of which were for respondents/defendants. (RX10, p.5). He has been paid

over $632,000.00 in the 2012 and 2013 fiscal years by Respondent for performing IMEs and records reviews and giving depositions. *Id.* at 25-26.

Dr. Williams performed a physical examination and reviewed Petitioner's medical history and agreed with Petitioner's diagnosis of bilateral carpal tunnel syndrome. *Id.* at 14, 30-31. However, based upon his review of the records and the materials provided by Respondent, he concluded that Petitioner's bilateral carpal tunnel syndrome was neither caused nor contributed to by Petitioner's employment with Respondent. *Id.* at 15. Dr. Williams testified that he visited Respondent's Pinckneyville facility and opened and closed *a* chuckhole in segregation, cuffed and uncuffed an officer, and lifted property boxes and food trays. *Id.* at 16. Dr. Williams has not visited Menard Correctional Center. *Id.* at 27.

On cross-examination, Dr. Williams acknowledged that bar rapping produces vibration, and that performing that activity on a daily basis for four years could cause or contribute to the development of carpal tunnel syndrome. *Id.* at 27. He acknowledged that Petitioner had bilateral hand complaints dating back to 2002. *Id.* at 29. Yet, he did not believe that the symptoms he experienced in 2011 for which Petitioner filed a claim were related to Petitioner's work at Menard Correctional Center. *Id.* at 35. He agreed that there is a latency period for conditions such as carpal tunnel syndrome, and that the latency period is different for each individual. *Id.* at 36-37. He also testified he did not find any evidence of diabetic neuropathy in Petitioner. *Id.* at 29-30. He also testified that he has considerable respect for Dr. Paletta and refers his ulnar collateral ligament patients to Dr. Paletta for surgery. *Id.* at 31. Dr. Williams did not have access to the CorVel analysis, the DVD, a "Demands of the Job" form or the 2011 report and deposition of Dr. Sudekum relating to the duties of Menard Correctional Officers. *Id.* at 37-38. He testified that he had no specific information whatsoever about Petitioner's job duties at Menard Correctional Center. *Id.* at 37.

Dr. Williams agreed that Petitioner's hobbies of deer hunting with a shot gun and jug fishing would not be sufficient to contribute to or aggravate carpal tunnel syndrome. *Id.* at 31-32. He also acknowledged that based on the timeline of the development of Petitioner's carpal tunnel syndrome, his motorcycle purchase in 2009 or 2010 would not have been a causative factor, but potentially an aggravating one. *Id.* at 33-34. Dr. Williams testified that he was unaware that Dr. Sudekum testified that the duties of a Menard Correctional Officer were contributing and to and aggravating the development of conditions such as carpal and cubital tunnel syndrome. *Id.* at 38.

Dr. Williams was not provided with the depositions of the Pinckneyville Correctional Officers and Locksmith Robert Schuchert, or the deposition of the CorVel employee who performed the analysis. *Id.* at 39. He acknowledged that repeated pinching and key turning causes increased pressure in the carpal tunnel. *Id.* at 41. He acknowledged that forceful and repeated gripping causes increased pressure within the carpal tunnel. *Id.* at 41. He acknowledged

that correctional officers forcefully pull on doors while performing wing checks to make sure the doors are closed, and acknowledged that Correctional Officers perform many other hand and arm intensive duties such as shakedowns and restraining inmates. *Id.* at 42-45. However, he did not feel that Petitioner's 19 years of performing these duties were causative or aggravating factors in Petitioner's condition of ill-being. *Id.* at 45.

CONCLUSIONS OF LAW

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?

The Arbitrator notes as a preliminary matter that the Statute of Limitations has no bearing on the presentation of evidence in repetitive trauma cases. This matter was recently addressed by the Appellate Court in *PPG Industries v. Illinois Workers' Compensation:*

> Additionally, looking to the plain and ordinary language of section 6(d), we find no evidentiary limitation. Section 6(d) provides limits with respect to the *filing* of a claim for benefits, not what evidence may be presented to support any particular claim. A repetitive-trauma injury is one which "has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction." *Peoria County*, 115 Ill.2d at 529, 106 Ill.Dec. 235, 505 N.E.2d at 1028; see also *Oscar Mayer & Co. v. Industrial Comm'n*, 176 Ill.App.3d 607, 611, 126 Ill.Dec. 41, 531 N.E.2d 174, 176 (1988) ("By their very nature, repetitive-trauma injuries may take years to develop to a point of severity precluding the employee from performing in the workplace."). It stands to reason that a claimant's work history may be necessary and relevant to determining whether she sustained such a work-related, gradual injury. As noted by the arbitrator and the Commission, case law establishes that a claimant's work history has been routinely considered in repetitive-trauma cases, including work history that extended beyond three years prior to an alleged manifestation date. See *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill.App.3d 915, 917–18, 293 Ill.Dec. 313, 828 N.E.2d 283, 287 (2005) (over 30 years); *Oscar Mayer*, 176 Ill.App.3d at 608, 126 Ill.Dec. 41, 531 N.E.2d at 174–75 (15 years); *City of Springfield, Illinois v. Illinois Workers' Compensation Comm'n*, 388 Ill.App.3d 297, 300–01, 327 Ill.Dec. 333, 901 N.E.2d 1066, 1069–70 (2009) (approximately 8 years); *Peoria County*, 115 Ill.2d at 527, 106 Ill.Dec. 235, 505 N.E.2d at 1027 (6 years).

PPG Indus. v. Illinois Workers' Comp. Comm'n, 2014 IL App (4th) 130698WC, ¶ 19.

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. "The word

'accident' is not a technical legal term, and has been held to mean anything that happens without design, or an event which is unforeseen by the person to whom it happens...Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor." *Laclede Steel. Co. v. Industrial Comm.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (1955) citing *Baggot Co. v. Industrial Comm.*, 290 Ill. 530, 125 N.E. 254 (1919). Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is **a** causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205, 797 N.E.2d 665 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037, 723 N.E.2d 846 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). 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). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

The Arbitrator notes that Illinois Courts have refused to adopt any standard threshold which a claimant must meet in order for his or her job to classify as repetitive enough to establish causal connection. In the repetitive trauma case of *Fierke*, the Appellate Court specifically applied the foregoing legal standard of causation specifically to a repetitive trauma case and noted that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Fierke*, N.E.2d at 849. The Court specifically stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id.*

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain

amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines supra.*

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or "dosage" (which in Petitioner's case would be force) would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Darling*, N.E.2d at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "***may***" carry great weight "only where the work duty complained of is a common movement made by the general public." *Id.* at 1142. The Arbitrator notes that Petitioner's job duties involve the performance of tasks distinctly related to his employment which pose risks to which the public is not equally exposed. This risk is both qualitative and quantitative.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, "while [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.* Based upon the aforementioned law, Petitioner can establish a claim for repetitive trauma even though he worked various assignments.

Based upon the aforementioned law, the Arbitrator does not find the causation opinion of Dr. Williams to be consistent with the law and the evidence in the record. Dr. Williams conceded that the activities performed by Petitioner at both Menard and Pinckneyville over 19 years were risk factors that could cause or contribute to the development of bilateral compression neuropathy; yet, he did not believe that Petitioner's conditions were related to his employment. (RX10). Dr. Williams felt that Petitioner's job duties at Menard Correctional Center were too remote from his 2011 claim, despite the fact that Petitioner initially developed symptoms in 2002, only 3 years from his employment at Menard Correctional Center. (RX10). Dr. Paletta testified that this was an entirely reasonable latency period. (PX6). It is a well-known general

fact that repetitive trauma injuries are cumulative and occur over time. Therefore, it is apparent that damage is sustained even before the injured begins to experience symptoms. The Commission recognized this fact by acknowledging that in repetitive trauma cases more than one employer can be responsible for the repetitive injuries sustained by employees. *See Lemes v. Peko Tile, Inc*, 07 I.W.C.C. 1545 (2007). Therefore, Petitioner's job duties as a Correctional Officer are relevant due to the fact that they predisposed him to repetitive injury. *See A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist., 1999) (acknowledging that a claimant's long history of repetitive work may predispose them to repetitive injury and same is a factor for consideration).

Dr. Williams had no knowledge of Petitioner's job duties at Menard Correctional Center, and lacked considerable detail concerning facility conditions at Pinckneyville Correctional Center. (RX9; RX10). The Arbitrator is likewise not persuaded by the fact that Dr. Williams was able to perform one or two iterations of the tasks performed by Correctional Officers while on a guided tour under controlled/favorable conditions. The gradual breakdown of the physical structure on account of the repetitive/prolonged performance of these activities is what leads to the development of repetitive trauma; only the Petitioner or other correctional staff would have the standing to testify as to the impact of prolonged exposure to the performance of these occupational activities. Additionally, the evidence upon which Dr. Williams based his causation opinion was contradictory and flawed. Respondent's Demands of the Job form and the Job Site Analyses are a prime example. The Arbitrator finds the deposition testimony of the locksmith and Jason Thompson and Robert Schuchert particularly probative with regard to the poor condition of the locks.

The Arbitrator is persuaded by the causation opinion of Dr. Paletta. The evidence shows that Petitioner repeatedly turned keys, opened and closed cell doors, opened and closed chuckholes, restrained inmates, performed shakedowns and wing checks and other activities for nearly two decades for Respondent at Menard and Pinckneyville Correctional Centers. The overwhelming weight of the evidence also shows that the condition of the locks and doors in Respondent's facility increased the strain imposed on Petitioner's upper extremities. Dr. Paletta testified that these activities played a role as causative or aggravating factors in the development of Petitioner's bilateral carpal tunnel syndrome. (PX6).

The Commission has also found the at the job duties of a Correctional Officer at Pinckneyville Correctional Center aggravate and contribute to the development of repetitive injuries. *Dustin Bowles v. Pinckneyville Corr. Ctr.*, 14 I.W.C.C. 0842 (2014); *Samuel Burns v. Pinckneyville Corr. Ctr.*, 14 I.W.C.C. 0482 (2014); *Chris Walter v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0634 (2013); *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013). Although Petitioner's comorbid conditions and hobbies may have at some point played a role in his condition of ill-being, this is of no consequence where Petitioner has established that his job

duties are a contributing factor in the development of his condition. The Commission has recognized same in a correctional case where the claimant was involved in martial arts activity outside of his employment with Respondent. *Samuel Burns v. Pinckneyville Corr. Ctr.*, 14 I.W.C.C. 0482 (2014). In the repetitive trauma case of *Fierke*, the Appellate Court specifically applied the foregoing legal standard of causation specifically to a repetitive trauma case and noted that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Id.* at N.E.2d at 849. The Court specifically stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id.*

Based upon the foregoing, the Arbitrator finds that Petitioner met his burden of proof in establishing that he sustained accidental bilateral repetitive compression neuropathies that arose out of and in the course of his employment with Respondent, which are causally related to his current condition of ill-being.

Issue (D): What was the date of the accident?
Issue (E): Was timely notice of the accident given to Respondent?

Repetitive-trauma injuries occupy an odd niche between accidental injury, compensable under the Act, and occupational disease, compensable under the Workers' Occupational Diseases Act. *A.C. & S. v. Indus. Comm'n*, 304 Ill. App. 3d 875, 879, 710 N.E.2d 837, 840 (Ill. App. 1st Dist., 1999). In choosing to cover such injuries as accidental injuries, as noted by the Appellate Court in *A.C. & S.*, the Supreme Court **deliberately** modified the standards for determining the date of injury for repetitive trauma cases in order provide protection for injured workers. *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 840-841 (Ill. App. 1st Dist., 1999). Even though carpal tunnel syndrome is not treated as an occupational disease in Illinois, we still look to the Occupational Diseases Act for guidance. *Id.*

The Workers' Compensation Act is a humane law of a remedial nature that should be liberally construed to achieve its purpose. *Hagene v. Derek Polling Const.*, 388 Ill. App. 3d 380, 902 N.E.2d 1269 (2009). Hence, the Supreme Court has established a flexible but fair standard for determining manifestation dates. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2007). Although the date on which the employee becomes aware that he has a condition related to work was the first method for determining a manifestation date, it is not the only permissible means for alleging or proving manifestation. The manifestation date can be set as: **(a)** the date the employee actually became aware of the physical condition and its relation to work through medical consultation; **(b)** the date the employee requires medical treatment; **(c)** the date on which the employee can no longer perform work activities; or **(d)** when a reasonable person would have plainly recognized the injury and its relation to work. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2007), *see also Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987); *Oscar Mayer & Co. v.*

Industrial Commission, 176 Ill.App.3d 607, 531 N.E.2d 174 (3rd Dist. 1988); *Three "D" Discount Store v. Industrial Commission*, 198 Ill.App.3d 43, 556 N.E.2d 261 (4th Dist. 1989).

Although a claimant is aware of symptoms and carries a suspicion that these are work-related, the Supreme Court has stated, "The 'fact of injury' is not synonymous with the 'fact of discovery'" *Durand*, N.E.2d at 927. In short, claimants are not charged with filing a claim as soon as they believe they *may* have a work-related condition, nor are they penalized for failing to realize a condition is work-related when the employer feels that he or she should have. In fact, the Supreme Court stated that to rely solely on a claimant's testimony concerning symptoms, without accurate knowledge of the cause of those symptoms, would essentially be asking them to "rely on 'expert' medical testimony from a layperson." *Id.* at 929. The Court likewise noted that the claimants would have had difficulty proving injury with a sketchy and equivocal understanding of same. *Id.* at 930. The standard that "the 'fact of injury' is not synonymous with the 'fact of discovery'" has since become a safety measure employed by all Courts to ensure that the employers do "penalize an employee who diligently worked through" his or her symptoms. *Durand v. Indus. Comm'n*, 862 N.E.2d at 927, 930. In *Durand*, the claimant was not sure her pain was from carpal tunnel syndrome, but "she believed it was work-related" in 1997, some 3 years before her injuries manifested in 2000. *Durand v. Indus. Comm'n*, 862 N.E.2d at 929-30.

In *Oscar Mayer*, the Court embraced the "date of collapse" method of determination (setting the manifestation date on the date of surgery, or the date the employee could no longer work), allowing compensation to be awarded to a claimant despite his full knowledge that his condition was work-related well before he filed a claim because the claimant diligently served his employer until he could no longer do so without intervention for his repetitive injuries. *Oscar Mayer supra.* The Court noted that no prejudice can occur in employing such a method, since it is not until the employee actually misses work for his injuries that the employer becomes adversely affected; and the notice provisions were not impugned as this flexible and fair provision in no way interfered with an employer's ability to effectively investigate the claim.

In *Three "D" Discount*, the claimant sought treatment with his family physician, Dr. Johnson, who referred him to a Dr. Block for evaluation. *Three "D" Discount Store v. Industrial Commission*, 556 N.E.2d 261 (1989). Dr. Block performed an EMG study and a physical examination of the claimant, and sent the EMG results to Dr. Johnson. *Id.* Dr. Block's report stated that his examination suggested bilateral carpal tunnel syndrome. *Id.* Dr. Johnson discussed the results of the EMG with the claimant and referred him to a Dr. McKechnie. Claimant reported to Dr. McKechnie and gave a history of his symptoms, but did not state that his condition was work-related or that Dr. Johnson had so informed him. Dr. McKechnie scheduled the claimant for surgery, and the claimant notified his employer that he required surgery and that it was his physician's opinion that that the condition was related to work. The Appellate Court found that Petitioner's manifestation date was the day he met with Dr. McKechnie and stated the following:

> The evidence in this case establishes that Dr. Carl Johnson discussed Dr. Block's report of the EMG results with petitioner. . . No direct evidence was presented regarding whether Dr. Johnson ever told Petitioner that his injury was work related. . . . It was not until July 10, when petitioner met with Dr. McKechnie, that it became clear that petitioner's condition necessitated surgery. . . Based on the evidence of record, it could be reasonably inferred that petitioner first learned that his condition of ill-being was work-related at some point between July 10, and the first of August, 1984. Applying the reasonable person test to these facts, we find that although petitioner persisted in his employment until August 10, a reasonable person in these circumstances would have been on notice that the condition was both work-related and medically disabling on July 10, 1984. *Three "D" Discount Store v. Industrial Commission*, 556 N.E.2d 261, (1989) [emphasis ours].

In the case at bar, Petitioner consistently testified that Dr. Paletta was the first physician who advised him that his condition was work-related, and that his visit was Dr. Paletta was the first time that he was certain, or rather, the causal connection between his injuries and his employment were "plainly apparent." (T.37-38, 45, 48, 51-52). The law allows Petitioner to select a manifestation date that coincides with discovery of injury *and its relation to work after medical consultation*. See *Steven Beal v. Town of Normal*, 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010); *see also White v Worker's Compensation Commission*, 374 Ill.App.3d 907, 873 N.E.2d 388. 392-393 (4th Dist. 2007) (holding Petitioner could select accident date); *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 841-842 (1st Dist. 1999).

The Arbitrator therefore finds that Petitioner met his burden of proof in establishing that his injuries manifested on September 12, 2011. Petitioner completed and submitted a Notice of Injury to Respondent on September 13, 2011. (PX7; RX1). Therefore, Petitioner provided timely notice of his accidental injuries under the Act.

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?

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001).

Petitioner has not been cured or relieved of the effects of his injuries. Due to the dispute, Petitioner has been unable to return to Dr. Paletta and undergo the recommended surgery. (T.38-

39). Petitioner testified that he would like to have the problem corrected. (T.38-39). Respondent's expert, Dr. Williams, agreed with the diagnosis of bilateral carpal tunnel syndrome, and testified that has considerable faith in the expertise of Dr. Paletta. (RX10).

Respondent is therefore ordered to pay the medical expenses contained in Petitioner's group exhibit and shall have credit for any amounts paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims from these medical providers arising out of the expenses for which it claims credit.

Respondent shall further authorize and pay for the treatment recommended by Dr. Paletta, including but not limited to surgery.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HALL, HOLLY Case# **10WC043842**
Employee/Petitioner

JOHN MADDEN MENTAL HEALTH CENTER
Employer/Respondent

On 10/22/2015, 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:

2221 VRDOLYAK LAW GROUP LLC
MEGAN WAGNER
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4980 ASSISTANT ATTORNEY GENERAL
COLIN KICKLIGHTER
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1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANGEMENT
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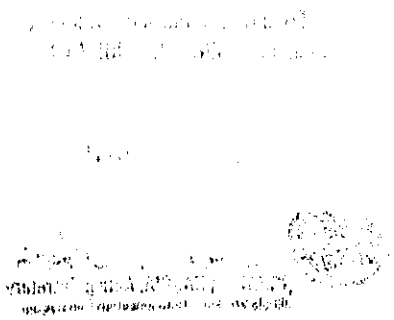
SPRINGFIELD, IL 62794-9208

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

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

OCT 22 2015

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



STATE OF ILLINOIS)
)
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

Holly Hall
Employee/Petitioner

Case #**10 WC 43842**

v.

John Madden Mental Health 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 **Milton Black**, arbitrator of the Commission, in the city of **Chicago**, on **July 24, 2015**. 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 the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

B. x 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. x 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. x Were the medical services that were provided to petitioner reasonable and necessary?

K. ☐ What amount of compensation is due for temporary total disability?

L. x What is the nature and extent of the injury?

M. ☐ Should penalties or fees be imposed upon the respondent?

N. ☐ Is the respondent due any credit?

O. ☐ Other _____

FINDINGS

- On **October 20, 2010**, the respondent **John Madden Mental Health Center** ***was*** operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship ***did*** exist between the petitioner and respondent.
- On this date, the petitioner ***did*** sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident ***was*** given to the respondent.
- Petitioner's current condition of ill being is causally related to the injury.
- In the year preceding the injury, the petitioner earned $**38,378.08**; the average weekly wage was $**738.04**.
- At the time of injury, the petitioner was **39** years of age, ***married*** with **3** children under 18.
- Necessary medical services ***have*** been provided by the respondent.

ORDER

- The respondent shall pay the petitioner the sum of $**442.82**/week for a further period of **15** weeks, as provided in Section **8(d) 2** of the Act, because the injuries sustained caused **2½% loss of the person as a whole.**
- The respondent shall pay the further sum of $**4200.00** for necessary medical services, as provided in Section 8(a) 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

October 19, 2015
Date

ICArbDec p. 2

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FACTS

Petitioner testified on direct examination that she worked as a mental health technician. She testified that on the date of accident a patient charged at her, yanked on her right upper extremity, and pushed her against a wooden table. She testified that she felt immediate pain. She testified that she went to the emergency room the next day where she was given a hot pack, a sling, and medication. She testified that she had pain on the right side of her neck. She testified that she cannot do her job as result of the injury and can only do homemaking work now. She testified that she continues to have painful symptoms.

Petitioner testified that she received chiropractic treatment, physical therapy, and right shoulder and right-sided neck injections. She testified to an MRI of the shoulder and elbow. She testified that she has pain if she lifts her right arm above her shoulder.

On cross-examination, petitioner testified that she was driven to the emergency room by a family member. She testified that she has a family doctor, who is not the chiropractor who treated her. She testified that she did not return to work for respondent. Then she testified that she was placed on light duty and did return to work for respondent. Petitioner then testified that she slowly got back to full duty work for respondent. She testified that she left respondent's employment for reasons that had nothing to do with her physical limitations.

On redirect examination she testified that she continues to have pain when answering the telephone.

On re-cross examination she testified that she was asked to resign for reasons that had nothing to do with her physical restrictions.

ACCIDENT

It is un-rebutted that petitioner was involved in an incident at work when a patient had an altercation with her.

Therefore, the Arbitrator finds that on October 20, 2010 petitioner sustained an accident that arose out of and in the course of her employment.

CAUSATION

The medical records are consistent with a right upper extremity and cervical spine injury which was sustained at work on October 20, 2010.

Therefore the arbitrator finds that petitioner's current condition of all being is causally related to the injury.

MEDICAL

It is undisputed that respondent is liable for the Preferred Open MRI bill of $4200.00.

Therefore the arbitrator finds it respondent is liable for the payment of said bill.

NATURE AND EXTENT

Based upon petitioner's testimony and the submitted medical records, the arbitrator finds that petitioner sustained the 3% loss of use of a person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

SORRELLS, MELISSA Case# **13WC018284**

Employee/Petitioner

JOHN DEERE PARTS DISTRIBUTION CENTER

Employer/Respondent

On 10/27/2015, 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 0.15% 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:

0568 WINSTEIN KAVENSKY & WALLACE
JOHN MALVIK
224 18TH ST 4TH FL
ROCK ISLAND, IL 61201

2119 CALIFF & HARPER PC
STEVEN NELSON
506 15TH ST SUITE 600
MOLINE, IL 61285

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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Melissa Sorrells
Employee/Petitioner

Case # **13** WC **18284**

v.

John Deere Parts Distribution 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 **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Rock Island**, on **September 9, 2015**. 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 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 $**38,652.64**; the average weekly wage was $**743.32**.

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

Respondent is entitled to a credit of $**10,917.00** under Section 8(j) of the Act for payments and write offs through its group health insurance plan, and $**3,907.20** in non-occupational indemnity disability benefits under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**495.55**/week for **9 6/7** weeks, commencing **June 4, 2013** through **August 12, 2013**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $**35.00**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**445.99**/week for **61.50** weeks, because the injuries sustained caused the **15%** loss of the **right hand**, and the **15%** loss of the **left hand**, 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 Anthony C. Erbacci

October 22, 2015
Date

OCT 27 2015

FACTS:

On April 16, 2013 the Petitioner was employed by the Respondent as a "picker" and "packer" and she had been so employed for approximately 9 years. The Petitioner described that her job involves picking and packaging parts located at various places in the facility and she described how she performed her job. The Petitioner indicated that the job is very hand intensive and repetitive due to the number of parts she handles, the labeling and packaging of them, and how often she performs these tasks. The Petitioner testified that the job is very hand intensive and that she uses both of her hands repetitively to perform the job.

The Petitioner testified that she began experiencing symptoms of pain, numbness and tingling in her hands while working for Respondent in 2010, and while seeing her primary care physician for other issues at that time, she discussed her ongoing symptoms with her doctor. The Petitioner underwent EMG/NCV studies at that time and she was diagnosed with bilateral carpal tunnel syndrome. The Petitioner testified that the possibility of an eventual need for surgery was discussed but she declined to consider surgery at that time. The Petitioner was treated conservatively with medication and splints and she testified that her symptoms improved. The Petitioner testified that she was able to continue working her regular job without experiencing any significant problems with her hands and that she missed no time from work due to her carpal tunnel syndrome until June of 2013.

The Petitioner testified that in early 2013 she again began having problems with her hands and on April 16, 2013, while seeing Dr. Teresa Coon, her primary care physician, she again mentioned her worsening hand symptoms. The Petitioner testified that she reported her condition to the Respondent's nurse the next day. The Petitioner was then referred to ORA Orthopedics for surgical intervention due to her worsened symptoms. In June of 2013 she underwent two (2) separate carpal tunnel surgeries, one for each hand.

At the request of the Respondent, the Petitioner was examined by Dr. Christine Deignan, the Respondent's Workers Compensation Medical Director, on March 27, 2014. Dr. Deignan's May 25, 2014 report of that examination was admitted into the record as Respondent's Exhibit 1. Dr. Deignan opined that the Petitioner's work activities for the Respondent were not the cause of the Petitioner's bilateral carpal tunnel syndrome. Dr. Deignan opined that the Petitioner's impairment rating pursuant to the American Medical Association's Guides to the Evaluation of Permanent Impairment was 0% of each upper extremity.

At the request of her attorney, the Petitioner was examined by Dr. Robert Milas on January 27, 2015. Dr. Milas' report of that date was admitted into the record as Petitioner's Exhibit 4. Dr. Milas opined that the repetitive nature of the Petitioner's work activities for the Respondent was the direct cause of the Petitioner's bilateral carpal tunnel syndrome. Dr. Milas opined that the Petitioner's impairment rating pursuant to the American Medical Association's Guides to the Evaluation of Permanent Impairment was 8% of the upper extremities or 5% of the whole person.

The Petitioner testified that the surgeries she underwent resulted in improvement of her condition and that she currently has no pain in her hands but she continues to notice some weakness. The Petitioner testified that she has returned to the same job with the Respondent and that she is not under any work restrictions.

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, the Arbitrator finds and concludes as follows:

The Petitioner testified, and the medical records demonstrate, that she was first diagnosed with carpal tunnel syndrome in 2006 after visiting her primary care physician who arranged for EMG/NCV studies. The studies confirmed the diagnosis of bilateral carpal tunnel syndrome. Despite her diagnosis in 2006, the Petitioner continued to work for the Respondent with no lost time from work. She was prescribed medication and splints, which she wore at night. These conservative measures improved her symptoms and she continued to work with no lost time from her job due to her symptoms. It was not until April 16, 2013 when Petitioner again was seeing her primary care physician for unrelated matters, when the topic of her worsening bilateral carpal tunnel syndrome again was discussed between doctor and patient. At that time, a referral for surgery was made to ORA Orthopedics. It is only at this point in time that the Petitioner's condition worsened to the point that she lost time from work due to surgical intervention. Her condition had deteriorated to the point that it was now disabling.

As a general rule, the date of an accidental injury in a repetitive-trauma claim is the date on which the injury "manifests itself." While the "manifestation date" has been held to be 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, Illinois courts have held that the date the Petitioner could no longer perform the job without medical intervention is also an appropriate "manifestation date".

In the instant matter the Petitioner was first diagnosed with carpal tunnel syndrome in 2006 but, despite that diagnosis, the Petitioner continued to work for the Respondent with no lost time from work and no ongoing medical treatment. It was not until April 16, 2013 that the Petitioner's condition had deteriorated to the point that it was disabling and she was referred for surgery for her worsening bilateral carpal tunnel syndrome. The Arbitrator finds that April 16, 2013 is the date that the Petitioner's injury manifested itself because it is the date that her symptoms had worsened to the point where the condition had become so disabling that she was referred for surgery by her primary care physician. She then lost time from work and surgical intervention was necessary to alleviate her symptoms.

Based upon the foregoing and the principles of law set forth in Peoria County Belwood Nursing Home v. Industrial Commission (1987) 115 Ill2d 524, 106 Ill Dec 235, 505 NE2d 1026; Oscar Mayer & Co. v. Industrial Commission 176 IllApp3d 607, 531 NE2d 174 (4th Dist. 1988); and Durand v. Industrial Commission, 224 Ill2d 53, 862 NE2d 918, 308 Ill Dec 715 (2006) and applying those principles to the facts of this case, the Arbitrator finds that on April 16, 2013 the Petitioner suffered an accidental which arose out of and in the course of her employment with the Respondent.

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Petitioner testified, and the medical records demonstrate, that she was first diagnosed with carpal tunnel syndrome in 2006. Despite the diagnosis in 2006, the Petitioner continued to work for the Respondent with no lost time from work. The Petitioner testified that conservative measures improved her symptoms and she was able to continue to work with no lost time and no significant symptoms. The Petitioner testified that her job activities increased in early 2013 and that her symptoms worsened and became more constant. In April 16, 2013 the Petitioner again sought treatment for her worsening bilateral carpal tunnel syndrome and she was referred for surgery.

The Petitioner described her job duties as very hand intensive and repetitive and she testified that her symptoms of numbness, pain, and tingling in the hands occurred with performing her work activities. Dr. Deignan, the Respondent's Workers Compensation Medical Director, opined that the Petitioner's work activities for the Respondent were not the cause of the Petitioner's bilateral carpal tunnel syndrome. Dr. Milas, the Petitioner's own examining doctor, opined that the repetitive nature of the Petitioner's work activities for the Respondent was the direct cause of the Petitioner's bilateral carpal tunnel syndrome.

While the Arbitrator notes the opinions of Dr. Deignan, the Arbitrator notes that the Petitioner's description of the actual work she performed differed from the job duties as described by, and relied upon by Dr. Deignan in rendering the opinions in her report. The Arbitrator also notes that Dr. Deignan is an employee of Respondent and it is therefore difficult to view her opinions as independent and unbiased. The Arbitrator finds that, in the instant matter, the opinions of Dr. Milas are more credible, reliable and persuasive than those of Dr. Deignan.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to her work injury on April 16, 2013.

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:

As a result of the accident of April 16, 2013, the Petitioner suffered an injury to her hands diagnosed as bilateral carpal tunnel syndrome. She commenced medical treatment for the injury on April 16, 2013 by going to Teresa Coon, her primary care physician. She was referred to ORA Orthopedics for surgical consult for her bilateral carpal tunnel syndrome and she underwent surgery on her hands as described in the medical records. The Petitioner submitted Petitioner's Exhibit 9 as evidence of the various physicians and providers who provided treatment for the symptoms related to her bilateral carpal tunnel syndrome and the charges for their services. An examination of the medical records reveals that the charges and services billed by the providers, as shown in Petitioner's Exhibit 9, correspond to treatment for her bilateral carpal tunnel syndrome. No evidence was offered to show that the treatment received was not reasonable and necessary. The charges for the services were not challenged.

Therefore, the Arbitrator finds that all of the bills incurred for medical services listed on Petitioner's Exhibit 9 were reasonable, necessary and causally related to the work injury of April 16, 2013, and are the responsibility of the Respondent. Accordingly, the Arbitrator finds that the Respondent is liable in the sum of $10,946.00 for medical bills incurred as a result of the Petitioner's accident of April 16, 2013. The Respondent is entitled to a credit of $4,615.55 in payments and $6,301.45 in PPO write-offs by providers pursuant to Section 138 (j) of the Act for group, non-occupational health benefits. A balance of $35.00 was paid by Petitioner, for a total of $35.00 awarded to Petitioner.

In Support of the Arbitrator's Decision relating to (K.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The Respondent disputed it's liability for Temporary Total Disability benefits based upon the dispute as to the issues of accident and causation. The parties stipulated, however, that the Petitioner was temporarily totally disabled from June 4, 2013 through August 12, 2013, a period of 9 6/7 weeks. As the Arbitrator has found for the Petitioner with regard to the issues of accident and causation, the Arbitrator finds that the Petitioner was entitled to Temporary Total Disability benefits from June 4, 2013 through August 12, 2013, a period of 9 6/7 weeks.

The parties stipulated that the Respondent is entitled to a credit of $3,907.20 in non-occupational indemnity disability benefits pursuant to Section 138(j) of the Act.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

The Petitioner's accident occurred after September 1, 2011. Therefore, Section 8.1(b) of the Act requires consideration of the following criteria in determining the level of permanent partial disability:

* The reported level of impairment based upon the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment;
* the occupation of the injured employee;
* the age of the employee at the time of the injury;
* the employee's future earning capacity; and
* evidence of disability corroborated by the treating medical records.

Additionally, Section 8(e)9 of the Act provides that if the accidental injury involves carpal tunnel syndrome due to repetitive or cumulative trauma, the permanent partial disability shall not exceed 15% loss of use of the hand, except for cause shown by clear and convincing evidence and in which case the award shall not exceed 30% loss of use of the hand. No single enumerated factor shall be the sole determinant of disability but the relevance and the weight of any additional factors used must be explained.

In the instant case, the Petitioner suffered from bilateral carpal tunnel syndrome which ultimately required surgeries. She ultimately returned to her regular work for the Respondent without restrictions and she continues to work in that same capacity. The Petitioner testified that she currently continues to notice some weakness in her hands

With regard to the reported level of impairment pursuant to Section 8.1(b), the level of impairment reported by Dr. Deignan, the Respondent's examining doctor, pursuant to the American Medical Association's Guides to Evaluation of Permanent Impairment is 0% of each upper extremity. The level of impairment reported by Dr. Milas, the Petitioner's examining doctor, pursuant to the American Medical Association's Guides to Evaluation of Permanent Impairment is 8% of the upper extremities or 5% of the whole person. The Arbitrator notes that impairment does not equate to permanent partial disability under the Workers' Compensation Act. The Arbitrator also notes that Dr. Deignan is an employee of Respondent and it is therefore difficult to view her opinions as independent and unbiased. In the instant matter, the Arbitrator finds that the reported level of impairment is not a significant factor in determining the amount of the Petitioner's permanent partial disability.

With regard to the occupation of the injured employee, the Petitioner's occupation is that of a picker packer, which the Arbitrator notes is repetitive, hand intensive work. The Arbitrator concludes that the Petitioner's ability to perform the duties of his employment will be more adversely affected by his permanent partial disability than would the ability of an individual who performs lighter work. Thus, the Arbitrator concludes that the Petitioner's occupation is a significant factor in determining the amount of the Petitioner's permanent partial disability.

With regard to the age of the employee at the time of injury, the Petitioner's age at the time of injury was 50 years old. The Arbitrator finds that the Petitioner's age is not a significant factor in determining the amount of the Petitioner's permanent partial disability.

With regards to the employee's future earning capacity, the Arbitrator notes that the Petitioner's future earning capacity appears to be unaffected by the injury. The Arbitrator finds that the Petitioner's future earning capacity is not a factor in determining the amount of the Petitioner's permanent partial disability.

With regard to the evidence of disability corroborated by the treating medical records, the Petitioner credibly testified that he currently continues to notice some weakness in her hands. These complaints are corroborated in the medical records of Dr. Milas. The Petitioner's complaints as supported by the medical records, evidences a disability as indicated by Commission decisions regarded as precedent pursuant to Section 19(e).

The determination of permanent partial disability is not simply a calculation but an evaluation of all 5 factors as stated in the Act. In making this evaluation of permanent partial disability, consideration is not given to any single enumerated factor as the sole determinant. Therefore, having considered the factors enumerated in Section 8.1(b) of the Act, 820 ILCS 305/8.1(b), and having considered the provisions of Section 8(e)9, the Arbitrator finds that as a result of her accidental injuries the Petitioner has sustained 15% disability to her right hand and 15% disability to her left hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HUGHES, GEORGE Case# **14WC018125**

Employee/Petitioner

AMERICAN UNITED CAB

Employer/Respondent

On 9/28/2015, 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:

0320 LANNON LANNON & BARR LTD
MICHAEL S ROLENC
200 N LASALLE ST SUITE 2820
CHICAGO, IL 60601

4751 DEBORAH L SCHAEFER
PO BOX 865
ELMHURST, IL 60126

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

George Hughes
Employee/Petitioner

v.

American United Cab
Employer/Respondent

Case # **14** WC **18125**

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 **Arbitrator Kurt Carlson**, Arbitrator of the Commission, in the city of **Chicago**, on **August 4, 2015**. 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 **2/27/2014**, 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*** 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 $**18,112.12**; the average weekly wage was $**348.31**.

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 $**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 to Petitioner reasonable and necessary medical services as stated in the body of this decision, pursuant to the medical fee schedule, as provided in Section 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **$253.00**/week for **9-4/7** weeks, commencing **02-27-14** through **05-04-14**, as provided in Section 8(b) of the Act. ($2,421.46)

Respondent shall pay Petitioner permanent partial disability benefits of **$253.00**/week for **20** weeks, because the injuries sustained caused the 4% loss of the **person as a whole**, as provided in Section 8(d)2 of the Act. ($5,060.00)

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

09-28-2015
Date

SEP 28 2015

FINDINGS OF FACT

Petitioner testified in February 2014, he was employed by Respondent as a cab driver. He had been so employed for 8 years. On February 27, 2014, Petitioner testified he was eastbound on Illinois street, had the green light, when a van going southbound ran the red light, striking his cab on the driver's side. Petitioner was wearing his seatbelt but, nonetheless, noticed neck and chest pain immediately after the collision.

Petitioner testified he was taken by ambulance to Stroger Hospital. At the hospital, Petitioner informed the nurse and the doctor about his injuries. The records from Stroger Hospital reflect Petitioner was complaining of pain in his neck, chest wall, and mid thoracic area. Petitioner was admitted for observation and underwent an EKG which revealed a stable first degree AV block. Petitioner also underwent an x-ray of his pelvis which was negative for fractures. He underwent a CT scan of his chest which revealed no traumatic aortic injury but did reveal a comminuted non-displaced fracture of the left second costochondral junction. A cervical CT scan revealed no fractures but multi-level degenerative disc disease. Petitioner was discharged to home on March 1, 2014 (PX. #1).

On March 4, 2014, Petitioner came under the care of Dr. Vincent Domingo of Associated Medical Centers of Illinois. At the initial visit, Petitioner was complaining of neck and chest pain. Dr. Domingo diagnosed Petitioner with a cervical sprain and a rib fracture. Dr. Domingo prescribed medications for Petitioner and recommended he consider physical therapy. He also advised Petitioner to follow-up with Dr. Bilko in one to three days (PX. #2).

Petitioner returned to Dr. Domingo on March 6, 2014 and was given treatments consisting of interferential, hot wet packs and mechanical traction.

On March 10, 2014, Petitioner was seen by Dr. Thomas Bilko, an orthopedic physician with Associated Medical Centers of Illinois. At this visit, Petitioner related his neck, upper back, anterior rib, right hip and right knee pain since the motor vehicle accident. Dr. Bilko diagnosed Petitioner with a cervical and thoracic sprain, cervical disc herniation, rib fracture, hip/thigh sprain and knee/leg sprain. Dr. Bilko

opined that his diagnoses are causally related to the accident. He ordered physical therapy for Petitioner along with pain medication (PX. #2).

Following this visit with Dr. Bilko, Petitioner received 6 therapy sessions before seeing Dr. Bilko on April 1, 2014. At that visit, it was noted that all of Petitioner's complaints were improving. Dr. Bilko recommended therapeutic exercises for strengthening and motion two times per week.

Petitioner then had five additional therapy sessions before seeing Dr. Michael Foreman on April 16, 2014 at which time he advised that he was continuing to have right hip pain which bothered him when he walks and which he feels was preventing him from returning to work as he does not feel able to press on the pedals all day as needed. His other symptoms have been intermittent and mild. Dr. Foreman ordered an x-ray of Petitioner's left ribs and an MRI of his hip. He also prescribed Dendracin, a topical medication for Petitioner's pain and inflammation.

Petitioner underwent the left hip MRI at Advantage MRI on that same date. The MRI was unremarkable. Petitioner returned to Dr. Foreman on April 30, 2014 complaining of an increase in neck and upper back pain radiating into the lower region. Dr. Foreman ordered strengthening exercises for Petitioner. Dr. Foreman also prescribed therapeutic massages for Petitioner. He also continued to order the Dendracin medication for Petitioner's pain and inflammation. Dr. Foreman advised Petitioner could return to work on May 5, 2014 as tolerated.

Between May 5, 2014 and May 27, 2014, Petitioner underwent 13 massages at AMC. Petitioner then had a final visit with Dr. Foreman on May 28, 2014 at which time Petitioner noted he was having mild improving neck and hip discomfort and needing his medications less frequently. Dr. Foreman recommended Petitioner continue with his home exercises and discharged him from his care (PX. #2).

On May 19, 2014, Petitioner was examined at the request of the Respondent by Dr. Gregory Primus. Dr. Primus noted it was reasonable for someone to miss several weeks up to three months if the job requires driving and heavy lifting. Dr. Primus did opine that based on Petitioner's initial cervical and lumbar complaints and chest pain, this was within reason for having limitations preventing him from returning to

work without restrictions. He also opined that the treatment received was appropriate and medically necessary.

Dr. Primus did not believe the hip and knee complaints were directly related to the accident due to the fact they were first reported approximately 2 weeks later (RX. #3).

On cross examination, Petitioner testified that he did not injure the hip anywhere else although he was asked about a prior hip injury in 2012. Petitioner testified that he was involved in a motor vehicle accident at that time while driving his cab and did have some right hip pain. He testified he went to an emergency room to be checked out and following his discharge from the emergency room, he testified to some right hip pain for a few days but it then went away completely. Petitioner testified he did not have any other medical treatment to his right hip until he sustained this accident. Petitioner also testified he did not have any problems with his right hip until following this accident. Between the accident in 2012 and this accident, Petitioner continued working full-time as a cab driver.

Petitioner testified he presently has occasional neck pain which he notices in the front of his neck when driving. He also testified that he has occasional chest pain which he notices when driving. He further testified that he has hip pain which he notices especially when lifting passengers' luggage and when walking.

The Arbitrator finds Petitioner's testimony to be credible.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision as to whether or not Petitioner's current condition of ill-being is causally related to the injury (F), the Arbitrator finds as follows:

Petitioner testified to injuries involving his neck, chest and thoracic area, and right hip. Petitioner testified that initially, while hospitalized, he did not notice any pain in his right hip as he was lying down. Once he was discharged from the hospital and began walking, he noticed pain in his right hip. Petitioner testified he did not mention it

initially to Dr. Domingo as he thought the right hip pain would go away and he was more concerned about his neck and chest injuries.

Petitioner testified that with the pain not going away, he finally mentioned it to Dr. Bilko on March 10, 2014, 9 days after being discharged from the hospital. Dr. Bilko performed a thorough examination of Petitioner and opined that all of his diagnoses were causally related to the accident including Petitioner's hip sprain.

Respondent's Section 12 examiner, Dr. Primus, also concurred that Petitioner's cervical, lumbar and chest complaints and pain were all related to the motor vehicle accident. Dr. Primus did not believe, however, that Petitioner's right hip and knee complaints were directly related to the accident based on the fact they were first reported approximately 2 weeks later. Dr. Primus gives no other reasons for why he does not believe Petitioner's hip cannot be related to the accident.

The Arbitrator adopts the findings and opinions of Dr. Bilko. The Arbitrator also adopts the findings and opinions of Dr. Primus with respect to Petitioner's cervical, lumbar and chest injuries.

The Arbitrator further adopts the findings and opinions of Dr. Bilko and Dr. Foreman as they relate to Petitioner's right hip complaints and injury but does not adopt the opinions of Dr. Primus regarding Petitioner's right hip.

The Arbitrator bases this opinion on the fact that Petitioner testified he did not notice his right hip pain while he was in the hospital as he was primarily stationary but first noticed the pain upon being discharged as he became more ambulatory. Petitioner informed Dr. Bilko that he was having the right hip pain since the accident.

The Arbitrator finds that Petitioner's neck, chest, thoracic, lumbar, and right hip injuries are all causally related to this accident.

Although Petitioner may have sustained a minor hip injury in 2012, there was no evidence presented to suggest it played any part in Petitioner's current injury.

In support of the Arbitrator's decision relating to the reasonableness and necessity of medical services and medical bills received and incurred by Petitioner (J), the Arbitrator finds as follows:

Petitioner placed into evidence a medical bill from the City of Chicago for ambulance transport on the date of accident. The amount of this bill is $1,143.00. In addition, Petitioner also placed into evidence two bills from Stroger Hospital, one from Dr. Faran Bokhari for services rendered on February 28, 2014 and one from Dr. Andrew Dennis for services rendered on March 1, 2014. Both of these bills are in the amount of $188.00.

Based on Petitioner's testimony and the medical records from Stroger Hospital, there is nothing to indicate that these bills were incurred for anything but reasonable and necessary medical care incurred by Petitioner as a result of his accident.

Accordingly, the Arbitrator awards the aforementioned medical bills to Petitioner pursuant to the Fee Schedule of the Act.

Petitioner also placed into evidence a bill in the amount of $1,750.00 from Advantage MRI. This was incurred as a result of the right hip complaints voiced by Petitioner to Dr. Foreman. In his April 16, 2014 office note, Dr. Foreman noted that with Petitioner's persistent hip complaints and findings limiting his return to work and other activities, it was necessary to rule out hip joint derangement. Accordingly, he ordered an MRI.

Respondent submitted into evidence as Respondent's Exhibit #6 a July 30, 2014 retrospective review consideration regarding the right hip MRI. The review was performed by Dr. Sankar Pemmaraju who opined that there was no clear detail provided anywhere why the MRI was obtained as there was a previous pelvic x-ray performed that showed no acute fracture but only mild bilateral hip joint osteoarthritis. Dr. Pemmaraju also opined in the initial clinical evaluation by Dr. Foreman (Dr. Domingo), there was no mention of any right hip pain or dysfunction and because of this, there was no need for the right hip MRI. Dr. Pemmaraju also stated that with the right hip MRI being

unremarkable that also supports his opinion that the study was not reasonable or necessary and should not have been obtained.

Dr. Foreman addressed the Prium denial letter. His response is contained in PX. #2. Dr. Foreman clarifies the fact that he did not initially see Petitioner on March 5, 2014, but rather was seen by a doctor covering for their usual physician. The hip complaints were then noted for the first time by Dr. Bilko, an orthopedic specialist on March 10, 2015 (sic 14). Dr. Foreman then opined that he noted the hip complaints and findings and the basis for the MRI when he examined Petitioner on April 16, 2014. Dr. Foreman stated that although the MRI was unremarkable, to say that it was not reasonable or necessary is a shocking opinion. He gave specific reasons why Dr. Pemmaraju's opinion was completely illogical. Dr. Foreman also referred to Dr. Pemmaraju's quoting the ODG guidelines that state that MRI's performed on asymptomatic patients with no history of pain injury or surgery revealed abnormalities in 73% of the patients. Dr. Foreman opined that this study highlighted the limitations of plain film radiography and that MRI is the modality of choice after plain films. Finally, Dr. Foreman opined that Dr. Pemmaraju pasted all of the guidelines in his review except for the initial statement which does in fact recommend an MRI for the aforementioned indications.

The Arbitrator concludes that it was reasonable for Petitioner to undergo the right hip MRI ordered by Dr. Foreman. The Arbitrator awards the bill for the MRI to Petitioner pursuant to the Fee Schedule of the Act.

Petitioner also placed into evidence a bill from EQMD in the amount of $1,287.24. The bill reflects medication for Dendracin on two separate occasions, Naprosyn on two separate occasions and Prilosec on one occasion. These medications were ordered by Dr. Foreman.

Respondent placed into evidence as Respondent's Exhibit #5 a retrospective review modification letter dated July 18, 2014 authored by Dr. Avrom Simon. Dr. Simon opined that the clinical information provided does not establish the medical necessity of any of the medications which comprise this bill. There was no response from Dr. Foreman regarding these medications so the Arbitrator disallows the bills for the medications from EQMD.

Petitioner also placed into evidence a medical bill from AMC in the amount of $7,540.81.

The Respondent placed into evidence as Respondent's Exhibit #7 a November 4, 2014 appeal modification from Prium authored by Dr. Stephan Simons. This letter was a modification which allowed 15 minute massages without direct provider contact under CPT #97124. There were 19 individual units of this massage given to Petitioner at $40.00 per unit between May 5, 2014 and May 28, 2014. This amounts to $760.00.

The Arbitrator finds Respondent is liable for payment to Petitioner for this amount pursuant to the Fee Schedule of the Act.

With respect to CPT #99211, it appears from the emails between Dr. Foreman and Lisa Cordero that it was agreed that an additional 10 visits for an additional payment of $393.00 was agreed upon.

The Arbitrator, therefore, awards this amount only for the CPT code 99211. The Arbitrator further notes that if Respondent has already made payment to Dr. Foreman of this amount, Respondent does not have to make an additional payment to him.

With respect to CPT Code 97014 there is an office note from Dr. Foreman dated October 31, 2014 advising he preformed a peer to peer with Dr. Simon on that code and on 97124. 97124 has already been decided above.

With respect to 97014, Dr. Foreman noted that per the knee ODG recs regarding the pain section approving stim in conjunction with exercise for various conditions including pain ineffectively controlled with medications, this was documented in the 3-5 eval prior to the trial of stim and then throughout the notes once therapeutic exercises started.

The Arbitrator notes there were 20 such visits corresponding to this CPT code and the Arbitrator awards this portion of the bill to Petitioner pursuant to the Fee Schedule of the Act.

All other portions of the medical bill from AMC not addressed above are hereby disallowed.

In support to the Arbitrator's decision as to the amount of temporary total disability benefits due and owing Petitioner (K), the Arbitrator finds as follows:

Petitioner was taken immediately to Stroger Hospital following the accident on February 27, 2014. The records reflect Petitioner was discharged to home with PCP follow-up.

Petitioner then came under the care of Dr. Domingo at AMC on March 4, 2014. Although the chart note reflects March 5, 2014, there is a clarification note from Dr. Domingo stating that the date of the visit was March 4, 2014 and not March 5, 2014. The note also reflects that his patient is a cab driver and has not been able to work since the accident. Dr. Domingo authorized Petitioner off work pending his evaluation with Dr. Bilko whom Petitioner saw on March 10, 2014. Dr. Bilko advised Petitioner to avoid strenuous activities and that he could gradually start driving as tolerated in a few days.

Petitioner's next visit with Dr. Bilko was on April 1, 2014 who informed him to advance his exercises and activities as able.

When seen by Dr. Foreman on April 16, 2014, Dr. Foreman authorized Petitioner off work pending his re-evaluation on April 30, 2014 at which time Dr. Foreman advised Petitioner could return to work on May 5, 2014.

Petitioner testified he remained off work during this period. He testified he did not drive a cab for Respondent nor any other cab company. He did not earn any income from any other source whatsoever. He testified his cab was totaled. He further testified he did not do any type of driving during this period but was transported around by a friend as he did not feel he is able to drive.

Respondent offered into evidence as Exhibit 1 the Chicago Municipal Code dealing with Workers' Compensation Section 9-112-330 (ii) is the pertinent part relied upon by Respondent to justify their not paying temporary total disability benefits to Petitioner. This Section states "any public chauffeur upon filing a claim for temporary total disability with the Illinois Industrial Commission shall immediately surrender his public chauffeur license to the department. Such public chauffeur license shall remain surrendered for any period for which the chauffeur reclaims or receives benefits. Any

public chauffeur whose claim for benefits with the Illinois Industrial Commission is determined to be fraudulent, not credible, or otherwise not filed in good faith may have his public chauffeur's license revoked."

The Arbitrator is of the opinion that the Commission is not bound by this section of the municipal code when it comes to making an award for temporary total disability benefits. The Arbitrator does note that this Application for Adjustment of Claim was filed by Petitioner on May 29, 2014 after which he had returned to work for the Respondent. Petitioner testified he was not aware of this Section of the Municipal Code which is why he did not surrender his chauffeur license immediately following the accident. The Arbitrator also notes that the harshness of this Section of the Code could have unintended ramifications in a case where the injured chauffeur is hospitalized and unable to surrender his license. While it would be patently obvious in that situation that Petitioner was not driving a cab, the Respondent could rely on the literal interpretation of this Section and deny Petitioner temporary total disability benefits.

The Arbitrator already found Petitioner's testimony credible and respondent produced no evidence reflecting Petitioner was earning any type of income during the time he was authorized off work. Accordingly, the Arbitrator awards Petitioner temporary total disability benefits for the period February 27, 2014 through May 4, 2014, a period of 9-4/7 weeks.

In support to the Arbitrator's decision as to the nature and extent of the injury, (L), the Arbitrator finds as follows:

Petitioner was diagnosed with a comminuted non-displaced fracture of the left second costochondral junction, a cervical and thoracic sprain, and a right hip/thigh/knee sprain. Petitioner received conservative treatment in the form of massages, therapy and manual traction. He testified he still has occasional complaints of pain in his neck and chest area as well as in his right hip. He notices the pain when he is driving his cab, lifting luggage for passengers and when walking.

This claim arose after September 1, 2011; therefore, the five factors for determining permanent partial disability shall be applied here.

1. **AMA Impairment Rating:** Neither Petitioner nor Respondent presented an AMA Impairment Rating. Based on the failure to submit an AMA Rating the Arbitrator cannot consider this factor.

2. **Occupation of the Injured employee:** Petitioner was employed by Respondent as a cab driver. He testified he was able to return to his job full-duty with no restrictions. Petitioner continues working for the Respondent in that capacity today. The Arbitrator gives great weight to this factor.

3. **Age of the employee at the time of the injury:** Petitioner was 54 at the time of his accident. The nature of this injury is going to affect the Petitioner more than it would a younger person so the Arbitrator gives greater weight to this factor.

4. **Employee's future earning capacity:** Petitioner testified he continues working for the Respondent. No testimony was brought out as to Petitioner's current earnings. The Arbitrator therefore, gives no weight to this factor.

5. **Evidence of disability corroborated by the treating medical records:** Petitioner sustained injuries to his neck and thoracic area as well as his right hip. The May 28, 2014 office note of Dr. Foreman reflects intermittent mild improving neck and hip discomfort. Needing medications less frequently. Improving tolerance to work and other activity. Still not at full hours but advancing. Exercise is being performed at home without difficulty. Cervical spine rotation to the right limited to 50°. A recommendation from Dr. Foreman to continue the home exercises and to wean off the oral medications.

The Arbitrator finds that Petitioner sustained a 4% loss of the person as a whole as provided in Section 8(d) 2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

TALLMAN, MATTHEW Case# **14WC012532**

Employee/Petitioner

JOHN DEERE PARTS DISTRIBUTION CENTER

Employer/Respondent

On 10/27/2015, 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 0.15% 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:

0568 WINSTEIN KAVENSKY & WALLACE
JOHN MALVIK
224 18TH ST 4TH FL
ROCK ISLAND, IL 61201

2119 CALIFF & HARPER PC
STEVEN NELSON
506 15TH ST SUITE 600
MOLINE, IL 61285

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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Matthew Tallman
Employee/Petitioner

Case # **14** WC **12532**

v.

John Deere Parts Distribution 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 **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Rock Island**, on **September 9, 2015**. 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 **December 11, 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 $**45,337.76**; the average weekly wage was $**871.88**.

On the date of accident, Petitioner was **30** 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 $ for TTD, $ for TPD, $ for maintenance, and $**35,232.00** for other benefits, for a total credit of $**35,232.00**.

Respondent is entitled to a credit of $**15,239.20** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $**581.25**/week for **34 3/7** weeks, commencing **December 12, 2013** through **August 10, 2014**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $**336.00**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $**523.13**/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.

Arbitrator Anthony C. Erbacci

October 21, 2015
Date

OCT 27 2015

FACTS:

On December 11, 2013 the Petitioner was employed by the Respondent as a quality control inspector. The Petitioner has been employed by the Respondent for about nine (9) years and, prior to his current job, he was a material handler/shipping clerk. The Petitioner testified that on December 11, 2013, while working as a material handler, he was driving a fork truck, loading and unloading semi-trailers. The Petitioner testified that in performing the material handling job, he was required to operate a fork truck throughout the work day, and he described the fork truck in detail. The Petitioner described that it was a one-person electric forklift with four (4) wheels. The driver is seated facing the forks with a steering wheel in front of him. The steering wheel is tilted more towards the horizontal position as opposed to the more vertically mounted steering wheel on an automobile. The wheel sits higher than an automobile steering wheel, and the steering operates the rear wheels of the lift truck. The steering is hydraulically power assisted. The operator is surrounded by a four point roll cage, and the truck does not have a suspension.

The Petitioner testified that his job as a material handler, required him to repeatedly drive in and out of semi-trailers, loading and unloading there contents, for 8-10 hours a day. He testified that he drove the fork truck forward and in reverse. When driving in reverse, he was required to turn and look backwards to look out for other traffic in the work area. Although equipped with a rearview mirror, the small size and location of the mirror made it impractical to use for driving in reverse. The Petitioner testified that to operate the lift truck in reverse, he turned his head and body to his right and reached back with his right arm to hold part of the roll cage that was behind him. He then had to scan the area behind him, including to the sides to watch for other traffic and to drive his fork lift backwards, while steering with his left arm extended to the steering wheel. The Petitioner testified that he had to operate his fork truck in reverse 30-45 times per hour for an 8-10 hour workday. The Petitioner described the job as not being as demanding as digging ditches, but physically taxing to the point that one was tired and stiff by the end of the shift.

The Petitioner testified that on December 11, 2013, after working steadily for 3-4 hours operating the fork lift, he was backing his fork lift out of a semi-trailer while looking backward over his right shoulder. His right arm was reaching rearward to hold on to the roll cage and his left arm was extended forward to operate the steering wheel. The Petitioner testified that when his rear wheels cleared the end of the trailer, he turned the steering wheel to make a right turn in reverse, and he felt a sudden pain and pinching sensation in his left shoulder.

Following the accident the Petitioner had symptoms of pain in left shoulder and sought medical treatment following his shift with Unity Point Express Care and then with ORA Orthopedics at their walk-in clinic in Bettendorf, Iowa. The history given by the Petitioner to Unity Point Express Care and ORA Orthopedics on the same day as the accident indicates that the Petitioner reported a sudden onset of pain and pinching sensation in his left shoulder as a result of backing his forklift out of a semi-trailer, followed by severe symptoms which prevented him from undressing after he went home from work. The Petitioner was seen by Dr. Suleman Hussain, who diagnosed the Petitioner as having an anterior superior labral tear with rotator cuff tendinitis. The Petitioner then underwent a course of physical therapy and,

on March 18, 2014, Dr. Hussain performed arthroscopic surgery on the Petitioner's left shoulder consisting of debridement of partial thickness rotator cuff tear, left open subpectoral biceps tenodesis, chondroplasty of his glenoid, bursectomy and acromioplasty.

At the request of the Respondent, the Petitioner was examined by Dr. Christine Deignan on January 7, 2015. Dr. Deignan's report of that examination was admitted into the Record as Respondent's Exhibit 1. Dr. Deignan reported as to her examination findings and the records she reviewed, and she opined that the incident of December 11, 2013 did not cause the Petitioner's left shoulder pathology. Dr. Deignan further indicated that the Petitioner's impairment rating pursuant to the Guides to the Evaluation of Permanent Impairment, 6th Edition, was 6% of the upper extremity or 4% of the whole body.

A June 1, 2015 narrative report authored by Dr. Suleman Hussain was admitted into the record as Petitioner's Exhibit 12. Dr. Hussain opined that the given the fact that the Petitioner did not have any pre-existing injury, and given the acute onset of his symptoms and the reporting of the symptoms immediately after the incident, the Petitioner's shoulder injury was causally related to the work accident.

The Petitioner testified that, prior to December 11, 2013 he was in good physical condition and had no problems or difficulties with either of his upper extremities. The Petitioner testified that following the surgery, he returned to his employment with the Respondent on August 14, 2014 and he now works as a quality control inspector, a physically less demanding job than prior to the injury. He testified to deficits in his left shoulder, including decreased strength and range of motion, and difficulty working overhead. The Petitioner's medical records show that he was not functioning at 100% with regard to his left shoulder when he was released from physical therapy and when he was released by Dr. Hussain to return to work.

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, the Arbitrator finds and concludes as follows:

The Petitioner was injured while operating his fork truck. The description of the truck provided by the Petitioner makes it clear that it is a specialized piece of equipment designed for material handling and used by the Petitioner to load and unload semi-trailers as part of his job duties. Although it has four wheels and a steering wheel, the vehicle is materially different from the vehicles operated by the general public in everyday life. A typical automobile has both side view and rearview mirrors. Many vehicles have back up cameras. These devices and their location in vehicles operated by the public obviate the need for a member of the public at large to turn one's head to travel in reverse to the extent a forklift operator such as Petitioner would be required to do to operate his forklift in reverse. Also, the steering wheel of the forklift is mounted more horizontal than vertical. This means that

when turning steering wheel of the forklift, the plane of travel by the hand, arm and shoulder of the operator is different than that experienced by members of the public at large who operate vehicles. The motion of the forklift operators arm in turning the steering wheel is more forward and backward as opposed to the up and down motion in vehicles operated by the public at large. As a result, when the Petitioner was backing out of the semi-trailer and turned the wheel to make the right turn in reverse while looking backward, this maneuver would have required him to reach and extend his arm further forward with his left hand to turn the wheel, causing increased stress on his shoulder as he turned the steering wheel. The steering wheel of the forklift operates the rear wheels of the fork lift, rather than the front wheels. The forklift is operated in a completely different physical environment than vehicles driven by the general public, requiring far more maneuvers than those encountered by the public. For these reasons, The Arbitrator finds that the Petitioner was exposed to a risk distinctly associated with his employment by operating the forklift. Therefore, when he suffered his injury while backing out of the semi-trailer while turning the steering wheel of the forklift on December 11, 2013, he suffered an accidental injury arising out of and in the course of his employment with Respondent.

Even if the activity of driving in reverse, with the head turned to the rear, right hand reaching back to grasp the roll cage, and left arm extended holding the steering was characterized as a neutral risk, Petitioner was exposed to that risk 30-45 times per hour for a period of 8-10 hours each day. This is an exposure to a risk far greater than is experienced by the public at large when doing an activity such as driving a vehicle in reverse. Under those circumstances, if a neutral risk analysis is applied to the facts, the Petitioner would still have a compensable injury under the Act.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that on December 11, 2013 the Petitioner sustained an accidental injury that arose out of and in the course of the Petitioner's employment by the Respondent.

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issue of accident are adopted and incorporated herein.

The Petitioner testified that his health history was unremarkable for any pre-existing condition relating to his upper extremities including his shoulders. He had worked for John Deere Parts Distribution Center for several years with no apparent difficulty, and no evidence of any prior injury or symptoms of ill-being related to his left upper extremity and shoulder were offered into evidence. Following his injury on December 11, 2013 the Petitioner had symptoms of pain in his left shoulder for which he immediately sought medical treatment with Unity Point Express Care and then with ORA Orthopedics at their walk-in clinic in Bettendorf, Iowa. The history given by the Petitioner to Unity Point Express Care and ORA Orthopedics on the same day as the accident indicates that the Petitioner reported a sudden onset of pain

and pinching sensation in his left shoulder as a result of backing his forklift out of a semi-trailer, followed by severe symptoms which prevented him from undressing after he went home from work. This history implicates the work accident of December 11, 2013 as the cause of his continuous symptoms of pain which were diagnosed by ORA Orthopedics on December 17, 2013 as an anterior superior labral tear with rotator cuff tendinitis for which Dr. Hussain performed surgery on March 18, 2014. In his report of June 1, 2015, Dr. Hussain opined that the injury the Petitioner sustained is causally related to his accident at work on December 11, 2013. Dr. Hussain performed arthroscopic surgery on Petitioner's left shoulder consisting of debridement of partial thickness rotator cuff tear, left open subpectoral biceps tenodesis, chondroplasty of his glenoid, bursectomy and acromioplasty. When he was released by Dr. Hussain in August of 2014, the Petitioner was noted to have had an 80% to 90% improvement in his pre-operative symptoms.

While the Arbitrator notes the opinions of Dr. Deignan, the Respondent's examining doctor, the Arbitrator also notes that there is no evidence of any history of any problems or symptoms of pain or injury in the Petitioner's left upper extremity or shoulder prior to the December 11, 2013 accident while working for the Respondent. Following his injury, the Petitioner immediately began a course of medical treatment and he was diagnosed within a week with significant injuries to his left shoulder consistent with trauma. The Petitioner's pain and discomfort continued from the date and time of his accident on December 11, 2013 through the date of his surgery on March 18, 2014, and Dr. Suleman Hussain, the Petitioner's treating orthopedic surgeon causally related the Petitioner's injury and symptoms to his work accident.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's current left shoulder condition of ill-being is causally related to the Petitioner's work injury on December 11, 2013.

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:

Based on the testimony of the Petitioner and on the medical records admitted into the record, the Arbitrator finds that as a result of the accident of December 11, 2013, the Petitioner suffered an injury to his left shoulder as detailed previously in this decision. He commenced medical treatment for the injury on December 11, 2013 by going to Unity Point Express Care, and then to the ORA Orthopedics walk-in clinic. An MRI was ordered and completed within a week of the injury which showed an anterior superior labrum tear with rotator cuff tendinitis. When he did not obtain relief from his symptoms through conservative care which included physical therapy at Rock Valley Physical Therapy, he underwent surgery on his left shoulder as previously described. After surgery, he completed physical therapy with Rock Valley Physical Therapy before he was released to return to work by Dr. Hussain. The various physicians and providers provided the Petitioner with treatment for the symptoms related to the injury to his left shoulder suffered as a result of his work accident.

The various medical providers and the charges for their services are listed on the Summary of Medical Bills which is submitted by the Petitioner as his Exhibit 15. An examination of the medical records reveals that the charges and services billed by the providers, as shown in the summary, correspond to treatment for the Petitioner's left shoulder injury. No evidence was offered to show that the treatment received was not reasonable and necessary. The charges for the services were not challenged.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the medical treatment rendered to the Petitioner and the medical expenses as demonstrated by Petitioner's Exhibit 15, were reasonable, necessary, and causally related to the Petitioner's December 11, 2013 work injury, and that the Respondent is liable for payment of those expenses, subject to the limitations of the Medical Fee Schedule, pursuant to Section 8(a) of the Act.

The Arbitrator notes that the parties stipulated that the Respondent is entitled to a credit of $13,427.52 in payments and $21,582.48 in PPO write-offs by providers pursuant to Section 138 (j) of the Act for group, non-occupational health benefits. A balance of $165.00 was paid by Petitioner, and $171.00 remain as unpaid bills, for a total of $336.00 awarded to the Petitioner.

In Support of the Arbitrator's Decision relating to (K.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The stipulation of the parties, the testimony of the Petitioner, and the medical records introduced into evidence demonstrate that the Petitioner was temporarily totally disabled from December 12, 2013 through August 10, 2014, a period of 34 3/7 weeks. The disability was the direct result of the left shoulder injury the Petitioner suffered on December 11, 2013 and the subsequent surgery necessitated by the injury.

The Arbitrator finds that the Petitioner was entitled to Temporary Total Disability benefits from December 12, 2013 through August 10, 2014, a period of 34 3/7 weeks. The parties stipulated that the Respondent is entitled to a credit of $15,239.20 in non-occupational indemnity disability benefits pursuant to Section 138(j) of the Act.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

The Petitioner's accident occurred after September 1, 2011. Therefore, Section 8.1(b) of the Act requires consideration of the following criteria in determining the level of permanent partial disability:

* The reported level of impairment based upon the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment;
* the occupation of the injured employee;

* the age of the employee at the time of the injury;
* the employee's future earning capacity; and
* evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability but the relevance and the weight of any additional factors used must be explained.

In the instant case, the Petitioner suffered an anterior superior labral tear with rotator cuff tendinitis for which Dr. Hussain performed surgery on March 18, 2014. The Petitioner was ultimately released to return to work without restrictions.

With regard to the reported level of impairment pursuant to Section 8.1(b), the level of impairment reported by Dr. Deignan pursuant to the American Medical Association's Guides to Evaluation of Permanent Impairment, 6th Edition, was 6% of the upper extremity or 4% of the whole body. The Arbitrator notes that impairment does not equate to permanent partial disability under the Workers' Compensation Act but finds the impairment rating to be a significant factor in the determination of the amount of the Petitioner's permanent partial disability.

With regard to the occupation of the injured employee, the Petitioner's occupation is that of quality control inspector, which the Arbitrator notes is 50% desk work according to the Petitioner's testimony. The Arbitrator concludes that the Petitioner's ability to perform the duties of his employment will be relatively unaffected by his permanent partial disability and finds the Petitioner's occupation to be of little significance in the determination of the amount of the Petitioner's permanent partial disability.

With regard to the age of the employee at the time of injury, the Petitioner's age at the time of injury was 30 years old. The Arbitrator considers the Petitioner to be a younger individual and concludes that the Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer. The Arbitrator finds the Petitioner's age to be a significant factor in the determination of the amount of the Petitioner's permanent partial disability.

With regards to the employee's future earning capacity, the Arbitrator notes that there was no evidence presented from which to conclude that the Petitioner's future earning capacity will be in any way affected by his injury. The Arbitrator finds the Petitioner's future earning capacity is not a factor in the determination of the amount of the Petitioner's permanent partial disability.

With regard to the evidence of disability corroborated by the treating medical records, the Petitioner credibly testified that he currently experiences deficits in his left shoulder, including decreased strength and range of motion, and difficulty working overhead. These complaints are corroborated in the medical records Dr. Hussain which indicate that the Petitioner was not functioning at 100% with regard to his left shoulder when he was released from physical therapy and when he was released to return to work. The Petitioner's complaints as supported by the medical records, evidences a disability as indicated by

Commission decisions regarded as precedent pursuant to Section 19(e) and are a significant factor in the determination of the amount of the Petitioner's permanent partial disability.

The determination of permanent partial disability is not simply a calculation but an evaluation of all 5 factors as stated in the Act. In making this evaluation of permanent partial disability, consideration is not given to any single enumerated factor as the sole determinant. Therefore, having considered the factors enumerated in Section 8.1(b) of the Act, 820 ILCS 305/8.1(b), the Arbitrator finds that as a result of his accidental injuries the Petitioner has sustained a 10% disability to his whole person.

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

GILMORE, ANEDRA Case# **13WC022569**

Employee/Petitioner

BURLINGTON COAT FACTORY

Employer/Respondent

On 10/27/2015, 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:

2333 WOODRUFF JOHNSON & PALERMO
RUSSELL HAUGEN
4234 MERIDIAN PKWY SUITE 134
AURORA, IL 60504

1120 BRADY CONNOLLY & MASUDA PC
MARK F VIZZA
10 S LASALLE ST SUITE 900
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
19(b)

ANEDRA GILMORE
Employee/Petitioner

v.

BURLINGTON COAT FACTORY
Employer/Respondent

Case # **13** WC **22569**

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 **Brian Cronin**, Arbitrator of the Commission, in the city of **Geneva**, on **April 13, 2015**. 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. [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 _____

FINDINGS

On the date of accident, **2/21/13**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**16,863.08**; the average weekly wage was $**324.29**.

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

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

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

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

ORDER

- **Respondent shall authorize and pay for the reasonable, necessary and related surgery that Dr. McGivney has recommended for Petitioner's lower back condition of ill-being, pursuant to Section 8(a) and subject to Section 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.

Signature of Arbitrator

October 26, 2015
Date

ICArbDec19(b)

OCT 27 2015

Anedra Gilmore

v. Case No. 13 WC 22569

Burlington Coat Factory

FINDINGS OF FACT

On February 21, 2013, Petitioner sustained an undisputed work accident while working as a floor associate for Respondent. At the time of the accident, Petitioner was unloading boxes from a truck. As she lifted a box and twisted her body, she had an immediate onset of pain in her lower back. Petitioner immediately reported this accident to her supervisor. At the time of the accident, Petitioner was working full duty without any medical restrictions.

On February 25, 2013, Petitioner was seen by Sonal N. Bhatt, M.D., at Concentra Medical Center. Petitioner provided a history of injuring her back on February 21, 2013 while "unloading boxes on line from truck." Petitioner was diagnosed with a lumbar strain, given medication, and instructed to undergo physical therapy. Petitioner underwent a physical therapy evaluation at Concentra Medical Center on February 25, 2013. PX 1.

Petitioner was seen at Concentra Medical Center for follow-up examinations on February 27, 2013 and March 18, 2013. Petitioner continued to complain of ongoing lower back pain with radiating pain into her right gluteal area. PX 1. Petitioner testified that she was not happy with the care she was getting at Concentra Medical Center so she sought treatment with her own physician at VNA Healthcare.

On April 26, 2013, Petitioner was seen by Sonia Abraham, M.D., at VNA Health Care. At that time, Petitioner complained of ongoing back pain. She was examined and diagnosed with thoracic/lumbosacral neuritis/radiculitis. She was given more medications and instructed to follow-up in one month. Petitioner returned to VNA Health Care on May 22, 2013. She was diagnosed with back pain, given medications, and instructed to follow-up. PX 2.

Petitioner underwent an MRI of her lumbar spine at Provena Mercy Medical Center on May 31, 2013. The referring physician was Dr. Abraham. By history, Petitioner reported complaints of back pain extending into her left leg and buttocks. The radiologist's impression was degenerative disc disease worst at L5-S1 and protruding discs at multiple levels. PX 3.

Petitioner was seen again by Dr. Abraham on June 19, 2013 with ongoing complaints of back pain. Dr. Abraham gave her a refill on her medications and instructed her to follow-up. On July 24, 2013, Ronald Vilbar, M.D., at VNA Health Care recommended Petitioner undergo physical therapy and stated "Will probably need ortho referral." PX 2.

Petitioner underwent a physical therapy spine evaluation at Provena Mercy Medical Center on August 5, 2013. At that time, Petitioner complained of ongoing back and leg pain with difficulty standing in one place. Petitioner was recommended to undergo a course of physical therapy three times a week for two weeks. Petitioner attended physical therapy on 8/8/13, 8/9/13, 8/15/13, 8/16/13, 8/26/13, and 8/28/13. PX 3.

On September 6, 2013, Petitioner was evaluated by Thomas J. McGivney, M.D., at Castle Orthopaedics & Sports Medicine. Petitioner reported that she injured her back in February while unloading boxes off a truck while working for Respondent. She complained of more leg than back pain. On examination, she had a pain with extension of her back and a mildly positive straight leg raise test. Dr. McGivney reviewed the 5/31/13 MRI and noted some degenerative changes of her discs but also a lateral disc herniation at L5-S1. However, he recommended that Petitioner undergo an updated MRI due to the inferior quality of the prior scan. Dr. McGivney also recommended Petitioner be seen a pain physician for epidural steroid injections and gave Petitioner light-duty work restrictions. PX 4.

Petitioner underwent a second course of physical therapy at Provena Mercy Medical Center. From December 3, 2013 through January 20, 2014, Petitioner attended six sessions of formal physical therapy. At the time of her last visit, she was referred back to her physician for future recommendations. PX 3.

Petitioner returned to Dr. McGivney on January 31, 2014. At that time, Petitioner continued to complain of ongoing pain in her left back, left buttocks, and radiating pain down the left leg. Dr. McGivney again recommended the updated MRI and pain management. Petitioner returned to Dr. McGivney on March 21, 2014. Dr. McGivney reviewed an updated MRI, which showed spondylolisthesis with a degenerative disc at L5-S1. Based upon the radicular component of Petitioner's complaints, Dr. McGivney continued to recommend pain management, specifically, epidural steroid injections by Dr. Sachin Bansal. Dr. McGivney then opined: "If this fails the only other option is a two-level interbody fusion, minimally invasive, at L4-5 and L5-S1, but I did discuss with her the success rates of that and I would obviously like to try to avoid that if at all possible." Petitioner's light-duty work restrictions were continued. PX 5.

On April 7, 2014, Petitioner was evaluated by Sachin K. Bansal, M.D. Petitioner provided a history of ongoing pain in her back and left leg since injuring her back approximately one year ago. Dr. Bansal's assessment was lumbosacral neuritis and lumbar disc protrusions secondary to a work-related injury. Dr. Bansal recommended that Petitioner proceed with a left L4-L5 and L5-S1 transforaminal epidural steroid injection. On April 16, 2014, Petitioner underwent the transforaminal epidural steroid injection with Dr. Bansal. Petitioner returned for follow-up to Dr. Bansal on May 5, 2014. At that time, Petitioner reported a very slight improvement following the recent injection but reported ongoing pain. Dr. Bansal recommended a second injection. Petitioner underwent another left L4-L5 and L5-S1 transforaminal epidural steroid injection with Dr. Bansal on June 24, 2014. Petitioner returned to Dr. Bansal on August 4, 2014.

Petitioner reported minimal relief after undergoing these injections and physical therapy. Dr. Bansal believed that Petitioner had exhausted conservative management and referred Petitioner back to Dr. McGivney for further management. PX 5.

On August 15, 2014, Petitioner was re-evaluated by Dr. McGivney. Dr. McGivney recommended that Petitioner to undergo a minimally invasive transforaminal interbody fusion at L4-L5 and L5-S1. Petitioner was made aware of the risk factors involved regarding that type of surgery. At that time, Petitioner expressed her desire to proceed with the surgery. PX 5.

Petitioner was last seen by Dr. McGivney on February 24, 2015. At that time, Dr. McGivney reviewed the report from Dr. Herman. Dr. McGivney did not agree with Dr. Herman's recommendations since the left foraminotomy would not address Petitioner's ongoing complaints of back pain. Dr. McGivney continued to recommend the transforaminal interbody fusion at L4-L5 and L5-S1. He further opined that he would not perform a left lamino-foraminotomy because he did not think it would have any long-term effect on Petitioner. PX 6.

At the time of arbitration hearing, Petitioner testified that she currently has pain in her back all the time and sometimes pain down her left leg. She further testified that the pain going down her left leg is not constant, but if she sneezes, turns or lands wrong, the pain will shoot down her leg. She testified that it is her desire to undergo the surgery Dr. McGivney is recommending. She further testified that Dr. McGivney explained the success rate of this procedure. She testified that she wants to proceed with the two-level fusion because she feels that it is the only alternative left for the relief of back pain.

Petitioner was examined by Andrew K. Kim, M.D., on August 14, 2013 at the request of Respondent and pursuant to Section 12. Dr. Kim suggested that Petitioner's lumbar degenerative disc disease was aggravated by the February 21, 2013 work accident. Dr. Kim opined that Petitioner was in need of physical therapy and a possible trial of lumbar epidural steroid injections by a pain specialist. Dr. Kim indicated that a possible surgical procedure such as a lumbar fusion may be needed if the epidural injections were ineffective. RX 1.

Petitioner was re-examined by Dr. Kim at the request of Respondent on October 5, 2014. Following an examination and a review of the medical records, Dr. Kim opined that Petitioner's current condition was causally related to the work accident. Dr. Kim further opined that the recommended surgery (by Dr. McGivney) is reasonable, medically necessary and related to the current injury. However, he felt that a spine surgeon would be able to give a better informed and definitive opinion than a general orthopedic surgeon. RX 3.

On January 15, 2015, Petitioner was examined by Martin D. Herman, M.D., Ph. D., at the request of Respondent and pursuant to Section 12. Petitioner provided a history of the February 2013 accident with ongoing low back pain and shooting pain down her left leg. Following an examination and a review of the medical records, Dr. Herman opined that Petitioner's underlying degenerative lumbar condition was aggravated by her work injury. Dr. Herman

recommended a left foraminotomy at L5-S1 for the purpose of nerve root decompression to address Petitioner's chief complaint of leg pain. RX 4.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision with regard to issue (F) "Is petitioner's current condition of ill-being causally related to the injury?," the Arbitrator makes the following findings of fact and conclusions of law:

Petitioner sustained an undisputed work accident on February 21, 2013. Petitioner has had complaints of low back pain since the work accident. She subsequently developed left leg pain soon thereafter. Petitioner testified that her back pain is constant and her leg pain is occasional but easily aggravated by simple movements such as sneezing or standing for an extended period of time. Petitioner's testimony is corroborated by the medical records.

There has been no intervening accident to break the chain of causation. Additionally, all of the treating physicians and both of the examining physicians have opined that Petitioner's current condition of ill being is causally related to the undisputed work accident.

Therefore, the Arbitrator concludes that Petitioner's current condition of ill-being of her low back is causally related to the accident of February 21, 2013.

In support of the Arbitrator's decision with regard to issue (K) "Is petitioner entitled to any prospective medical care?," the Arbitrator makes the following finding of fact and conclusions of law:

Petitioner underwent conservative treatment without significant relief. She continues to experience low back pain and left leg pain as a result of the work accident. Petitioner's treating physician, Dr. McGivney, has recommended surgical intervention to treat her current condition of ill-being.

The Arbitrator finds the opinions of Petitioner's treating orthopedic surgeon, Dr. McGivney, to be more persuasive than those of Respondent's examining neurosurgeon, Dr. Martin Herman, particularly since Petitioner testified that she has constant back pain along with her left leg pain. Dr. McGivney has treated Petitioner for approximately 19 months. The medical records indicate that Petitioner's complaints are to the low back and left leg. Dr. McGivney opined that the two-level interbody fusion will effectively address Petitioner's complaints of low back pain and left leg pain. He did, however, advise Petitioner that there is a 50% success rate for such surgery.

Petitioner was examined by Dr. Herman on one occasion. Dr. Herman opined: "If she were to elect for surgery (sic), I would recommend a left foraminotomy at L5-S1 for the purpose of nerve root compression since her leg pain is clearly her chief complaint." Yet, in his review of

systems, under MS (musculoskeletal), Dr. Herman notes that Petitioner is positive for back pain, bone/joint symptoms and myalgia. Dr. Herman found the presence of one Waddell's sign. Dr. Herman wrote that when he asked Petitioner whether she was interested in having surgery or not, it seemed to him somewhat unclear as to whether or not she would elect to undergo surgery.

Petitioner testified that Dr. Herman's exam lasted ten to fifteen minutes. Petitioner testified that on January 15, 2015, the date she was examined by Dr. Herman, she told him that she does have back pain. She further testified that she has experienced back and leg pain since the accident.

The Arbitrator concludes that Petitioner is entitled to further medical treatment based upon the opinions of Dr. McGivney. Respondent is ordered to authorize and pay for the transforaminal interbody fusion at L4-5 and L5-S1, as prescribed by Dr. Thomas McGivney, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

The Arbitrator finds that the surgery Dr. McGivney has recommended is reasonable, necessary and related to the accidental injury of February 21, 2013.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HALCOMB, JERRY Case# **15WC001354**

Employee/Petitioner

MONSANTO TECHNOLOGY LLC

Employer/Respondent

On 10/27/2015, 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 0.15% 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 A SWEE
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

2623 McANDREWS & NORGLE
GREG NORGLE
53 W JACKSON BLVD SUITE 315
CHICAGO, IL 60604-3607

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

- [ ] 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

Jerry Halcomb
Employee/Petitioner

v.

Monsanto Technology LLC
Employer/Respondent

Case # 15 WC 01354

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 William R. Gallagher, Arbitrator of the Commission, in the city of Urbana, on September 11, 2015. By stipulation, the parties agree:

On the date of accident, March 22, 2012, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned $54,796.04; the average weekly wage was $1,053.77.

At the time of injury, Petitioner was 61 years of age, married, with 0 dependent child(ren).

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

Respondent shall be given a credit of $4,917.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $4,917.00. The parties stipulated that all TTD benefits were paid in full.

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 permanent partial disability benefits of $632.26 per week for 65 weeks because the injury sustained caused the 13% loss of use of the body 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.

William R. Gallagher, Arbitrator

October 26, 2015
Date

OCT 27 2015

Findings of Fact

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 March 22, 2012. According to the Application, Petitioner fell and sustained "back and spinal injuries" (Arbitrator's Exhibit 2). At trial, counsel for Petitioner and Respondent stipulated that medical and temporary total disability benefits had been paid in full and that the only disputed issue was the nature and extent of disability.

Petitioner was employed by Respondent as a seed technician and was also self-employed as a farmer. Petitioner testified that on March 22, 2012, he was operating a forklift and was unloading a winter corn crop. The corn was in bags that each weighed approximately 1,000 pounds. One of the bags burst open and corn was scattered on a steel dock plate. Petitioner slipped and fell approximately five feet off of the dock and landed on his rear end on a concrete slab. At that time, Petitioner experienced immediate mid-back pain.

Petitioner initially sought medical treatment at Carle Clinic where he was seen by Dr. William Scott, an occupational medicine specialist. At that time, Petitioner complained primarily of low back pain. Dr. Scott ordered an x-ray of the back which revealed compression fractures of T12 and L3 vertebrae. Dr. Scott authorized Petitioner to be off work, prescribed medications and ordered an MRI scan (Petitioner's Exhibit 2).

The MRI was performed on March 23, 2012, which confirmed that Petitioner had compression fractures of T12 and L3; however, the L3 fracture appeared to be old. In regard to the T12 fracture, the vertebral body had lost approximately 20% of its height (Petitioner's Exhibit 4).

Dr. Scott subsequently ordered a CT scan which was performed on March 27, 2012. The CT scan noted the loss of height of the T12 vertebrae had increased since the MRI and that the L3 vertebral fracture was stable and old (Petitioner's Exhibit 3).

Dr. Scott referred Petitioner to Dr. James Harms, an orthopedic surgeon. Dr. Harms initially evaluated Petitioner on April 23, 2012. At that time, Petitioner complained of low back pain but not any radiating pain into either leg. Dr. Harms reviewed the diagnostic studies and opined that it was too early to determine if the T12 vertebral fracture was stable or unstable. He authorized Petitioner to return to work, but with restrictions (Petitioner's Exhibit 5).

Dr. Harms ordered physical therapy and continued to see Petitioner through the summer of 2012. Petitioner was seen by Glenett Barrett, Dr. Harms' Nurse Practitioner, on November 20, 2012, and he was released to return to work without restrictions at that time (Petitioner's Exhibit 7).

Petitioner was again seen by NP Barrett on October 7, 2013. At that time, Petitioner complained of numbness/tingling in the lower thoracic and upper lumbar spine as well as pain. An x-ray was ordered which revealed that approximately one-third of the height of T12 was gone. NP Barrett opined that the height change altered the ligaments, joints and disc in the back. It was recommended Petitioner remain physically active and continued therapeutic exercises, especially bicycling (Petitioner's Exhibit 6).

At the direction of Respondent, Petitioner was examined by Dr. David Fletcher, an occupational medicine specialist, on June 9, 2015. In connection with his examination of Petitioner, Dr. Fletcher reviewed medical records provided to him by Respondent. When examined by Dr. Fletcher, Petitioner complained of pain in the mid-back with numbness in the left anterior thigh. Dr. Fletcher ordered an x-ray which revealed a 33% loss of height of the T12 vertebrae. Dr. Fletcher opined that Petitioner sustained an acute fracture of the T12 vertebrae as a result of the accident of March 22, 2012. He opined that Petitioner had an AMA impairment rating of eight percent (8%) loss of the whole person as a result of the injury. He specifically excluded the old L3 compression fracture from his rating (Petitioner's Exhibit 1).

At trial, Petitioner complained of pain/stiffness in his back as well as numbness on the left side. Although Petitioner has not sought medical treatment since October, 2013, he continues to do his home exercises and rides his bicycle approximately 45 minutes per day.

Conclusion of Law

The Arbitrator concludes that Petitioner has sustained permanent partial disability to the extent of 13% loss of use of the person as a whole.

In support of this conclusion the Arbitrator notes the following:

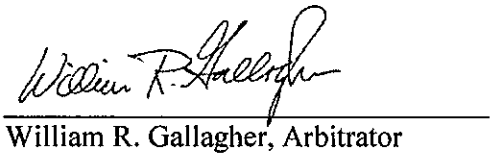
Dr. Fletcher opined that Petitioner has an AMA impairment rating of eight percent (8%) loss of use of the whole person. The Arbitrator gives this factor significant weight.

Petitioner was employed by Respondent as a seed technician and was also self-employed as a farmer. Petitioner was able to return to work to both occupations without restrictions. The Arbitrator gives this factor no weight.

Petitioner was 61 years of age at the time of the accident. There was no evidence that Petitioner's age had any effect on the disability he sustained as a result of the accident of March 22, 2012. The Arbitrator gives this factor no weight.

There was no evidence that the injury had any effect on Petitioner's future earning capacity. The Arbitrator gives this factor no weight.

The last time Petitioner sought medical treatment was in October, 2013, and he complained of numbness/tingling in the lower thoracic and upper lumbar spine as well as pain. At that time, it was recommended Petitioner continue exercising and riding his bicycle. The medical records clearly indicated that there was a significant loss of height of the T12 vertebrae. Further, this loss of vertebral height has caused a structural change in Petitioner's back. Petitioner still has symptoms consistent with the injury he sustained and continues to perform home exercises and riding his bicycle. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

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

WAGNER, CHRISTOPHER Case# **15WC010538**

Employee/Petitioner

SALVATION ARMY

Employer/Respondent

On 10/20/2015, 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:

1189 WOLTER BEEMAN & LYNCH
FRANCIS J LYNCH
1001 S 6TH ST PO BOX 5276
SPRINGFIELD, IL 62705

0000 NYHAN BAMBRICK KINZIE & LOWRY
ADAM J COX
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602-4195

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

- [ ] 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)

CHRISTOPHER WAGNER
Employee/Petitioner

Case # **15** WC **010538**

v.

Consolidated cases: _____

SALVATION ARMY
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 **Urbana**, on **August 12, 2015**. 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. [ ] 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, 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 **$20,576.44**; the average weekly wage was **$395.70**.

On the date of accident, Petitioner was **34** years of age, ***married*** with **4** children under 18.

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

Respondent shall be given a credit of **$2,640.00** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$2,640.00**.

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 all 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 for all reasonable and necessary prospective medical treatment, including, but not limited to, physical therapy relative to Petitioner's low back condition.

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 Molly Dearing

October 8, 2015
Date

OCT 20 2015

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

CHRISTOPHER WAGNER
Employee/Petitioner

v. **Case No. 15 WC 10538**

THE SALVATION ARMY
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

On his date of accident, Petitioner was thirty-four years of age (Arb. X 1) and employed by Respondent as a truck driver. He had been employed by Respondent for six months. In his capacity of a truck driver, he drove a truck, delivered products, and retrieved and returned items from and to Respondent's stores. Petitioner testified that his position as a truck driver involved bending and stopping. Prior to his position as a truck driver, Petitioner testified that he worked for Respondent an assistant dock foreman, which involved lifting and carrying.

Petitioner testified that on January 6, 2015, he and another employee traveled to Kankakee, Illinois to retrieve a load of items to return to Respondent's stores to sell as wholesale. He described the weather that day as windy with ice and snow. Petitioner testified that the truck hit an ice patch, tipped over, and eventually came to rest in a ditch. He notified Respondent. Petitioner testified that he does not recall what happened to his body while in the truck and he denied noticing anything about himself when he emerged from the truck because he was "out of it." Petitioner was unsure as to whether he was limping and he had no recollection of suffering specific pain thereafter. He testified that his supervisor and Captain Rutledge arrived at the scene, and insisted he present to the hospital for treatment.

On January 6, 2015, Petitioner presented to the Emergency Department at Memorial Medical Center with complaints of leg pain after a motor vehicle accident in which the truck he was driving rolled over. He denied loss of consciousness, head or neck pain. An x-ray of the left lower leg revealed no acute fractures. Petitioner was diagnosed with a contusion of the lower extremity and discharged home with instructions to follow up with his primary care physician. PX 1, RX 1. Petitioner testified that he was briefly examined by a physician after what he described as a lengthy wait. He testified that no x-rays were taken and no medical orders were given on that date.

Petitioner testified that after he was released from the hospital, he developed sharp pain in his low back while sitting down watching television on January 7, 2015. He returned to work on January 9, 2015. Petitioner testified that at that time, he was experiencing significant pain in his low back and difficulty walking. He notified his supervisor, and he stated that both his supervisor and Captain Rutledge had an opportunity to observe him ambulating and moving about the office. His supervisor advised him to sit down, and Captain Rutledge inspected his leg and recommended he seek treatment.

Petitioner presented to Express Care on January 9, 2015 and reported pain, swelling, and pressure in his lower extremity worsened by walking following a motor vehicle accident, and pain in the lower back and left arm that began "after the accident". Petitioner necessitated further evaluation and a possible ultrasound to rule out deep vein thrombosis, and he was transferred to the emergency department at Memorial Medical Center. PX 1, 2.

In the Emergency Department, Petitioner presented with complaints of swelling and pain in his left lower extremity, and intermittent back pain since a motor vehicle accident. He reported presenting to the emergency room at the time of the accident where he was "told [he] would be sore a while but work wants him rechecked." A left lower extremity venous Doppler revealed subcutaneous edema in the medial aspect of the lower leg in the area of clinical concern, but no deep vein thrombosis. Petitioner was diagnosed with a contusion of the lower extremity, discharged home with prescriptions of Toradol, Flexeril and Norco, and instructed to follow up with his primary care physician. PX 1. Petitioner testified that upon presenting to the emergency department on January 9, 2015, he was able to speak to medical personnel about the pain in his leg and back, and he underwent a physical examination. Thereafter, Respondent accommodated his restrictions and upon returning to work subsequent to January 9, 2015, Respondent placed him as an assistant foreman on the dock and he was provided assistance with lifting.

On January 14, 2015, Petitioner presented to Dr. Arun Abraham with complaints of left leg pain. He reported that his pain continues to shoot up and down his leg, and he occasionally experienced tingling in his leg. A physical examination of his left foot and ankle revealed ecchymosis along the medial aspect of the foot, tenderness along the medial aspect of the foot as well as the lateral aspect of the ankle, normal strength and range of motion, normal pedal and posterior tibial pulses, normal sensation, and no evidence of erythema, abrasions or bleeding. Dr. Abraham assessed him with an ankle sprain and contusion of the left foot. He did not prescribe any medications, but he instructed Petitioner to alternate Motrin with Tylenol every four hours, and to return to Dr. Omar Vargas as instructed by the emergency department. RX 3.

On January 15, 2015, Petitioner presented to Nurse Practitioner Leanne Novar at SIU Center for Family Medicine and complained of left ankle pain. He was diagnosed with a left ankle sprain, prescribed Cyclobenzaprine and Norco, and he was removed from work until January 29, 2015. PX 3, RX 4.

On January 29, 2015, Petitioner presented to Dr. Michael Owolabi at SIU Center for Family Medicine and complained of swelling and pain in his left ankle, as well as back pain "that has not improved much." Dr. Owolabi ordered an MRI of the left ankle and physical therapy. PX 3, RX 5.

An MRI of the left ankle of February 6, 2015 revealed diffuse nonspecific subcutaneous edema medial more than lateral and edema in the pre-Achilles fat pad suggesting Achilles peritendinitis. PX 3.

On February 9, 2015, Petitioner presented to Dr. Owolabi and complained of swelling and pain in his left leg that occasionally radiated up to his hip. He reported that he was unable to walk without a brace on his left ankle. Petitioner rated his left leg pain as a four on a ten-point scale. He also reported low back pain that "started yesterday" as he was "attempting to move a 30lb box when he hurt himself. Did not hear any sounds but just felt he might have aggravated his back when attempting to move the box." Dr. Owolabi instructed Petitioner to discontinue Norco, he

prescribed him Naproxen and Flexeril, and ordered him to undergo physical therapy. PX 3, RX 2. Petitioner testified that he attempted to lift a box at home that weighed approximately twenty-five pounds. He stated that doing so aggravated his back. Petitioner explained that prior to lifting the box, he experienced sharp low back pains, and thereafter, he experienced a dull ache in addition to the sharp pain.

Petitioner returned to Dr. Owolabi on March 6, 2015 and continued to complain of back pain and left ankle sprain since a motor vehicle accident on January 6, 2015. He reported an inability to work "because of difficulty with ambulation after the MVA." A physical examination showed no edema in the lower extremities or neurological deficits. Dr. Owolabi allowed Petitioner to return to work with restrictions of no lifting more than ten pounds and no climbing ladders, and instructed him to continue therapy. PX 3.

On March 26, 2015, Petitioner presented to Dr. Owolabi. He complained of leg pain while sitting as a four on a ten-point scale, swelling at nighttime, intermittent tingling in his left upper extremity and back pain, though he denied ankle swelling. "Ankle pain began after an MVA that he suffered on January 6th, 2015 and back pain began after lifting a box on 2/8/15." Dr. Owolabi instructed him to discontinue use of Cyclobenzaprine, to continue Naproxen, and he ordered Petitioner undergo physical therapy. PX 3, RX 6.

On April 2, 2015, Petitioner presented to Dr. Cara Vasconcelles at Memorial Physician Services with complaints of persistent left ankle and lower leg pain, as well as low back pain. Dr. Vasconcelles assessed Petitioner with left ankle pain, left leg pain, and back pain. Petitioner was prescribed Metaxalone, Tramadol, an ankle air cast stabilizer brace, and a compression stocking. He underwent x-rays of his ankle and tibia-fibula on April 6, 2015, which were negative. Dr. Vasconcelles issued work restrictions for Petitioner on April 13, 2015, and Nurse Practitioner Andrea Beyers removed Petitioner from work on April 30, 2015. PX 4.

Petitioner presented to Dr. Barry Mulshine at the Orthopedic Center of Illinois on May 5, 2015. He reported intermittent swelling in his left lower leg, pain at both anteromedial and anterolateral, general pain and swelling increased with standing and walking. Upon physical examination, Dr. Mulshine noted that Petitioner ambulated without any assistive devices, but with a significant limp. He also noted painless range of motion across both hips and knees, good strength across the hips and knees, symmetric active motion across both ankles and hind feet, no significant swelling in the lower left leg, some tenderness fairly diffuse in the ankle, mild tenderness diffusely along the anterior compartment and mid tibia, no crepitus with passive motion across the ankle, and no instability. X-rays taken of the left foot were negative. Dr. Mulshine's assessment was persistent pain and intermittent swelling in the left lower leg five months following a motor vehicle accident with negative x-rays, negative electromyography, negative Doppler, and an MRI showing only some diffuse subcutaneous edema. Dr. Mulshine opined that there "does not seem to be any structural problem nor a neurological injury. I think the next area to work up would be vascular. This could represent a venous insufficiency. An ischemic problem would be less likely. I would recommend either vascular testing or consultation with a vascular surgeon." PX 4. Petitioner testified that at the time he presented to Dr. Mulshine, it was difficult for him to walk, his balance was poor, he was unable to bear weight on his left foot, and his gait was "kind of off".

On May 14, 2015, Petitioner presented to Dr. Michael Comerford at Memorial Physician Services for reevaluation of his left leg pain. He reported ongoing achy, sharp pain in the medial left

shin where the area of contusion occurred, as well as medial/posterior ankle pain and low back pain. Petitioner reported some relief of his left leg pain with utilization of a compression sock. Dr. Comerford assessed him with left leg pain, left ankle pain, and lumbar back pain. Petitioner was prescribed Ketorolac Tromethamine and Prednisone, a cast boot/shoe was ordered, and a physical therapy prescription was renewed relative to Petitioner's left leg and low back pain. PX 4. Petitioner was restricted from climbing stairs or ladders, working around high speed or moving machinery, lifting over ten pounds, and limited to desk job duties on May 26, 2015. PX 4.

Petitioner underwent physical therapy at Memorial beginning on June 2, 2015 relative to his left ankle. The physical therapist noted to "treat ONLY the ankle – therapy is not approved for back at this time."

On July 13, 2015, Petitioner presented to Dr. Vasconcelles with continued pain in his left leg and back following a motor vehicle accident on January 6, 2015 at work. He reported a sharp, shooting pain at times with a consistent dull ache that can radiate into both hips and sometimes down his right lower extremity. "He has had an EMG and MRI that did not show any disk herniation or fracture of his back to explain his pain." Dr. Vasconcelles assessed Petitioner with complex regional pain syndrome, lumbar degenerative disc disease, lumbar radiculopathy, lumbar back pain, smoker, and a cough. Petitioner was ordered to undergo a chest x-ray, physical therapy evaluation and treatment, and he was instructed to utilize Gabapentin. Dr. Vasconcelles removed Petitioner from work through July 14, 2015. On July 16, 2015, Petitioner was removed from work until July 30, 2015. PX 4. On July 30, 2015, Petitioner was restricted from operating mobile equipment and limited to desk tasks that allowed "him to be sitting more than walking" until his "back and leg pain resolves." PX 6.

Petitioner testified that he has experienced low back pain since its onset on the night of January 7, 2015. He stated that his pain interferences with his activities, and he cannot vacuum or sweep the floor. Petitioner is presently undergoing medical treatment for his left foot and ankle, and has also begun a physical therapy program at Memorial Rehabilitation relative to his low back that is paid by his group health insurance through Respondent. Petitioner stated that Respondent has not authorized physical therapy for his low back at any time following his work accident. He has received three physical therapy treatment visits to his low back, though he has not received any bills for same to date, and he stated that physical therapy is somewhat improving the condition of his back. Petitioner testified that he continues to have an altered gait that he explained is worse at times than others and he continues to work in a light duty capacity for Respondent.

Captain Rutledge testified at Arbitration. She is the administrator of Respondent's facility and oversees an eighty-six bed facility for drug addicted men. Captain Rutledge testified that Respondent also operates a store and a fleet of trucks, and she herself manages five remote locations. She acknowledged that she is not in the office at all times. Captain Rutledge testified that she recalled Petitioner's date of accident and she stated that she checked on Petitioner and another of Respondent's drivers who were both present in the emergency room on January 6, 2015. Captain Rutledge testified that she was unable to observe whether Petitioner ambulated with a limb on that date because he was on a gurney in the hallway of the hospital upon her arrival. She was not present when he was attended to by a nurse or physician, and she was not present when Petitioner was examined. Captain Rutledge testified that Petitioner returned to work on January 9, 2015, and that Respondent instructed him to seek additional medical treatment at that time because he was in a significant amount of pain in his left leg and he was limping. She stated that she observed his leg

and it was still swollen at that time. Captain Rutledge was unable to recall whether he complained to her about anything other than his left leg hurting, but she stated that she reviewed the discharge sheet from the hospital of January 9, 2015 that indicated he also complained of back pain. Captain Rutledge stated that Respondent accommodated Petitioner's restrictions, when indicated, and she testified that he performed some lifting within his restrictions with assistance on the docks. She testified that presently, Petitioner is working with restrictions or no lifting as a dispatcher and in that position, Petitioner watches trucks while sitting in a chair and takes phone calls. Since Petitioner has returned to work, Captain Rutledge has noticed that Petitioner walks with an altered gait that she states has varying degrees, as it is sometimes worse and sometimes better. She described his gait as at times very halting, and at other times, the altered gait is unnoticeable. Captain Rutledge testified that Petitioner wears an elastic sock for his left lower extremity condition and she stated that Respondent is aware that Petitioner has repeatedly complained of low back pain.

OPINION AND ORDER

The parties stipulated that on January 6, 2015, Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent. Arb. X 1.

In regard to disputed issue (F), Respondent does not dispute the causal relatedness of Petitioner's left lower extremity condition to his work accident. Respondent disputes the causal connection between Petitioner's low back condition and his work accident.

"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). "An independent intervening cause has been held to be one which breaks the chain of causation between a work-related injury and an ensuing disability or injury...Thus, if a nonemployment-related factor is a contributing cause, with the compensable injury, in an ensuing injury or disability, it does not constitute an 'independent intervening cause' breaking the causal connection where it is not brought about by claimant's intentional or negligent misconduct." *International Harvester Co. v. Industrial Comm'n*, 46 Ill.2d 238, 245-247 (1970).

The Arbitrator concludes that Petitioner's current condition of ill-being in his low back is causally related to his work accident of January 6, 2015. In so finding, the Arbitrator notes that Petitioner was working without restrictions at the time of his work accident and performed job tasks as assistant dock foreman and truck driver in the six months preceding his injury that required lifting, carrying, bending and stooping. Following his work accident, however, Petitioner testified that he suffered an onset of low back pain that began one day following the motor vehicle accident, which has persisted to the present. Although Respondent contends that the record is devoid of any mention of Petitioner's low back complaints between January 9, 2015 and February 9, 2015, the Arbitrator notes that Petitioner complained of low back pain "that has not improved much" upon presentation to Dr. Owolabi on January 29, 2015. PX 3, RX 5. While Petitioner's complaints of low back pain are not present in every treatment record subsequent to January 9, 2015, Petitioner reported a history of back pain following his motor vehicle accident to Memorial Medial Center, Dr. Owolabi, Dr. Comerford, and Dr. Vasconcelles that is consistent with his testimony at Arbitration, and his treating medical records corroborate his continued complaints of back pain.

The Arbitrator finds that Petitioner's medical records demonstrate that the box-lifting incident of February 8, 2015 was not sufficient to interrupt the causal connection between his current condition of ill-being in his low back and his work accident of January 6, 2015. Although Petitioner may have experienced symptomatology as a result of the lifting incident that contributed to his condition, the Arbitrator notes that Petitioner's complaints of low back pain are clearly represented in his treatment records beginning on January 9, 2015. Petitioner's testimony that he experienced sharp pain in his low back following his work accident and then a dull ache as a result of the lifting incident of February 8, 2015 in addition to the sharp pain already present demonstrates that Petitioner's work accident continues to be a factor in his current low back condition. Petitioner's testimony is supported by Dr. Owolabi's treatment record of March 6, 2015 in which, subsequent to the box-lifting incident of February 8, 2015, Petitioner continued to relate his low back pain to his work accident of January 6, 2015, rather than to the box-lifting incident (PX 3), as well as by Dr. Vasconcelles record of July 13, 2015, wherein Petitioner presented with complaints of back pain that had persisted since his motor vehicle accident at work on January 6, 2015. PX 4. The Arbitrator finds that the histories of February 9, 2015 and March 26, 2015 regarding Petitioner's box-lifting incident are undermined by the subsequent histories of March 6, 2015 and July 13, 2015, respectively, in which Petitioner reported low back pain since his work accident of January 6, 2015. PX 3, 4. To rely upon the histories contained in Dr. Owolabi's notes of February 9, 2015 and March 26, 2015 to find that his current low back condition is solely resultant from the box-lifting incident of February 8, 2015, and that his work accident of January 6, 2015 is not a factor in his current low back condition, would necessitate the Arbitrator ignore the history provided to Dr. Owolabi by Petitioner on January 29, 2015, more than a week prior to the box-lifting incident, wherein Petitioner reported "back pain that has not improved much" (PX 3), the two histories of low back pain reported by Petitioner on January 9, 2015 (PX 1), as well as that of March 6, 2015 and July 13, 2015 in which Petitioner reported low back pain since the work accident. PX 3, 4. In light of the aforementioned, the Arbitrator finds insufficient evidence in the record to warrant a conclusion that Petitioner's lifting incident of February 8, 2015 broke the causal connection chain between his work accident of January 6, 2015 and his current condition of ill-being in his low back.

Based upon the foregoing and the record in its entirety, the Arbitrator concludes that Petitioner's current condition of ill-being in his low back is causally related to his work accident of January 6, 2015. The Arbitrator concludes that Petitioner's current condition of ill-being in his left foot and left leg is causally related to his work accident, as stipulated by the parties.

In regard to disputed issue (J) and in conjunction with the Arbitrator's conclusions as to causal connection, the Arbitrator finds Petitioner's care and treatment to be reasonable, necessary, and casually related to his work accident. 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 all 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) and in conjunction with the Arbitrator's conclusions as to causal connection, the Arbitrator finds that Petitioner is not at maximum medical improvement and is in need of further medical care. Moreover, the Arbitrator finds that the need for prospective medical care to his low back, left foot, and left leg is causally related to the work accident of January 6, 2015. Respondent shall pay for all reasonable and necessary prospective medical treatment, including, but not limited to, physical therapy relative to Petitioner's low back condition.

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

BROWN, CAMERON
Employee/Petitioner

Case# **14WC009652**

BENSON'S APPLIANCE
Employer/Respondent

On 10/27/2015, 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 0.15% 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

0766 HENNESSY & ROACH PC
QUINN M BRENNAN
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Cameron Brown
Employee/Petitioner
v.

Case # **14** WC **9652**

Benson's Appliance
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 **Rock Island**, on **September 3, 2015**. 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. [x] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [ ] Other

FINDINGS

On the date of accident, **February 17, 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 $**20,800.00**; the average weekly wage was $**400.00**.

On the date of accident, Petitioner was **32** years of age, ***married*** with **2** dependent children.

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

Respondent shall be given a credit of $**14,483.50** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**14,483.50**.

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 $**286.00**/week for **79 1/7** weeks, commencing **February 27, 2014** through **September 3, 2015**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $**76,608.59,** as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay, pursuant to the medical fee schedule, the reasonable and necessary costs associated with the surgical procedure recommended for the Petitioner by Dr. Kube, 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 19, 2015
Date

OCT 27 2015

FACTS:

On February 14, 2014 the Petitioner sustained undisputed accidental injuries arising out of and in the course of his employment with the Respondent as an appliance delivery driver. The Petitioner testified that his job responsibilities included the loading and unloading of appliances into and out of a truck, and the delivery, repair and installation of appliances consisting of washers and dryers, refrigerators, microwaves, etc. The Petitioner testified that he had worked for Respondent since 2009.

The Petitioner testified that on the morning of February 17, 2014, he and a co-worker were loading a washing machine onto a truck with a dolly, and as the two were loading the machine the Petitioner experienced a "pop" in his lower back. He testified that he continued to attempt to work but was unable to continue. He testified that he reported the injury to his supervisor, Scott Benson, who directed the Petitioner to Proctor First Care.

The Petitioner presented to Proctor First Care that same day and gave a consistent history of injury. The Petitioner complained of low back pain, shortness of breath and tingling in all five of his left toes. The note indicates that there was evidence of exaggerated pain behavior and negative straight leg raise. The Petitioner was diagnosed as having low back pain and he was prescribed Norflex and Naproxen. The Petitioner was also placed on light duty restrictions.

The Petitioner continued to follow up at Proctor First Care and continued to complain of low back pain. On February 19, 2014 the Petitioner was continued on light duty restrictions and prescribed physical therapy. On February 28, 2014, X-rays were taken, revealing "minimal narrowing of the L5-S1 disc space level and L4-L5 disc space level without acute fractures or subluxations."

The Petitioner testified that he continued to work in a light duty capacity through February 26, 2014 and that he was then terminated by the Respondent. Scott Benson, the Respondent's President, testified that the Respondent attempted to accommodate the Petitioner's light duty restrictions and that he terminated the Petitioner on March 5, 2014 for an alleged act of theft.

The Petitioner continued to follow up at Proctor First Care and he continued to participate in physical therapy at Accelerated Rehabilitation. The Petitioner testified that he participated in approximately 30 physical therapy sessions. On April 7, 2014 an MRI was recommended for the Petitioner.

On April 17, 2014 the Petitioner sought treatment with Dr. Richard Kube. The Petitioner provided Dr. Kube with a consistent history of injury and reported that his condition was not getting better. Dr. Kube reviewed the imaging studies, and felt that the lumbar spine series demonstrated a loss of disc height, especially toward the low lumbar spine. Dr. Kube diagnosed the Petitioner with a sacroiliac joint injury as well as a probable aggravated degenerative disc from a work injury. Dr. Kube recommended sacroiliac joint injections to see how much of the Petitioner's disorder was coming from that space, and he indicated that, depending the results, he would determine the next steps for treatment.

The Petitioner underwent an MRI at Proctor Hospital on April 25, 2015. The MRI was interpreted to reveal "degenerative disc disease of the lower two lumbar disc spaces."

On May 5, 2014, the Petitioner underwent right and left sacroiliac joint injections. His diagnosis was bilateral sacroiliac joint pain.

On June 9, 2014, the Petitioner underwent right and left epidural steroid injections at L4-5 and L5-S1. His diagnosis at this injection was a left-sided L5-S1 herniated disc.

On June 26, 2014, Dr. Kube recommended an NCV/EMG and a provocative discogram so that he could determine the specific pain generator. Dr. Kube indicated that he was very suspicious of the L5-S1 disc with the annular tear and that he wanted to determine whether the L4-5 disc was also a component.

On July 17, 2014, the Petitioner underwent an EMG/NCV with Dr. Edward Trudeau. Dr. Trudeau's note indicates that the Petitioner's MRI which was interpreted by Dr. Kube to reveal a disc herniation more paracentral on the left side at L5-S1; lumbarized S1 vertebra; and a degenerative disc at L4-5. Dr. Trudeau reported that the nerve conduction studies in the lower extremities were normal and that the EMG showed evidence of a moderately severe right S1 radiculopathy, which Dr. Trudeau surmised was secondary to disc abnormality at L5-S1. Dr. Trudeau also noted evidence of mild left S1 root irritation, but no evidence of L5 or L4 radiculopathy on either side. Dr. Trudeau indicated that he suspected the Petitioner's difficulties were related to the L5-S1 disc herniation compromising the S1 nerve roots bilaterally and especially on the right side.

On July 28, 2014, the Petitioner underwent a provocative discogram at L3-4, L5-5, and L5-S1.

On August 4, 2014, the Petitioner presented to Dr. Kube for follow up. Dr. Kube felt that Petitioner was positive at L4-5 and L5-S1 and noted that the NCV was consistent with L5-S1. Dr. Kube recommended the Petitioner move forward with decompression and fusion versus living with where he was and considering a functional capacity evaluation. The Petitioner testified that he wishes to proceed with the recommended fusion.

At the request of the Respondent, the Petitioner was examined by Dr. Sergei Neckrysh on November 13, 2014. Dr. Neckrysh diagnosed the Petitioner with "low back pain without radiculopathy" and he opined that there was a "significant mismatch between the clinical history, clinical findings, imaging studies and EMG studies in [Petitioner]." Given the inconsistent history, Dr. Neckrysh concluded that the Petitioner's alleged current condition of ill-being was not causally connected to the work accident. He noted foraminal stenosis on the left much worse than the right, but that the Petitioner's symptoms were on the right with no symptoms on the left. He opined that the Petitioner presented with a history of someone who would have had an acute disc herniation, but that there was no evidence of a herniation on the MRI film. He noted that the MRI was of "borderline" quality, and he recommended that the Petitioner get a study of better quality. Dr. Neckrysh also suggested a CT myelogram to potentially identify a lesion which was not identified on the MRI, and to also consider a nerve root block at L5-S1 to eliminate stenosis at that level as a potential pain generator.

The Petitioner underwent a second MRI at the same location as the first on December 19, 2014. This MRI was compared to the previous, and was interpreted to reveal a 7mm right paracentral

disc herniation at L2-3 impinging on the right L3 nerve root; and a disc bulge and degenerative changes.

Dr. Neckrysh authored an addendum report on March 2, 2015. Dr. Neckrysh noted that the updated MRI was performed at the same facility and that it was again of poor quality, but slightly better resolution. Dr. Neckrysh opined that, when compared to the previous MRI, there were some cuts that revealed a disc bulge at L3-4, not L2-3 as noted in the radiologist report and that at L5-S1 there was a degenerative disc bulge producing bilateral foraminal stenosis much worse on the left than on the right side. Dr. Neckrysh again opined that the Petitioner's current condition of ill-being was not causally connected to the work accident and he indicated that he disagreed with the surgical recommendations. Dr. Neckrysh opined that surgery was "very premature and may not be necessary at all" and had a "minimal" chance of a good outcome. He concluded that regardless of cause of the Petitioner's condition, he would hold off on declaring the Petitioner to be at maximum medical improvement from his injury until he receives selective nerve root blocks at the L3-4, L4-5 and L5-S1 levels on the right side, which will determine the need for any further interventions.

The Petitioner continued to follow up with Dr. Kube on a monthly basis and the last visit that the Petitioner had with Dr. Kube was on July 21, 2015. As of that time, Dr. Kube continued to recommend surgery for the Petitioner and he continued to keep the Petitioner off work pending that surgery.

The June 15, 2015 evidence deposition testimony of Dr. Kube's was admitted into the record as Petitioner's Exhibit 8. Dr. Kube testified as to his examinations and treatment of the Petitioner and he also testified as to disagreements with the opinions of Dr. Neckrysh. Dr. Kube opined that, based upon the Petitioner's history of injury and the lack of any significant lumbar or radicular problems prior to the time of the injury, as well as the diagnostic testing that he reviewed including x-rays and MRI, discogram and EMG and the physical examination that he performed on the Petitioner, the Petitioner, at a minimum, aggravated the condition of his low back. Dr. Kube also indicated that the mechanism of injury described was consistent with the Petitioner's condition as the Petitioner injured his back during a lift. Dr. Kube also testified that the treatment he provided to the Petitioner as well as the work restrictions he placed on the Petitioner were reasonable and necessary and causally related to the Petitioner's February 17, 2014 work injury.

The July 21, 2015 evidence deposition testimony of Dr. Neckrysh was admitted into the record as Respondent's Exhibit 5. Dr. Neckrysh testified as to his examination of the Petitioner and the records he reviewed. Dr. Neckrysh testified that he had difficulty connecting the Petitioner's complaints to the work accident and that he questioned whether the Petitioner actually had an accident. Dr. Neckrysh opined that regardless of his causation opinions, the treatment the Petitioner received up until the date of his examination of the Petitioner was medically appropriate. Dr. Neckrysh further opined that Dr. Kube's surgical recommendation was premature and the Petitioner should undergo selective nerve root blocks prior to considering surgery. Dr. Neckrysh indicated that the Petitioner was not at maximum medical improvement and that he should be continued off work until after his actual condition could be determined.

The Petitioner testified that he had no back problems prior to the accident of February 17, 2014, nor had he had any accidents, injuries, or medical treatment involving his back. The Petitioner testified that he currently continues to experience pain in his lower back and that bending, lifting and

prolonged walking causes an increase in his back pain. The Petitioner testified that the more activity he engages in, the more his pain increases.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Petitioner sustained undisputed accidental injuries arising out of and in the course of his employment with the Respondent on February 14, 2014 when he experienced pain in his back while lifting a washing machine. The Petitioner immediately reported his injury and began a course of medical treatment at Proctor First Care, a facility to which he was directed by the Respondent. The Petitioner was diagnosed as having low back pain and he was prescribed medications and physical therapy and he was placed on light duty restrictions. The Petitioner continued to follow up at Proctor First Care and continued to work in a light duty capacity through February 26, 2014 when his employment was terminated.

Thereafter, the Petitioner sought treatment with Dr. Richard Kube who ultimately diagnosed the Petitioner with an aggravation of his degenerative discs at L4-5 and L5-S1 with an annular tear at L5-S1 and radiculopathy. Dr. Kube has prescribed surgery for the Petitioner and opined that the Petitioner's condition of ill-being and his need for surgery is causally related to the work injury of February 14, 2014.

Dr. Neckrysh, the Respondent's examining physician, did not connect the Petitioner's complaints to the work accident and he questioned whether the Petitioner actually had an accident. The Arbitrator notes, however, that the accident was not disputed and no evidence which contradicted the Petitioner's testimony regarding the accident was offered into the record. The Arbitrator also notes that Dr. Neckrysh opined that regardless of his causation opinions, the treatment the Petitioner received up until the date of his examination of the Petitioner was medically appropriate, that the Petitioner was not at maximum medical improvement, and that the Petitioner should be continued off work until his actual condition could be determined. Dr. Neckrysh also opined that Dr. Kube's surgical recommendation was premature and the Petitioner should undergo selective nerve root blocks prior to considering surgery.

The Petitioner testified that he had no back pain or problems prior to his work injury, nor had he had any accidents, injuries, or medical treatment, involving his back. The Arbitrator finds that the Petitioner's testimony in that regard was credible and not contradicted or rebutted. The Arbitrator also notes that the Petitioner was employed by the Respondent as an appliance delivery man for over three years prior to his injury and was apparently able to perform the duties of that job without difficulty. The Petitioner testified that he currently continues to experience pain in his lower back and that bending, lifting and prolonged walking causes an increase in his back pain. The Petitioner testified that the more activity he engages in, the more his pain increases.

While the Arbitrator notes the opinions of Dr. Neckrysh, the Arbitrator finds the opinions of Dr. Kube to be sufficiently credible, reliable, and persuasive so as to satisfy the Petitioner's burden of proof in the instant matter. In so finding, the Arbitrator notes that Dr. Neckrysh agreed that the treatment the Petitioner had received was medically appropriate, and he opined that the Petitioner was not at maximum medical improvement and should be continued off work. The Arbitrator also notes the credible testimony of the Petitioner relative to the accident, the lack of evidence of any prior back problems or treatment, and the Petitioner's apparent ability to perform the duties of his job without difficulty for at least three years prior to the injury.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's current condition of ill-being is causally related to the undisputed work injury of February 17, 2014.

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:

The Arbitrator's findings and conclusions relating to the issue of causation are adopted and incorporated herein.

The Petitioner introduced the following medical bills into evidence as Petitioner's Exhibit 7. The Arbitrator has found that the Petitioner's current condition of ill-being is causally related to the undisputed work injury of February 17, 2014 and Dr.Kube, the Petitioner's treating physiacian, as well as Dr. Neckrysh, the Respondent's examining physician, have opined that the medical treatment the Petitioner received was medically appropriate, the Arbitrator finds the medical treatment the Petitioner received to bereasonable, necessary and causally related to the work injury of February 17, 2014. The Arbitrator, therefore, awards the following medical bills, subject to the limitations of the Medical Fee Schedule provided for in the Act:

PROVIDER	AMOUNT
Accelerated Rehabilitation	$12,570.00
Memorial Medical Center	$1,572.00
Prairie Spine and Pain Institute	$20,825.10
Prairie SurgiCare	$36,745.49
Proctor First Care	$1,198.00
Dr. Edward Trudeau	$3,698.00
TOTAL	**$76,608.59**

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 Arbitrator's findings and conclusions relating to the issue of causation are adopted and incorporated herein.

The Arbitrator has found that the Petitioner's current condition of ill-being is causally related to the undisputed work injury of February 17, 2014 and that the opinions of Dr. Kube are sufficiently credible, reliable, and persuasive so as to satisfy the Petitioner's burden of proof in the instant matter. Dr. Kube, the Petitioner's treating physician, testified that the Petitioner is in need of a L4-L5 and L5-S1 decompression and fusion. While Dr. Neckrysh, the Respondent's examining physician, opined that Dr. Kube's surgical recommendation was premature and that the Petitioner should undergo selective nerve root blocks prior to considering surgery, he agreed that the Petitioner was not at maximum medical improvement.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the surgical procedure recommended for the Petitioner by Dr. Kube is reasonable, necessary and causally related medical treatment which the Respondent is liable to provide to the Petitioner pursuant to Section 8(a) of the Act.

In Support of the Arbitrator's Decision relating to (L.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The Arbitrator's findings and conclusions relating to the issue of causation are adopted and incorporated herein.

The Petitioner was provided with work restrictions when he initially sought treatment at Proctor First Care on February 17, 2014. The Petitioner testified that he continued to work under those restrictions until his employment was terminated by the Respondent on February 26, 2014. The Petitioner testified that the last day that he worked at the Respondent was February 26, 2014 and that he has not returned to any type of work since that time. The medical records as well as the testimony of Dr. Kube and Dr. Neckrysh demonstrate that the Petitioner has been under light duty restrictions or been prescribed completely off work from the time of his initial medical treatment at Proctor First Care on February 17, 2014 through the date of hearing.

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 February 27, 2014 through September 3, 2015, a period of 79 1/7 weeks.

The Arbitrator notes that the Petitioner testified and Arbitrator's Exhibit 1 demonstrates that the Respondent has paid $14,483.50 in Temporary Total Disability benefits for which it is entitled to a credit.

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 Arbitrator's findings and conclusions relating to the issue of causation are adopted and incorporated herein.

The Arbitrator finds that the Respondent reasonably relied on the findings and opinions of Dr. Neckrysh, its examining physician, the Respondent's reliance on those opinions was not objectively unreasonable in the instant matter. The Petitioner's request for penalties and fees is, therefore, denied.

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

EDDIE ANDREWS,

Petitioner,

vs. NO: 13 WC 24044

15IWCC0775

AGENCY FOR COMMUNITY TRANSIT,

Respondent.

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, temporary total disability (TTD), and permanent partial disability (PPD) and being advised of the facts and applicable law, reverses the Decision of the Arbitrator and finds that Eddie Andrews failed to establish that he sustained a repetitive trauma injury arising out of and in the course of his employment on or about June 14, 2013.

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.

This matter was consolidated at trial with case 07 WC 51356. In that case, the Commission adopted the arbitrator's findings of facts and modified the Decision with respect to TTD only. Those findings, as they relate to Petitioner's condition and work history prior to his employment with Agency for Community Transit (ACT) are incorporated by reference herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following findings:

1. According to the Application for Adjustment of Claim filed July 25, 2013, Petitioner was a 47 year old, married male with 2 dependants under the age of 18. The Petitioner alleged injury/aggravation to the bilateral hands, wrists, and elbows while working for ACT. The manifestation date was listed as June 14, 2013.

2. Petitioner underwent an EMG/NCV on August 3, 2009 that revealed bilateral median and ulnar sensory neuropathies at the wrist. PX.4. Dr. Hillard Scott diagnosed Petitioner with bilateral carpal tunnel on August 11, 2009. Petitioner testified that he was never completely free of hand pain after leaving his employment with Cerro Copper. T.67.

3. Petitioner was hired as a Transit Bus Driver for ACT on September 8, 2009. T.34. He worked 30 hours a week for the first two and a half years and then worked 25 hours per week thereafter. Mr. Andrews testified that the bus steering wheel was larger than a car steering wheel and sat flat. T.15. He would drive the bus with his arms and hands extended straight out and with his elbows at the middle of his chest. T.64.

4. Mr. Andrews began to feel a shooting pain go up his arms that progressively got worse after he started working for ACT. T.29. He also started to experience elbow pain while working for ACT. He would have to shake his hands to gain some relief. *Id.*

5. Ms. Rhonda Webel is the HR manager for ACT. She testified that ACT received the Application for Adjustment of Claim on July 18, 2013. Ms. Webel testified that she was not aware of the Petitioner having any issues. T.92.

6. Petitioner was seen by Dr. Nathan Mall on June 3, 2013 on referral from his attorney for pain in the bilateral wrists and hands that had been present for some time. Mr. Andrews reported that he did manual work for a long period of time that required twisting of objects and loading the wrists with repetitive movements for 10 to 12 hours. Petitioner was experiencing an increased difficulty with opening objects and he had a severe decrease in grip strength as well as problems with his hands going numb while driving. Dr. Mall noted that the nerve conduction study from several years prior revealed bilateral carpal tunnel. The wrist splints were no longer helping. Examination revealed a positive bilateral flexion compression test at the wrist. He had mild tenderness to palpation along the wrists and a mild positive Tinel's of the wrist bilaterally. He had a mildly positive flexion compression test at the elbow. The assessment was bilateral carpal tunnel and possible bilateral cubital tunnel. PX.7. Dr. Mall recommended surgery.

7. Petitioner underwent and EMG/NCV with Dr. Daniel Phillips on June 14, 2013. The test revealed moderate-to-severe bilateral sensory motor median neuropathies across the carpal tunnel. There were moderate ulnar neuropathies across the right elbow with partial sensory axonal loss. There were mild demyelinative ulnar neuropathies across the left elbow. PX.7.

8. Mr. Andrews presented for follow-up with Dr. Mall on June 14, 2013. Dr. Mall noted the EMG revealed significant bilateral carpal and cubital tunnel syndrome. Petitioner's blood pressure was 160/110. Dr. Mall opined that Petitioner's current symptoms and his development of carpal and cubital tunnel was causally related to his work injury that occurred in 2008 and 2009 while working for Cerro Copper. PX.7.

9. Petitioner completed an event report with ACT on June 30, 2013. Per the report, Petitioner would experience pain while driving. His pain had been present for several months. His condition would ache when he turned or grabbed the steering wheel. There was no specific date of injury. RX.3.

10. ACT obtained a records review from Dr. R. Evan Crandall on December 3, 2013. He diagnosed Mr. Andrews with bilateral carpal tunnel and bilateral ulnar neuropathy at the elbows. Dr. Crandall stated that Petitioner's job duties at Cerro Copper were hand intensive and he had sufficient years of service to have adequate exposure to repetitive work. He stated that the evidence supported that his condition began around 2007, which was prior to becoming a bus driver. Petitioner's bus driving position was not hand intensive and would not be able to cause the condition of carpal tunnel or ulnar neuropathy. Dr. Crandall opined that Petitioner's diagnosis was not related to his job duties at ACT, as his condition pre-existed his employment with ACT. His condition was related to his job duties while employed at Cerro Copper. RX.2.

11. Petitioner was seen by Dr. Mall on January 3, 2014. Dr. Mall again recommended carpal and cubital tunnel release. Petitioner's blood pressure was 147/105. Petitioner provided Dr. Mall with Dr. Crandall's report. Dr. Mall reviewed the report and disagreed with Dr. Crandall's opinions. Dr. Mall was of the opinion that driving a bus could place a person at an increased risk for carpal tunnel. PX.7.

12. Dr. Mall performed right carpal tunnel release and right cubital tunnel decompression and transposition on May 13, 2014. He performed left carpal tunnel release and left cubital tunnel decompression and transposition on July 3, 2014. PX.10.

13. Dr. Mall was subsequently deposed on January 14, 2014. At the time of his deposition, Dr. Mall was not board certified, only board eligible. PX.12. pg.4. He diagnosed Mr. Andrews with bilateral carpal tunnel syndrome and signs and symptoms of cubital tunnel syndrome. PX.12. pg.9. Dr. Mall noted that most people with this diagnosis have problems while driving. PX.12. pg.13. Most people drive with their wrist flexed at a certain degree; therefore, he disagreed with Dr. Crandall and stated that driving a bus can cause carpal and cubital tunnel. Dr. Mall opined that Petitioner's job duties as a bus driver for ACT clearly aggravated his carpal and cubital tunnel syndrome. Dr. Mall testified that the Department of Labor published its top 20 occupations for the development of carpal tunnel syndrome, and a bus driver was listed as 11 out of 20. PX.12. pg.26. Dr. Mall opined that carpal tunnel can be aggravated by driving.

14. Dr. Mall further opined that the Petitioner's carpal tunnel syndrome was related to Petitioner's employment with Cerro Copper. His opinion was based on the job description provided to him and his review of the medical records. Dr. Mall thought Mr. Andrews had cubital tunnel while at Cerro Copper, but it was not well documented. PX.12. pg.22.

15. Dr. Crandall was deposed on February 5, 2014. He is a board certified plastic surgeon. Dr. Crandall performed a records review on behalf of ACT and authored a report on December 3, 2013. He diagnosed Mr. Andrews with bilateral carpal tunnel syndrome and bilateral ulnar neuropathy of the elbow. RX.1. pg.7. He opined that Petitioner's job duties with ACT did not aggravate or cause his condition. *Id.* His opinion was based on the fact that the medical records showed that Petitioner's condition was present prior to working for ACT. Dr. Crandall's opinion was further premised upon his belief that driving a bus would not cause or aggravate carpal tunnel or ulnar neuropathy. His condition was related to his employment with Cerro Copper. *Id.* He recommended bilateral ulnar nerve transposition and bilateral carpal tunnel release. The need for surgery, however, was due to his work at Cerro Copper as his job duties there were hand intensive. He further opined that driving a bus does not expose the driver to vibration sufficient enough to cause carpal tunnel. RX.1. pg.37.

The Commission is not bound by the Arbitrator's findings, and may properly determine the credibility of witnesses, weigh their testimony and assess the weight to be given to the evidence. *R.A. Cullinan & Sons v. Industrial Comm'n*, 216 Ill. App. 3d 1048, 1054, 575 N.E.2d 1240, 159 Ill. Dec. 180 (1991). It is the province of the Commission to weigh the evidence and draw reasonable inferences therefrom. *Niles Police Department v. Industrial Comm'n*, 83 Ill. 2d 528, 533-34, 416 N.E.2d 243, 245, 48 Ill. Dec. 212 (1981). Interpretation of medical testimony is particularly within the province of the Commission. *A. O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536-37, 283 N.E.2d 875, 877 (1972).

An employee who alleges injury from repetitive trauma must still meet the same standard of proof as other claimants alleging accidental injury. *Three "D" Discount Store v. Industrial Comm'n*, 198 Ill. App. 3d 43, 47, 556 N.E.2d 261, 264, 144 Ill. Dec. 794 (1989). The employee must show that the injury is work related and not the result of a normal degenerative aging process. *Peoria County Belwood Nursing Home v. Industrial Com.*, 115 Ill. 2d 524, 505 N.E.2d 1026, 1987 Ill. LEXIS 161, 106 Ill. Dec. 235 (Ill. 1987). An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Peoria County Belwood Nursing Home v. Industrial Comm'n* (1987), 115 Ill. 2d 524, 529-30, 505 N.E.2d 1026, 1028, 106 Ill. Dec. 235.

The Commission finds that Mr. Andrews failed to prove that his job duties with ACT were repetitive in nature, or required any forceful activity. The Petitioner worked as a part-time

bus driver. The Petitioner offered scant details of his job duties other than the steering wheel laid flat and was twice the size of a normal steering wheel. His arms and hands were extended straight out and his elbows at the middle of his chest. The Commission notes that the Petitioner offered no testimony as to the condition of the bus, whether the bus had power steering, the number of stops he had to make, or the condition of the road over which he drove. Mr. Andrews offered no testimony as to the frequency and duration of any of his job duties.

Further, the Commission finds the Arbitrator's finding that "the way Petitioner is seated while driving basically requires Petitioner to lean over the wheel when gripping it, putting pressure on his wrists, elbows, and upper extremities in order for him to turn the wheel" is not supported by the evidence. While the Petitioner may have demonstrated to the Arbitrator how he drove the bus, the record is devoid of any testimony or evidence that pressure was put on his wrist, elbows or upper extremity in order for him to turn the wheel.

The Commission finds no evidence to support that Mr. Andrews' condition was the result of his bus driving duties. The evidence demonstrates that the Petitioner was diagnosed with bilateral carpal tunnel prior to his employment with ACT. The Commission adopts the opinion of Dr. Crandall in support of its finding. Dr. Crandall opined that bus driving was not hand intensive and would not be able to cause the condition of carpal tunnel or ulnar neuropathy. The Commission finds Dr. Crandall's opinion more persuasive than Dr. Mall's opinion. The Commission notes that Dr. Mall, on June 14, 2013, originally opined that Petitioner's condition was related to his employment with Cerro Copper. It was not until January 3, 2014, that Dr. Mall opined that driving a bus could place a person at an increased risk for carpal tunnel. The Commission is not persuaded by the second opinion. Dr. Mall changed his opinion only after he reviewed Dr. Crandall's opinion, which was critical of his recommendations.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 5, 2015, is hereby reversed for the reasons stated above.

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: OCT 2 2 2015
MJB/tdm
O: 8-24-15
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ANDREWS, EDDIE
Employee/Petitioner

Case# **13WC024044**

07WC051356

AGENCY FOR COMMUNITY TRANSIT
Employer/Respondent

15IWCC0775

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:

1239 KOLKER LAW OFFICES
DANIEL BROOMBAUGH
9423 W MAIN ST
BELLEVILLE, IL 62223

0180 EVANS & DIXON LLC
MARILYN C PHILLIPS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

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

Eddie Andrews
Employee/Petitioner

v.

Agency for Community Transit
Employer/Respondent

Case # 13 WC 24044

Consolidated cases: 07 WC 51356

15IWCC0775

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 **Lee**, Arbitrator of the Commission, in the city of **Belleville, Illinois**, on **September 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. [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 [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 **Accident, causation, nature & Extent, Medical, Temporary Total Disability**

FINDINGS

On **6/14/13**, 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*** 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 $**19,943.61**; the average weekly wage was $**383.53**.

On the date of accident, Petitioner was **47** 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 $**0.00** 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 the reasonable and necessary medical services listed in Petitioner's Exhibit 15 of Dr. Mall/Regeneration Orthopedics, NEI of St. Louis, Mercy Imaging, Kansas Brace System, Timberlake Surgery Center, Premier Anesthesia, KS Medical, Injured Workers Pharmacy, and ProRehab, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $319.00/week for 5 & 3/7 weeks, commencing 5/13/14 through 6/2/14, and 7/3/14 through 7/21/14, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $319.00/week for 88.875 weeks, because the injuries sustained caused the 13% loss of the Right Arm, 12% loss of the Left Arm, 6.5% loss of the Right Hand (15% minus credit of 8.5% from 07WC51356), and 6% loss of the Left Hand (12.5% minus credit of 6.5% from 07WC51356), 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.

Edward Cee
Signature of Arbitrator

12/12/14
Date

JAN 5 - 2015

State of Illinois)
)SS
County of St. Clair)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

EDDIE ANDREWS
Employee/Petitioner

v.

Case# 13-WC-24044
07-WC-51356

AGENCY FOR COMMUNITY TRANSIT
Employer/Respondent

15IWCC0775

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner testified that since 2009 he has worked for Agency for Community Transit driving a bus, and he testified that the steering wheel for these buses actually comes up from the floor and is flat in front of the driver. The steering wheel is at least twice the size of a regular car steering wheel. Petitioner initially worked approximately 30 hours per week during the first year and a half to two years at ACT, but after that has worked approximately 25 hours per week.

Prior to working for ACT, Petitioner worked from Cerro Copper from 1991 through 2007. He typically worked 50 to 70 hours a week doing various jobs that involved the use of many hand tools including hacksaws, jackhammers, hammers, grinders, nail guns, cleaning tools, and reamers which involved constantly working your wrist. This involved a lot of twisting, turning, tugging, and pulling.

What Petitioner did mainly depended on what job he was assigned to. Petitioner was mainly a laborer, but he had a lot of different jobs. In addition to using hand tools, he also capped and packed copper to put on skids, and worked on machines that required a lot of hand motion. Petitioner was also required to put copper in a vice, oil them, and then plug them to put into a machine to make them a different size. Petitioner also worked on a redraw job that entailed lifting railroad ties, sliding them across a floor, cutting wood with saws, and using a nail gun to set up a trailer to copper could be transported.

The last job Petitioner did before he stopped working for Cerro Copper as the ANM machine. This required a lot of twisting with the wrist, a lot of turning, a lot of pulling and plugging, a lot of hammering, and a lot of lifting heavy weights. This is the job he did in the last two to three years working for Cerro Copper. During the last year he was employed at Cerro, he was laid off sporadically, and was ultimately laid off permanently in August of 2007. Petitioner noticed that while working for Cerro Copper, his hands and wrists would ache. He first noticed this aching in the last couple of years of employment with Cerro, although he did not know what it was.

After Petitioner was laid off, he want to school for heating and cooling. This was a 14 month course, four days a week, four hours a day. This schooling consisted mainly of writing, a lot of videos, and in-class work. It also involved approximately two hours of hands-on work. This involved watching the instructor do a certain task, watch the other class members do the task, and then Petitioner would do the task. Petitioner testified that

only 15-20 minutes of his school day involved him personally doing hands-on work. He testified that during this time he was in school his upper extremities did not hurt as much.

After he was laid off from Cerro Copper, Petitioner went to his family doctor, Dr. Eckert to get a check-up because his insurance was expiring, and that is when he had a test for carpal tunnel using a Neurometrix. This was done in August of 2007. (PX 1) The test results were abnormal, and the findings were of unclear significance.

Petitioner was later referred to Dr. Glogovac by his family doctor, and Petitioner was also sent to Midwest Occupational Medicine by Cerro Copper. (PX 2, PX 3) Dr. Glogovac stated that Petitioner had what appeared to be an aberrant form of carpal tunnel, and Dr. Glogovac recommended that Petitioner wear night splints. (PX 2) After seeing Dr. Glogovac, Petitioner was sent to Midwest Occupational Medicine. (PX 3) The doctor at Midwest Occupational saw Petitioner on a couple of occasions, and the doctor noted that it was still unclear exactly what condition Petitioner was suffering from. It was also noted that Petitioner was not even sure what was causing his hand and wrist problems or whether it was related to his work at Cerro. (PX 3)

Prior to being seen by Dr. Glogovac and Midwest Occupational, Petitioner was sent to Dr. VanRyn. Dr. VanRyn issued a report dated January 7, 2008. In that report, Dr. VanRyn outlined Petitioner's job duties, specifically the ANM machine Petitioner referred to at trial. (PX 15) Dr. VanRyn noted that Petitioner's symptoms were the worst in the last couple years of working at Cerro Copper, which Petitioner also testified to at trial. Further, Dr. VanRyn indicated in his note that Petitioner said his pain got better after he stopped working at Cerro. (PX 15) Again, Petitioner testified in accordance with this a trial. Ultimately, Dr. VanRyn diagnosed Petitioner with a scapholunate instability, and opined that Petitioner's condition was related to his work at Cerro Copper. (PX 15)

Petitioner was also sent to Dr. Rotman for an IME requested by Respondent, Cerro Copper. Dr. Rotman opined that Petitioner did not have scapholunate instability, he did not have carpal tunnel, and Dr. Rotman stated Petitioner did not need any further medical treatment. Dr. Rotman also testified through deposition. Of note, Dr. Rotman indicated he never saw the nerve conduction that was done at Christian Hospital.

Just before Petitioner started working for the Agency for Community Transit, Petitioner presented to his new family doctor, Dr. Hillard Scott, with continued complaints of problems with his wrists. (PX 4) Dr. Hillard Scott referred Petitioner for a nerve conduction study, which was done at Christian Hospital on August 3, 2009. (PX 5) This test showed bilateral median and ulnar neuropathies at the wrist. Petitioner started working for ACT shortly after this test was performed. Petitioner testified that his condition became worse after he started driving a bus. His pain returned and he also began having pain going up his arms. Over time it got worse and worse.

Petitioner testified that he did not have any problems with his elbows until he started working for ACT, and that after he started working for ACT he would have to shake out his hands to try and get some relief while he was driving. This was something he never had to do while working at Cerro Copper. After Petitioner had been working for ACT for some time, he presented to Dr. Beatty. Dr. Beatty opined that Petitioner had carpal tunnel syndrome, and recommended a repeat nerve conduction study. He testified through a deposition that the cause of Petitioner's carpal tunnel was Petitioner's work at Cerro Copper. He also testified that he was not aware of any other risk factors the Petitioner had that would cause carpal tunnel.

On June 3, 2013, Petitioner presented to Dr. Mall with continued complaints of problems with his hands and wrists. Dr. Mall noted the Petitioner's history of work at Cerro Copper, and also noted that Petitioner was having problems with his hands going numb while driving. Dr. Mall diagnosed Petitioner with carpal tunnel syndrome, and possible cubital tunnel syndrome, and Dr. Mall recommended a new nerve conduction study.

The nerve conduction study was done on June 14, 2013, and it showed moderate to severe bilateral sensory motor nerve neuropathies across the carpal tunnels. It also showed moderate ulnar neuropathy across the right elbow and mild ulnar neuropathy across the left elbow. Following his review of the nerve conduction study, Dr. Mall diagnosed Petitioner with bilateral carpal and cubital tunnel, and Dr. Mall recommended surgery. Dr. Mall later testified through deposition that the work Petitioner did at Cerro Copper was a factor in Petitioner's current condition, and Dr. Mall also testified that the Petitioner's work at ACT at least aggravated Petitioner's condition, which led to the need for the surgery being recommended by Dr. Mall.

Respondent, ACT, obtained a records review report from Dr. Crandall dated December 3, 2013, and Dr. Crandall opined that Petitioner did have carpal and cubital tunnel, however, Dr. Crandall stated the conditions and need for surgery were related to Petitioner's work with Cerro Copper, and not related to Petitioner's work with ACT. Dr. Crandall stated that driving a bus was not hand intensive.

Petitioner underwent surgery on his right upper extremity on May 13, 2014, and his left upper extremity on July 3, 2014. Following the first surgery, Dr. Mall referred Petitioner to ProRehab for right upper extremity therapy. The Petitioner testified that he was off work a couple of weeks after each surgery, and that after the surgeries he feels much better. He testified that he doesn't have to shake out his hands while driving anymore.

On cross-examination, Petitioner agreed that he was periodically laid off in 2007 before being laid off permanently. Petitioner reiterated that the pain in his hands started in the last two or three years working for Cerro Copper, and when he first went to see the doctor he was not having any pain in his elbows. Petitioner also stated that when he saw Dr. Hillard Scott in 2009, he had not worked for Cerro for over two years.

Regarding the trade school Petitioner went to, he stated it was for a period of 14 months, and he did use hand tools. Petitioner further testified that no doctor before Dr. Mall recommended surgery. After Petitioner started working for ACT is when his hands got worse again, and he started having problems in his elbows. The shaking of the hands out while driving a bus was different than before, too.

On redirect, Petitioner stated that other than the few periods in 2006 and 2007, he was never laid off from Cerro. Petitioner further testified that the last couple of years at Cerro where his pain got worse was when he was working on the ANM machine. He also clarified that the only time he used hand tools in trade school was during the lab part, which was a very small part of his day.

On further cross-examination, Petitioner again stated he did not have any pain in his elbows while working at Cerro. Petitioner still works for ACT, and the amount of hours he works varies depending on bids. Petitioner could not recall the first conversation he had with Dr. Mall, and whether Petitioner thought the bus driving was causing problems in his elbows.

Petitioner testified that outside his work he watches TV, goes out to dinner, and doesn't do any sports or bowling. Petitioner also has a resale shop where he occasionally rings people out, but he has his sons do the heavy work. Most of the time Petitioner is driving a bus, so the shop is run by his sons, and he sometimes mows the lawn and shovels snow.

On redirect, Petitioner again testified that his elbow problems started when he was working for ACT. He also testified that his hands didn't hurt as much after he stopped working for Cerro and before he started working for ACT. Petitioner stated that the resale shop is mostly run by his wife and kids. Petitioner again confirmed that surgery was not recommended prior to him seeing Dr. Mall.

Respondent, Cerro Copper, called Joseph Grana, the manufacturing support manager, as a witness at trial. He testified that he first received the Application for Adjustment of Claim in this in early to mid November.

Respondent, ACT called Rhonda Webel as a witness at trial. She is the Human Resources Manager for ACT. She confirmed she received Petitioner's Application for Adjustment of Claim on July 18th.

CONCLUSIONS OF LAW

1. The Arbitrator finds Petitioner suffered repetitive trauma injuries to his bilateral hands and arms arising out of and in the course of his employment with Agency for Community Transit, with a manifestation date of June 14, 2013. Petitioner testified regarding his job duties while working for Agency Community Transit. Petitioner has worked for ACT since 2009, and his job duties have always consisted of driving a bus. When he first started, he was working approximately 30 hours a week, and he did this for approximately one and a half to two years. Since that time, he was worked approximately 25 hours per week.

Petitioner testified that the steering wheel for the bus is twice as large as a regular car steering wheel, and it comes up from the floor of the bus. The way the Petitioner is seated while driving basically requires Petitioner to lean over the wheel when gripping it, putting pressure on his wrists, elbows, and upper extremities in order to turn the wheel. The Petitioner stated that after he stopped working for Cerro Copper, his condition got better, but after he started working for ACT, his condition again got worse, and he also started having problems into his elbows, which he did not have before. He also had to shake out his hands while driving the bus, which he did not have to do before.

Based on the medical records in evidence, and the Petitioner's testimony, the Petitioner's condition got progressively worse while working for ACT, which led to the need for surgery. The Arbitrator therefore finds the opinions of Dr. Mall more credible than those of Dr. Crandall, and the opinions of Dr. Mall, along with the Petitioner's testimony show that at the very least Petitioner's condition was aggravated by the work Petitioner does while working for ACT.

2. Given a manifestation date June 14, 2013, the Arbitrator finds notice was proper in this case. Petitioner's Application for Adjustment of Claim was mailed to Respondent on July 16, 2013, and filed with the Commission on July 25, 2013. Further, Respondent's witness, Rhonda Webel, testified that she received the Application for Adjustment of Claim on July 18, 2013. The day the Application was sent to Respondent, the day it was filed with the Commission, and the day it was received by the Respondent are all within 45 days of the injury pursuant to Section 6(c) of the Act.

3. For the reasons enumerated above, the Arbitrator finds a causal connection between Petitioner's accident of June 14, 2013, and his current condition of ill-being.

4. For the reasons enumerated above, the Arbitrator finds Respondent liable for the medical treatment and accompanying medical bills contained in Petitioner's Exhibit 15 of Dr. Mall/Regeneration Orthopedics, NEI of St. Louis, Mercy Imaging, Kansas Brace System, Timberlake Surgery Center, Premier Anesthesia, KS Medical, Injured Workers Pharmacy, and ProRehab. This treatment and the corresponding bills were both reasonable and necessary. Respondent is not liable for any other medical bills contained in Petitioner's Exhibit 15.

5. Respondent is liable for temporary total disability benefits of $319.00 a week from May 13, 2014 through June 2, 2014, and July 3, 2014 through July 21, 2014, representing 5 and 3/7ths weeks, as provided in Section 8(b) of the Act.

6. The Arbitrator finds that Petitioner suffered 13% loss of the Right Arm and 12% loss of the Left Arm. Further, after taking into account Respondent's credit of 8.5% of right hand and 6.5 % of the left hand for claim

07WC51356, the Arbitrator finds Petitioner suffered 6.5% (15% minus 8.5% credit) loss of the Right Hand and 6% (12.5% minus 6% credit) loss of the Left Hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MORECRAFT, RUSTON Case# **13WC035271**

Employee/Petitioner

FIRST BAPTIST CHURCH OF OBLONG

Employer/Respondent

On 10/15/2015, 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 0.08% 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:

5236 CULLEY FEIST KUPPART & TAYLOR
KREIG B TAYLOR
3 S MAIN ST SUITE 2
HARRISBURG, IL 62946

2593 GANAN & SHAPIRO PC
SARAH E ANTRIM
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

- [ ] 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

Ruston Morecraft
Employee/Petitioner

v.

First Baptist Church of Oblong
Employer/Respondent

Case # **13 WC 35271**

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 **Urbana**, on **August 13, 2015**. 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. [ ] 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 **4/14/2013**, 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 $**44,218.75**; the average weekly wage was $**850.36**.

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 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 for any amounts paid (as reflected in PX 11) by its group medical plan for which credit is allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner the sum of $**510.22**/week for a further period of **37.625 weeks**, as provided in Section **8(e)** of the Act, because the injuries sustained caused **17.5% loss of use of the right leg.**

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 11 in the amount of **$28.355.23**, as provided in Sections 8(a) and 8.2 of the Act, subject to the medical 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.

Respondent shall pay Petitioner compensation that has accrued between April 14, 2013 and August 13, 2015 and shall pay the remainder of the award, if any, in weekly installments.

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 11, 2015
Date

OCT 15 2015

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner filed an Application for Adjustment of Claim which alleged that he sustained an injury to his right leg arising out of and in the course of his employment for Respondent on April 14, 2013. (AX 2) The issues in dispute are accident, temporary total disability benefits, medical bills and nature and extent.

The Arbitrator finds:

In April of 2013 Petitioner signed an Employer's First Report of Injury. According to the report Petitioner turned from "going" and turned a light off." He claimed a right knee injury. (RX 1)

On April 14, 2013, Petitioner presented to the emergency room at Union Hospital in Terre Haute, Indiana. (PX 1) Petitioner provided an accident history of sitting at a desk for several hours and noticing stiffness in his right knee. Petitioner gave a history of having right knee pain for the previous two weeks and that while he was at church that day he "put pressure on [his] right knee and felt immediate pain." Petitioner reported an increase in his pain with pressure or twisting. In another section of the medical record Petitioner gave a history of having the sudden onset of pain and swelling with redness and stiffness to his knee which started when he was "walking down the hall and when he turned he suddenly felt a severe pain in his right knee and was unable to ambulate or bear weight on his right leg. Petitioner denied any prior problems or history regarding his right knee. Petitioner underwent a CT scan of his right knee which showed degenerative changes, joint effusion, a possible spur, and a non-displaced small fracture. Petitioner reported he was no longer able to ambulate or bear weight on the right lower extremity. (PX 1) Petitioner was prescribed with crutches, a knee immobilizer and pain medications and was referred to an orthopedic specialist. (PX 1)

On April 17, 2013 Petitioner was examined by PA-C Harshil Patel reporting four days of knee pain that he attributed to "turning to turn off a light at his church." Petitioner reported swelling and the inability to bear weight without pain. Petitioner underwent aspiration of the knee with 34 ml. of bloody thin fluid being removed. On April 17, 2013, Petitioner underwent an x-ray of his right knee which showed patella femoral spurring with a probable joint effusion. (PX 2)

An MRI was ordered and Petitioner was to see Dr. McDonald the next day. (PX 2)

On April 19, 2013, Petitioner underwent an MRI of his right knee which showed a complex tear of the anterior and posterior horns of the medial meniscus with a small medial tibia plateau bone contusion seen anteriorly. (PX 2)

Petitioner returned to see Dr. McDonald the next day and was seen by PA-C McCarty. Petitioner again reported severe knee pain after turning to turn off a light at his church. He reported improvement in the swelling after undergoing the aspiration the day before. Petitioner was examined by Dr. McDonald, told to wean himself down to one crutch, use pain medications and heat/ice. An MRI was ordered. (PX 2)

PA-C McCarty again examined Petitioner on May 6, 2013. He was encouraged to wean off the crutch. An injection and arthroscopic knee surgery were possible treatment modalities to be considered. (PX 2)

Petitioner continued to treat with Dr. McDonald who recommended an injection in to the right knee that was performed on June 3, 2013. After continuing to experience pain in the knee after the injection, Dr. McDonald recommended right arthroscopic knee surgery. Surgery was scheduled for August 13, 2013. (PX 2)

On July 22, 2013 Petitioner began treating with Dr. William McDonald at Crawford Memorial Hospital. Petitioner was actually examined by PA-C McCarty. Petitioner described medial, sharp knee pain worse with any activity. (PX 2) Petitioner was diagnosed with mild to moderate osteoarthritis, a right medial meniscus tear, and a clinically healed right tibial eminence fracture. (PX 2) Right knee surgery was recommended. (PX 2)

On 7/29/13, Petitioner met with Dr. Sharma for his pre-operative evaluation. On that date it was noted by Dr. Sharma that prior to the injury, Petitioner reported being able to walk up a flight of stairs, walk more than a mile and ride a bike without difficulty. (PX 4; PX 5)

On August 12, 2013 Petitioner gave a recorded statement. Petitioner was not taking any medication at the time of his statement being given. Petitioner told Ms. Riedman that he was both pastor and part-time custodian for Respondent. Petitioner explained that he was turning lights on and off prior to Sunday evening service as was his normal routine. He explained that he usually gets to the church early to check lights and air conditioning and open doors. Petitioner further explained that as he went to turn a light switch off he reached and then pivoted to go on his way in the other direction. Petitioner described reaching a ways as he probably should have taken an extra step. Petitioner denied carrying anything in his hands at the time. (RX 2)

Petitioner was seen at the Orthopaedic Institute of Southern Illinois on February 6, 2014. Petitioner provided a history of having pivoted on his right leg in April of 2013 when he felt a pop and ended up in the emergency room. Petitioner had subsequently been diagnosed with a meniscal tear and surgery had been recommended but it was not approved. Petitioner had moved to Harrisburg since then and was establishing care with the doctor at this appointment. Petitioner described his pain as "6/10" and achy. Occasionally, he would notice a sharp pain which would worsen with walking or on uneven surfaces. He reported that his knee always felt "tired." Petitioner had been wearing a brace and taking tramadol that didn't seem to help. He also denied relief from the injections. Dr. Miller and PA-C Mason discussed treatment options with Petitioner and they agreed on a plan of physical therapy, NSAIDs, and Voltaren gel. Oral medication would be the next step. Petitioner's diagnoses were listed as chronic medial meniscus tear and mild degenerative osteoarthritis, predominantly of the patellofemoral joint and, possibly, the medial compartment. (PX 6)

Petitioner underwent an arthroscopic evaluation of his right knee with a partial meniscectomy and chondral debridement of the medial femoral condyle on April 15, 2014. (PX 3; 7) Petitioner remained under Dr. Miller's care post-operatively. (PX 8) As of May 30, 2014 Petitioner was doing really well with very little difficulty except for an occasional "twinge" when moving his knee a certain way. Petitioner reported he was doing everything he previously did. Dr. Miller also noted Petitioner reported some swelling in one joint but the doctor could not see any swelling on examination. Range of motion was full with no instability. Petitioner reported this was the first time he could straighten out his knee "in years." He was to return in 3-4 weeks or cancel the appointment if satisfied. (PX 8)

Dr. Miller's office notes (PX 8) reference an appointment on July 2, 2014 and there is a bill for that visit. However, no specific office note from that day is contained in PX 8. (PX 8, 11)

Petitioner has had no further visits with Dr. Miller but he has continued to see his primary care physician for a variety of medical issues. None of the visits contained in PX 9 reference any knee problems being discussed or mentioned. Petitioner has been treated for low back pain which he reported was aggravated by standing and there is a reference to a left lower extremity in November of 2014 with an erroneous reference to a left knee surgery in April of 2014. Petitioner has also been getting treatment for cervical pain complaints. (PX 9)

Petitioner's case proceeded to arbitration on August 13, 2015. Petitioner testified that he was employed as a Pastor for Respondent on April 14, 2013. Petitioner further testified that on that date, he was six foot three inches tall and weighed just under 300 pounds. Petitioner testified that on April 14, 2013, he was walking through Respondent's church building, turning off all unnecessary lighting before services. Petitioner testified as he was walking to the Fellowship Hall he noticed there was a light on at the end of a hallway that would not be used that evening. Petitioner testified he turned that light off so people would not try to enter there as the door would be locked. Petitioner testified the carpeting on the floor near the light switch was near a door to the outside, so there was a mat on top of the carpet that people used to wipe off their shoes. Petitioner testified as he reached to turn the light off, he turned or pivoted, which was when he felt a sharp pain in his right knee. Petitioner testified he pivoted his knee "like I have done for years...instead of taking steps I pivot."

Petitioner testified he had a Bible and a study course booklet in his hands at the time of his alleged accident. Petitioner testified the mat he stood on had carpet in the center and one inch of rubber around the edge. Petitioner testified he did not notice if the mat he was standing on moved as he stood on it.

On cross-examination, Petitioner testified he did not recall giving a recorded statement to Karen Redmond on August 12, 2013. Petitioner's recorded statement referenced his alleged injury of April 14, 2013. (RX-2) Petitioner testified he did not recall being asked on what surface he was standing at the time of his injury or if he had anything in his hands. Petitioner testified if the recorded statement indicated he spoke previously about the circumstances of his alleged accident, he must have done so.

Petitioner admitted no one asked him to switch off the lights in the church. Petitioner testified he turns off unused lights because he likes to conserve energy and the expenses of the church. Petitioner admitted he also turns light switches on and off at home. Petitioner testified the location where his alleged accident occurred would be frequently used by church members during the morning service, but not as much in the evening.

Petitioner testified that after his surgery, he was told not to stand while working for two to three weeks, as well as to attend three weeks of physical therapy. Petitioner was released to return to his full duties on April 30, 2014, and was released from care on May 30, 2014.

Petitioner testified he has some outstanding medical bills from his treatment to his right knee (PX 11). Petitioner testified during the time in which he had restricted duties and was off work, he was still paid his regular salary. Petitioner testified he left his job with Respondent and is currently employed with Saline Baptist Association.

Petitioner testified he still has ongoing problems with his knee. Petitioner testified he is able to stand while he preaches, but his right knee starts to ache if he stands too long. Petitioner testified traveling takes longer because he needs to stop to take breaks and put his knee in the right position. Petitioner testified he generally sleeps with a pillow under his knee, and takes Ibuprofen for pain prevention. Petitioner testified he can still walk up and down stairs, but in a modified fashion in order to have more stability.

The Arbitrator concludes:

With respect to Issue (C) Did an accident occur on April 14, 2013 that arose out of and in the course of Petitioner's employment by Respondent?

The Arbitrator concludes that Petitioner sustained an accident arising out of and in the course of his employment with Respondent on April 14, 2013. Petitioner was in the course of his employment. The primary issue is whether he sustained an accident that arose out of his employment.

In support of her conclusion that he did, the Arbitrator notes the following:

The Arbitrator finds Petitioner's testimony to be credible regarding the mechanism of his accident and the facts and circumstances surrounding the same. Petitioner testified that on April 14, 2013 he injured his right leg while turning or pivoting after turning off a light at the church prior to the Sunday evening service. Petitioner testified that doing a sweep of the church and turning off lights or other things, which are not in use by other members of the church, is a duty that he regularly performed almost every service. The light was located in an area of the church which was not frequented by other members of the congregation at that time of the day, which is the very reason that Petitioner turned the light off.

Petitioner testified that he was checking out the facilities in preparation for the evening service. This included checking lights. Petitioner testified that he was standing and pivoting on a carpeted rug when he was injured, all of which increased his risk of injury. He acknowledged he was wearing tennis shoes that might have "grabbed" more.

The Arbitrator finds the facts and circumstances of this matter similar to those in the recent Commission decision of *Ogle v. Catalent Pharma Solutions*, 21 ILWCLB 171 (Ill. W.C. Comm. 2013). In the case of *Ogle v. Catalent Pharma Solutions*, the Commission awarded benefits to the claimant where he injured his knee turning in his chair. *Ogle v. Catalent Pharma Solutions*, 21 ILWCLB 171 (Ill. W.C. Comm. 2013). The area in which the claimant in *Ogle* was turning was covered with a rubber mat which the Commission held did not allow the claimant's foot to twist or move easily. *Id.*

The frequency in which Petitioner performed the duty of turning the lights off, coupled with the location of the area, which was not used by other members of the congregation, as well as the carpeted rug not allowing for his foot or leg to move or twist easily, is sufficient proof for the Arbitrator to conclude that Petitioner's accident arose out of and in the course of his employment.

The Arbitrator is cognizant of discrepancies between Petitioner's testimony and his recorded statement regarding whether or not he was carrying anything in his hand at the time of the accident. However, given the totality of the circumstances that discrepancy is a minor one and not crucial to the liability determination as, in this instance, whether or not he had something in his hand, is really irrelevant. Petitioner's job duties pre- evening service increased his risk of injury. Therefore, his accident arose out of his employment.

With respect to Issue (J) Medical Expenses.

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills associated therewith. Respondent shall pay all reasonable and necessary medical services as identified in Petitioner's Exhibit 11 (totaling $28,355.23), as provided in Sections 8(a) and 8.2 of the Act, subject to the medical 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.

With regard to Issue (K) Temporary Total Disability Benefits.

Respondent did not dispute the dates of temporary total disability, only liability for same. (AX 2) While Petitioner did sustain lost time on account of work-related knee injury, he testified that he received full salary while off work. Accordingly, Petitioner's claim for temporary total disability benefits is denied.

With regard to Issue (L) Nature and Extent.

Section 8.1b of the Act provides:

"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."

With respect to (i) of Section 8.1b(b), no impairment rating was admitted into evidence. Therefore, the Arbitrator gives no weight to this factor.

With respect to (ii) of Section 8.1b(b), the occupation of the injured employee, the Arbitrator notes that after his surgery, Petitioner returned to his previous employment as a preacher. The job duties which Petitioner performs do not require extensive use of his legs; however, Petitioner did testify that he stands when he preaches and if he does so for too long it starts to ache. He also testified to symptoms when traveling long distances but he provided no testimony as to how much lengthy travel might be required

by his job. Given the nature of his job and the need to be on his feet, the Arbitrator gives some weight to this factor.

With respect to (iii) of Section 8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 54 years old at the time of the injury. The Arbitrator gives some weight to this factor.

With respect to (iv) of Section 8.1b(b), Petitioner's future earning capacity, there is nothing which indicates that Petitioner's future earning capacity has been negatively affected by his injury herein. The Arbitrator gives no weight to this factor.

Finally, with respect to (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner had a good result from his surgery but does continue to experience pain and weakness in his knee. He also noted that he has to stop regularly when he travels long distances due being unable to position his knee without pain. In addition he testified that it is very difficult for him to make long trips much longer than 3 or 4 hours due to his leg.

Petitioner testified that sleeping is uncomfortable for him and he has to sleep with a pillow under his knee and when he wakes up he has to take an ibuprofen. He also noted that he takes an ibuprofen during the day and before he goes to bed.

In regards to walking up and down stairs, Petitioner testified that he can do about two steps up and after that he has to take it one step at a time to get up the stairs. He also noted that he tried to avoid stairs and inclines because that causes increased pressure on the knee. He testified that when he walks up the stairs or on uneven surfaces his knee feels weak and unstable.

In contrast to Petitioner's testimony, Dr. Miller's notes reference an excellent outcome. The details of their last visit (July 2, 2014) are absent from the record and Petitioner has since treated with his primary care physician for a variety of complaints (neck, low back and thoracic spine) with no mention of any right knee problems. Petitioner has associated a variety of difficulties performing activities of daily living with these ongoing unrelated complaints (as reflected in the doctor's notes). Petitioner has not returned to see Dr. Miller despite these alleged right knee related complaints. In this instance the Arbitrator gives greater weight to the doctor's notes than Petitioner's testimony. While Petitioner testified to the use of Ibuprofen, no corroboration for that is found in his primary care doctor's records.

The determination of permanent partial is not simply a calculation but an evaluation of all five of the aforementioned factors stated in Section 8.1b(b). In making a permanent partial disability evaluation, consideration is not given to any single factor as the sole determinant. 820 ILCS 305/8.1b(b). Applying Section 8.1b of the Act, the Arbitrator finds that Petitioner sustained a 17.5% loss of use of the right leg. Respondent shall therefore pay to Petitioner permanent partial disability benefits of $510.22/ week for 37.625 weeks, as provided in Section 8(e) of the Act.

****

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KRUS, KATRINA
Employee/Petitioner

Case# **12WC000393**

PEORIA PUBLIC SCHOOL DISTRICT
Employer/Respondent

On 10/9/2015, 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 0.06% 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:

1824 STRONG LAW OFFICES
MICHAEL K BRANDOW
3100 N KNOXVILLE AVE
PEORIA, IL 61603

5354 STEPHEN P KELLY
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Katrina Krus
Employee/Petitioner

Case # **12** WC **393**

v.

Peoria Public School District
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 14, 2015**. 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 **March 22, 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 $**19,240.00**; the average weekly wage was $**370.00**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **1** dependent child.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $**222.00**/week for **12.5** weeks, because the injuries sustained caused the **2.5**% 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.

Arbitrator Anthony C. Erbacci

October 6, 2015
Date

OCT - 9 2015

FACTS:

On March 22, 2011 the Petitioner sustained an undisputed accidental injury arising out of and in the course of her employment with the Respondent as a cafeteria manager. The Petitioner testified that she lifted a tote filled with food and felt a "pop" in her low back. The Petitioner testified that the next morning she reported her back pain to the Respondent and was directed to obtain treatment at IWIRC.

The Petitioner was seen at IWIRC on March 23, 2011and gave a consistent history of injury. She was diagnosed with a lumbar strain, prescribed medication and physical therapy, and given light duty work restrictions. The Petitioner followed up at IWIRC on April 1, 2011 and reported improvement in her symptoms. On April 6, 2011 the Petitioner returned and reported that her symptoms had worsened since her last visit and that she now had constant shooting pain down her left leg and numbness in her great toe. Examination was noted to demonstrate inconsistencies and hyper-exaggerations and it was noted that her symptoms could not be explained by a mechanical back problem. An MRI was ordered to rule out an occult malignancy or other cause and the assessment included symptom magnification.

An MRI was completed on April 20, 2011 and was reported to demonstrate mild levoscoliosis of the lumbar spine, mild diffuse disc bulging throughout the lumbar spine, and mild bilateral foraminal stenosis at L4-5.

On April 21, 2011 the Petitioner returned to IWIRC with continuing complaints of stabbing pain in her low back, constant throbbing down her left leg, and numbness in her big toe. The Petitioner reported her pain as being 10/10 and she also complained of urinary incontinence. The MRI was reportedly reviewed with the Petitioner and was noted to demonstrate no significant nerve root impingement, spinal stenosis, or cauda equine syndrome. The Assessment continued to be lower lumbar muscle strain and exam inconsistencies and hyper-exaggerations were again noted. It was also noted that the Petitioner's current symptoms and urinary incontinence could not be explained by the MRI. It was again noted that the Petitioner was symptom magnifying and she was directed to see her primary care physician to find the cause of her urinary incontinence which was indicated to be not work related. The Petitioner was released from care and directed to return to unrestricted work.

The Petitioner testified that she continued working for the Respondent through the end of the 2011 school year and that she then sought treatment with her primary care physician at Methodist Family Practice. The Petitioner testified that she then underwent testing for multiple sclerosis which was ruled out. The Petitioner continued to be treated at Methodist Family Practice during the summer of 2011 because of her back complaints.

The records of Methodist Medical Group demonstrate that the Petitioner was seen there by Dr. Karen Gellada on April 22, 2011 and reported a one year history of bilateral lower extremity pain, which were worse with activity, and difficulty walking. The Petitioner also reported that "3 months ago, Picked up something, hurt back". The Petitioner was noted to have complaints of bilateral lower extremity pain and numbness as well as headaches, numbness in both feet and hands, and urinary incontinence. The Petitioner was assessed as having lower extremity pain, sensory deficits, and urinary incontinence and she was referred for a neurological assessment to rule out multiple sclerosis.

The Petitioner returned to Methodist Medical Group on May 10, 2011 and was noted to have chronic low back pain which was exacerbated after lifting a heavy object at work. It was also noted that the Petitioner reported that "in the last few months" she noted low back pain with radiation into both feet which was worse with sitting or activity. She was assessed as having low back pain with radiation and she was prescribed Norco and physical therapy. The Petitioner returned on May 13, 2011 with complaints of worsening low back pain radiating into both feet. It was noted that a lumbar MRI showed disc bulges and the Petitioner was noted to have positive straight leg raise tests bilaterally with shooting pains of the outer feet at 20 degrees. The Petitioner was referred to the pain clinic and her dosage of Norco was increased. The Petitioner followed up again on May 23, 2011 and was again assessed as having low back pain.

On June 11, 2011, the Petitioner was seen at the Emergency Room at Methodist Medical Center for complaints of chronic pain. It was noted that the Petitioner reported a history of having pain in her lower lumbar spine for three years. The Petitioner also reported taking Norco and "going through" epidural injections for her back pain. The Petitioner was given an injection of Toradol in her right gluteus, provided Percocet, and discharged with instructions to obtain follow up care.

On June 13, 2011, the Petitioner returned to Methodist Medical Group complaining of uncontrolled bowel movements and low back pain. The Petitioner also reported increased left leg weakness and increased radiating pain on the left leg as compared to the right leg. The Petitioner was assessed as having back pain with radiation and fecal incontinence and an MRI was ordered. The Petitioner underwent the MRI of the lumbar spine that same day and the history noted by the radiologist was low back pain for three years and recent steroid injection. The Petitioner was noted to have numbness in the left foot, hypesthesia in the left leg and bowel incontinence. The MRI was reported to demonstrate minimal facet joint hypertrophy at L5-S1 and no acute findings.

On June 27, 2011, the Petitioner returned to Dr. Gellada with complaints of extreme back and left leg pain which was worse after a "back injection" 3 days earlier. It was noted that the Petitioner had been seen at the pain clinic and had received epidural shots and Topamax as well as Norco. It was further noted that the Petitioner rated her pain as 10/10 and that the duration of her pain was "3 yrs". The Petitioner was also noted to be working at Hucks as a cashier.

On September 13, 2011, the Petitioner went to Methodist Medical Center due to her back pain. The Petitioner reported that her left leg had given way and she fell and hit her left cheek The Petitioner was noted to report a two year history of chronic low back pain, for which she was being seen at the pain clinic, and that she "does a lot of lifting in her job". It was also noted that the Petitioner had undergone a left sacroiliac joint injection on September 9, 2011. The Petitioner indicated that she wanted a surgical consultation and she was requesting Norco. It was noted that the Petitioner had no signs of disc herniation or neurological compromise of the lower extremity and, objectively, hypersensitive skin reaction to palpation, straight leg raise bilateral to 75 degrees with no tingling or parasthesis, and good sensation. The Petitioner was directed to follow up with the pain clinic.

On September 19, 2011 the Petitioner underwent another MRI of her low back as well as an x-ray of her left hip. The history noted in the report of the MRI indicates that the exam was requested through the emergency room and that the Petitioner reported that she had fallen on September 11, that she had back pain in both buttocks which radiated into the left leg, and that since September 17 she had bowel and bladder incontinence. The MRI was reported to demonstrate no acute findings,

no disc herniation or spinal stenosis; normal appearance to the lower thoracic cord and conus medullaris; and mild facet degeneration. The left hip x-ray was reported to demonstrate calcification adjoining the roof of the acetabulum, which had increased from the Petitioner's previous study from May 6, 2009, but no fracture or significant narrowing of the joint space.

A nerve conduction study was then completed on October 24, 2011 and was reported to demonstrate a left mid and lower lumbar and sacral radiculopathy. Physical therapy was recommended for the Petitioner but she declined therapy at that time. The Petitioner was next seen by Dr. Rians at Great Plains Orthopedic on November 14, 2011. Dr. Rians' diagnosis was an L5 radicular pain with a normal MRI exam and a normal EMG. Dr. Rians recommended that the Petitioner be referred to a neurosurgeon to evaluate her condition given her history of incontinence. Dr. Rians took the Petitioner off work for a month at that point and suggested that she might need a CT myelogram to address the cause of her L5 radicular pain. Dr. Rians referred the Petitioner to Dr. Fassett at Illinois Neurological Institute.

On December 21, 2011, the Petitioner returned to Great Plains Orthopedic with continuing complaints of low back pain with left sciatica at the L5 distribution. The Petitioner reported that Dr. Fassett felt that he could not do anything for her given that her MRI was normal and did not show a nerve root impingement. Dr. Rains noted that her MRI did show some mild mass effect of the right L5 but that her symptoms were on the left. The Petitioner was then referred to Dr. Kube, pursuant to her request. Dr. Rains also recommended a CT myelogram and that was to be held off until the Petitioner saw Dr. Kube.

On December 29, 2011, the Petitioner saw Dr. Kube who took the Petitioner off work, ordered an MRI of the left hip, and recommended an SI joint injection.

On February 20, 2012, Dr. Fassett generated a report for Dr. Rians. Dr. Fassett reviewed the MRI of the Petitioner's low back which he noted to be completely normal. Dr. Fassett indicated that the Petitioner's left lower extremity pain was of unknown origin and that no neurosurgical interventions could alleviate the Petitioner's symptoms.

On February 27, 2012 a lumbar CT was completed and reported to demonstrate no significant findings.

On March 5, 2012 Dr. Rians noted that the CT myelogram was normal and that the lumbar spine could be ruled out as the source of the Petitioner's problems. Dr. Rians indicated that hip and SI problems were possible sources and he diagnosed possible femoral acetabular impingement.

An MRI of the left hip took place on April 5, 2012, and was reported to demonstrate a small amount of edema in the left paraspinous muscle which could be related to the steroid injection versus a muscle injury such as a strain. On April 19, 2012 the Petitioner underwent an SI joint injection by Dr. Kube and on May 1, 2012, Dr. Kube noted that the Petitioner reported that she had good results from the injection. The Petitioner then commenced a course of physical therapy and underwent a second SI joint injection on May 7, 2012. At a follow up visit with Dr. Kube on May 15, 2012, Dr. Kube noted that the Petitioner reported only temporary relief from that injection and he then recommended an SI joint fusion. Dr. Kube also placed the Petitioner on sedentary work restrictions. Thereafter, the Petitioner continued treating on and off with Dr. Kube or one of his assistants through November 13,

2012, when she was taken off work completely. As of the date of hearing, the Petitioner has not had the SI joint fusion recommended by Dr. Kube.

The Petitioner testified that she currently has difficulty walking and that she is unable to lift greater than five pounds. She testified that lifting anything greater than five pounds or "standing the wrong way" causes an increase in her pain. She testified that walking any distance causes her back to "pop".

On cross-examination, the Petitioner acknowledged that she told Dr. Kube that she did not have any problems with her low back prior to February 23, 2011 and she initially testified that she had no treatment for her low back prior to February 23, 2011. She later testified that she could have had treatment for her low back prior to February 23, 2011but she could not remember. The Petitioner testified that she did not remember treating with Dr. Capecci in May of 2009 or treating for complaints of severe back and leg pain in July of 2009. The Petitioner also testified that she did not recall receiving injections in her back or physical therapy prior to February 23, 2011. The Petitioner initially testified that she did not remember if she worked after the end of the 2011 school year but then acknowledged that she worked for Peoria Charter in the summer of 2011 and at a Huck's for four to five weeks in 2011. The Petitioner testified that she could not remember which Huck's she had worked at and that she did not remember if she worked anywhere else after May of 2011.

At the request of the Respondent, the Petitioner was examined by Dr. Gunnar Anderson on February 23, 2012 and again on October 22, 2013. Dr. Anderson's deposition testimony of November 20, 2013 was admitted into the record as Respondent's Exhibit 1. Dr. Anderson testified as to his examination findings and the medical records he reviewed relating to the Petitioner. Dr. Anderson noted that the Petitioner had treated with Dr. Capecci at Great Plains Ortopaedics in May of 2009 for complaints of bilateral leg pain and pain in her thigh and hip and was thought to have sciatica. He noted that a lumber MRI was performed on the Petitioner on June 18, 2009 and was reported to show no evidence of central canal stenosis or disc herniation but mild narrowing on the right side in the foramen at L5-S1 secondary to facet arthropathy and spurring. Dr. Anderson also noted that it appeared that the Petitioner had been treated with epidural steroid injections for complaints of low back pain with right leg pain in August of 2009. Dr. Anderson further noted the treatment rendered to the Petitioner at IWIRC and Methodist Medical Group, and the treatment rendered to her by Dr. Hauter, Dr. Fassett, Dr.Liu, Dr. Rians, and Dr. Kube.

Dr. Anderson opined that the Petitioner sustained a lumbar strain injury as a result of the March 22, 2011 work accident and that she reached maximum medical improvement from that injury by April 14, 2011. Dr. Anderson diagnosed the Petitioner as having pain complaints without any specific underlying physical diagnosis and he noted that the Petitioner has no objective medical findings to support her subjective complaints of pain. Dr. Anderson opined that the Petitioner has developed a chronic pain syndrome with significant psychological and emotional components and should be evaluated by a psychiatrist or neuropsychiatrist or psychologist specializing in pain syndromes. Dr. Anderson opined that the Petitioner's chronic pain syndrome is unrelated to her work accident and that there is no causal relationship between the Petitioner's work injury and her current condition of ill-being.

The August 19, 2013 deposition testimony of Dr. Kube was admitted into the record as Petitioner's Exhibit Number 9. Dr. Kube testified as to the care and treatment that he rendered to the Petitioner and he opined that the treatment was reasonable and necessary. Dr. Kube testified that

the Petitioner should remain at a sedentary work status and that she would benefit from the SI joint fusion which he continues to prescribe for the Petitioner. Dr. Kube testified that he was not aware of any pre-existing complaints or problems with medical treatment to the Petitioner's SI joint or her lower lumbar spine that pre-dated the March 22, 2011 accident and that he was not aware of any subsequent or intervening accident. Dr. Kube indicated that the Petitioner's lumbar radiculopathy was a function of SI joint inflammation which was causally related to the accident of lifting the totes. Dr. Kube noted that the onset of the Petitioner's symptoms was very contemporaneous to her accident without intervening issues. He further noted that the Petitioner had no previous problems or difficulties with her SI joint.

At the request of the Respondent, a review of all of the Petitioner's medical records was performed by Dr. Martin Lanoff and he issued a report dated January 30, 2014. The May 4, 2015 deposition testimony of Dr. Lanoff was admitted into the record as Respondent's Exhibit 2. Dr. Lanoff testified as to the medical records he reviewed and he opined that, as a result of her work injury, the Petitioner may have sustained a lumbar strain that should have improved within six to eight weeks of the injury. Dr. Lanoff indicated that the Petitioner current complaints of pain were out of proportion with her objective findings and he opined that her current back problems were unrelated to her work injury. Dr. Lanoff further opined that no treatment or testing six to eight weeks after the work injury was medically indicated and he testified that the sacral fusion recommended by Dr. Kube was neither reasonable nor necessary.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Respondent stipulated that on March 22, 2011 the Petitioner sustained accidental injuries that arose out of and in the course of her employment and that timely notice of the accident was provided to the Respondent. The Petitioner sought medical treatment the following day and was diagnosed as having a lumbar strain. She initially reported improvement in her condition but a few weeks later she reported that her symptoms had worsened and that she now had constant shooting pain down her left leg and numbness in her great toe. Examination was noted to demonstrate inconsistencies and hyper-exaggerations and it was noted that her symptoms could not be explained by a mechanical back problem. An MRI was ordered to rule out an occult malignancy or other cause and the assessment included symptom magnification. Thereafter the Petitioner began a long course of medical treatment with various physicians, none of whom found and objective basis for the Petitioner's complaints. Ultimately, the Petitioner came under the care of Dr. Kube who diagnosed her as having a lumbar strain, sacroiliac dysfunction and chronic pain from trauma. Dr. Kube injected the Petitioner's SI joint on two occasions and recommended a SI joint fusion for the Petitioner.

The Arbitrator notes that of all of the physicians who treated the Petitioner, Dr. Kube is the only physician that has opined that a causal relationship exists between the Petitioner's work injury and her current condition of ill-being. The Arbitrator finds Dr. Kube's opinion to be unpersuasive. In so finding, the Arbitrator notes that Dr. Kube was unaware of the Petitioner having received any treatment for her lower back or having any lower back complaints prior to her work injury. The Petitioner acknowledged that she told Dr. Kube that she did not have any treatment for her low back prior to her work injury and the medical records clearly demonstrate that the Petitioner had treated for

her low back prior to her work injury. Further, the medical records demonstrate that the Petitioner had complaints of pain radiating into both of her legs prior to her work injury. Dr. Kube testified that he was not aware of any pre-existing complaints or problems with medical treatment to the Petitioner's SI joint or her lower lumbar spine that pre-dated the March 22, 2011 accident.

The Arbitrator also notes that the Respondent's examining physician, Dr. Anderson, and the Respondent's record review physician, Dr. Lanoff, both opined that the Petitioner sustained a lumbar strain as a result of her work injury and that she reached maximum medical improvement from that injury within a relatively short period of time thereafter. Both Dr. Anderson and Dr. Lannoff testified that the Petitioner's pain complaints were not supported by any objective findings and they both indicated, as did the physicians at IWIRC when she was seen there in April of 2011, that the Petitioner was symptom magnifying. Both Dr. Anderson and Dr. Lanoff indicated, as did Dr. Fasset, that the Petitioner's MRI findings did not support the Petitioner's continuing complaints of pain. Both Dr. Anderson and Dr. Lanoff opined that there was no causal relationship between the Petitioner's work accident and her current condition of ill-being.

The Arbitrator further notes that the Petitioner's testimony on cross examination demonstrated that the Petitioner's memory of her prior medical care and treatment as well as her work history was so poor as to cause the Arbitrator to have serious doubts as to the reliability of the Petitioner's testimony.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner failed to prove that her current condition of ill-being is causally related to the work injury of March 22, 2011. The Arbitrator adopts the opinions of Dr. Anderson and Dr. Lanoff and finds that as a result of the work injury of March 22, 2011, the Petitioner sustained a lumbar sprain from which she reached maximum medical improvement by April 14, 2011.

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:

The findings and conclusions of the Arbitrator relating to the issue of Causation are adopted and incorporated herein.

The Arbitrator has adopted the opinions of Dr. Anderson and Dr. Lanoff and found that as a result of the work injury of March 22, 2011, the Petitioner sustained a lumbar sprain from which she reached maximum medical improvement by April 14, 2011. The Arbitrator finds therefore, that the Petitioner failed to prove that any of the medical care and treatment she received subsequent to April 14, 2011 was reasonable, necessary and causally related medical treatment for which the Respondent is responsible.

In Support of the Arbitrator's Decision relating to (K.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The findings and conclusions of the Arbitrator relating to the issue of Causation are adopted and incorporated herein.

The Arbitrator has adopted the opinions of Dr. Anderson and Dr. Lanoff and found that as a result of the work injury of March 22, 2011, the Petitioner sustained a lumbar sprain from which she reached maximum medical improvement by April 14, 2011. The Arbitrator finds therefore, that the Petitioner failed to prove entitlement to any period of Temporary Total Disability after April 14, 2011.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

The findings and conclusions of the Arbitrator relating to the issue of Causation are adopted and incorporated herein.

The Arbitrator has adopted the opinions of Dr. Anderson and Dr. Lanoff and found that as a result of the work injury of March 22, 2011, the Petitioner sustained a lumbar sprain from which she reached maximum medical improvement by April 14, 2011. The Petitioner testified that she continued to work for the Respondent through the end of the 2011 school year and that thereafter she worked for Peoria Charter in the summer of 2011 and at a Huck's for four to five weeks in 2011. Based upon the diagnosis of a lumbar strain, the Arbitrator finds that the Petitioner sustained a 2.5% disability to her whole person as a result of the work injury of March 22, 2011.

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

ROBERTS, JEFFREY Case# **14WC001199**

Employee/Petitioner

CONTECH CONSTRUCTION PRODUCTS

Employer/Respondent

On 10/21/2015, 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:

1824 STRONG LAW OFFICES
SEAN OSWALD
3100 N KNOXVILLE AVE
PEORIA, IL 61603

2461 NYHAN BAMBRICK KINZIE & LOWRY
JAMES P TOOMEY
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

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)

Jeffrey Roberts
Employee/Petitioner
v.
Contech Construction Products
Employer/Respondent

Case # **14** WC **1199**

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, 2015**. 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] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[x] 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, **September 17, 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 $**39,212.16**; the average weekly wage was $**754.08**.

On the date of accident, Petitioner was **41** 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 partial disability benefits of $**302.72**/week for **92 3/7** weeks, commencing **November 11, 2013** through **August 19, 2015**, as provided in Section 8(a) of the Act

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of $**3,412.55**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay the reasonable and necessary charges associated with the left carpal tunnel release and the left cubital tunnel release prescribed for the Petitioner by Dr. Rhode, as provided in Section 8(a) 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 16, 2015
Date

OCT 21 2015

FACTS:

On October 15, 2013 the Petitioner was employed by the Respondent as a rivet machine operator and that he started his employment with the Respondent in 2007. The Petitioner testified that his job was to build steel culverts by riveting two-foot sections of pipe together, and that that culverts would be from 8 feet to 50 feet long. He testified that the diameter of the culverts would be from 12 inches to 120 inches in diameter, and 16-gauge to 8-gauge steel thickness. The Petitioner testified that he would use a rivet machine that punched holes into steel and hammered rivets into the culvert, and that he also used hand tools, such as an air binder, a hand binder, a hammer, and a chisel.

The Petitioner described that he used the rivet machine to punch holes in the culvert pipe, and he would then put the rivets into the holes by hand. He would then put the culvert pipe back into the machine, which hammered the rivets. He testified that the process did not always go smoothly, and that the punch could stick in the material and he would need to rock the pipe off or use a small hammer or sledgehammer. The Petitioner testified that he would occasionally have to use a sledgehammer to make sure there was no slack in the sections of pipe when they got attached to the next piece of pipe and that he also had to use a hand spud to pry the cans open.

A CD Rom containing video of the rivet machine being used was viewed during the hearing and the Petitioner testified that what was depicted in the video was essentially the same type of machine that he used in his job and that the operation of the machine depicted was essentially accurate when the operation is going smoothly.

The Petitioner testified that he would perform his rivet machine work eight to ten hours per shift and that he worked from forty-five to fifty-five hours per week. The Petitioner testified that there were no breaks, and that his hands and shoulders were sore at the end of each day. The Petitioner testified that he started to notice numbness and tingling in his hands which was not simply being "worn out." He testified that the symptoms were the same as when he had carpal tunnel syndrome four years earlier and that he told the plant foreman, Bryan Dorsey, about the symptoms in his hands.

The Petitioner testified that he had previously been diagnosed with carpal tunnel syndrome for which he underwent surgery by Dr. Rhode in 2009. The Petitioner testified that he recovered from that surgery and returned to his regular full-duty work on the rivet machines after the surgeries. The Petitioner testified that he spoke with Bryan Dorsey on two or three occasions to let him know his hand condition was getting worse and that both hands were numb and tingling all the time. The Petitioner testified that by October to November, the condition was "really bad." The Petitioner testified that on the day he was laid off, he told Brian Crader that he had already spoken with Bryan Dorsey about his hands and that he was going to get his hands "looked at" during the lay off because they felt the same as the previous time.

On November 11, 2013, the Petitioner presented to Dr. Daniel Hoffman and provided a history of prior bilateral carpal tunnel surgery, repetitive work operating a rivet machine, and pain and numbness in both hands radiating up the elbow since September. Dr. Hoffman noted a positive Tinel's sign at the wrist with normal reflexes and he diagnosed the Petitioner with repetitive carpal tunnel syndrome.

On December 24, 2013, the Petitioner presented to Dr. Edward Trudeau, reporting that he has noticed a repeat of his right upper extremity symptoms in October and notified his employer in November 2013. Dr. Trudeau indicated that he previously performed a bilateral upper extremity EMG on the Petitioner on November 10, 2009 and Dr. Trudeau performed another EMG/NCV of the Petitioner's upper extremities. Dr. Trudeau noted bilateral prolongations and slowing of nerve conduction velocity across the elbow in either ulnar motor distribution, but indicated that other nerve conduction studies were normal. Dr. Trudeau concluded that needle electroneuromyographic examination of the upper extremities was normal. He interpreted bilateral median neuropathies at the wrists that were mild and neurapraxic and he also interpreted bilateral ulnar neuropathies at the elbows, mild to moderately severe on either side, right greater than left.

On January 9, 2014, the Petitioner returned to Dr. Hoffman, complaining of pain and numbness in his hands and elbows. Dr. Hoffman diagnosed carpal tunnel syndrome and cubital tunnel syndrome, and referred the Petitioner to an orthopedic surgeon.

On January 15, 2014, the Petitioner presented to Dr. Blair Rhode complaining of work-related bilateral elbow and wrist pain that began in October 2013. He told Dr. Rhode that he has performed the same job for three years, and that the job is highly manual and repetitive. He reported that his last date of work was November 19, 2013. On examination, Dr. Rhode noted bilateral pain over the palms, bilateral Phalen's tests and cubital tunnel signs at the wrists, and bilateral Tinel's signs. He also noted a positive Tinel's at the right elbow and a positive tennis elbow test on the right, and a positive tennis elbow sign and positive cubital tunnel sign on the left elbow. Dr. Rhode administered a right lateral epicondyle injection and provided the Petitioner with oral anti-inflammatories and bilateral wrist splints, in addition to an elbow splint.

Petitioner returned to Dr. Rhode on January 29, 2014, reporting lateral elbow pain improvement, but continued numbness. Dr. Rhode discussed treatment options, and the Petitioner indicated that he wished to proceed with a repeat left carpal tunnel release and cubital tunnel release.

The Arbitrator notes that the Petitioner continued to see Dr. Rhode on a biweekly basis after January 29, 2014. Dr. Rhode performed identical examinations on each occasion, with the same test results and diagnoses, and he continued to prescribe Norco 7.5/325mg and Mobic 7.5mg.

At the request of the Respondent, the Petitioner was examined by Dr. Michael Vender on May 22, 2014. Dr. Vender ordered an electromyogram and nerve conduction study that was performed by Dr. Scott L. Heller of Lakeshore Neurology, Ltd. on the same date. Dr. Heller found mild residual bilateral median neuropathies at the wrist without active denervation within the right distal median innervated muscles following bilateral carpal tunnel releases. Dr. Heller reported that he found no electrodiagnostic evidence of bilateral ulnar neuropathies across the elbows or the wrists.

The December 1, 2014 evidence deposition testimony of Dr. Vender was admitted into the record as Respondent's Exhibit1. Dr. Vender testified that the Petitioner reported his previous bilateral carpal tunnel releases and indicated that he subsequently was doing well until 2013. Dr. Vender testified as to his examination findings and the findings from the new EMG on May 22, 2014 which he indicated were normal with regard to the elbows and showed mild residuals from the previous carpal tunnel syndrome. Dr. Vender testified that the Petitioner's subjective presentation did

not match the objective findings, and indicated that, in addition to nonphysiologic findings, the distribution of numbness that the Petitioner complained of did not match the findings on electrodiagnostic testing. Dr. Vender testified that he did not believe a causal relationship existed between the Petitioner's complaints and the alleged repetitive trauma to the wrists, as the video demonstrated nonrepetitve and non-forceful hand use. He testified that he did not believe there was any real pathology to the elbows and that there was no significant forceful use of the elbows to be contributory to the elbow condition. Dr. Vender opined that the Petitioner was at maximum medical improvement and was capable of full duty work as of May 22, 2014.

The March 12, 2015 evidence deposition testimony of Dr. Rhode was admitted into the record as Petitioner's Exhibit 7. Dr. Rhode testified that with regard to the alleged October 15, 2013 occurrence, the Petitioner demonstrated positive compressive neuropathies of the wrist and elbow with a positive Tinel's and Phalen's at the wrist and a positive Tinel's at the elbow, along with lateral epicondylar findings. Dr. Rhode testified that he performed a lateral epicondyle injection because the Petitioner demonstrated symptomatology consistent with lateral epicondylitis. Dr. Rhode testified that the EMG findings he reviewed were positive, and that he recommended bilateral wrist and elbow splints, with use of anti-inflammatories and a home exercise program. Dr. Rhode testified that on January 29, 2014, the Petitioner told him he was unwilling to live with his symptoms and wished to undergo a revision left carpal tunnel release and a cubital tunnel release.

Dr. Rhode testified that after a carpal tunnel release, the tissues reform, and a return to the same activities can cause symptom recurrence. He also testified that the Petitioner's pathology could be so advanced that he did not return to the pre-injury baseline. Dr. Rhode testified that he has seen Petitioner as recently as February 23, 2015 and that he sought to obtain a second opinion from Dr. Fernandez. Dr. Rhode testified that he recommended proceeding with a carpal and cubital tunnel release on the most significant side. Dr. Rhode testified that the Petitioner's job exposure as described and the previous incidence of carpal tunnel syndrome met his level for causation on carpal and cubital tunnel syndrome.

Brian Crader, the Respondent's plant manager testified that the Petitioner was under his direct supervision, and that the Petitioner primarily operated the two-man rivet machine. Mr. Crader testified that the Petitioner never told him about work-related injuries to his wrists, elbows or arms between October 2013 and the layoff on November 11, 2013. He testified that that Mr. Dorsey not anyone else at the Respondent ever made him aware of the Petitioner's complaints and that the first time he became aware of the Petitioner's hand and wrist complaints was when he received a letter from the Petitioner's attorney in January or February 2014. Mr. Crader testified that Mr. Dorsey was a more direct point of contact for employees and he denied that the Petitioner came to him before the layoff and reported that he was going to go to his doctor to have his hands checked out.

The Petitioner testified that he currently continues to experience numbness and tingling in his hands with activity as well as some loss of strength. He also testified that he has difficulty sleeping and has symptoms in his forearms. The Petitioner testified that he currently works as a security guard at Ross Stores Incorporated on a part-time basis and that he obtained that part-time job in anticipation of the seasonal layoff which occurred in the winter of 2013. The Petitioner testified that he is paid $10.00 per hour in his current employment and that he now works about thirty hours per week. The Petitioner testified that he wants to undergo the bilateral carpal and cubital tunnel releases

recommended by Dr. Rhode, but that he has no way to obtain the surgery without authorization from the Respondent's insurance carrier.

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 Arbitrator notes that Petitioner's testimony at the hearing was persuasive as to the repetitive and forceful nature of his work. The video demonstration of the job activities confirmed that the riveter position required repetitive forceful grasping and repetitive exposure to vibration, especially when the rivets were being hammered in by the rivet machine. The Arbitrator also notes that the Petitioner had previously been diagnosed with carpal tunnel syndrome as a result of his performance of the same job activities for the Respondent. The Petitioner underwent bilateral carpal tunnel releases for that condition and he then returned to the same job duties without restrictions or limitations. After a period of time performing those job activities, the Petitioner again became symptomatic and was diagnosed with carpal tunnel syndrome and cubital tunnel syndrome.

Dr. Rhode, the Petitioner's treating physician, has opined that the Petitioner's condition is causally related to his work activities for the Respondent and that the Petitioner is in need of surgery to address that condition. Dr. Vender, the Respondent's examining physician, opined that no causal relationship existed between the Petitioner's complaints and his job activities, as the video demonstrated nonrepetitve and non-forceful hand use. He testified that he did not believe there was any real pathology to the elbows and that there was no significant forceful use of the elbows to be contributory to the elbow condition. Dr. Vender opined that the Petitioner was at maximum medical improvement and was capable of full duty work as of May 22, 2014.

While the Arbitrator notes the testimony and opinions of Dr. Vender, the Arbitrator finds that the work activities depicted in the video and the description of the work activities provided by the Petitioner demonstrate that, contrary to Dr. Vender's assertion, the Petitioner's work activities clearly required repetitive and forceful hand use. Thus, the Arbitrator finds the opinions of Dr. Vender to be less persuasive than the opinions of Dr. Rhode in the instant matter.

Based upon the foregoing, and having considered the totality of the persuasive credible evidence adduced at hearing, the Arbitrator finds that the Petitioner's work activities did result in accidental injuries which arose out of and in the course of the employment. The Arbitrator further finds that the testimony and opinions of Dr. Rhode are sufficiently reliable and persuasive to satisfy the Petitioner's burden of proving that a causal relationship exists between the Petitioner's work activities and his current condition of ill-being.

In Support of the Arbitrator's Decision relating to (E.), Was timely notice of the accident given to Respondent, the Arbitrator finds and concludes as follows:

The Petitioner testified that he had previously been diagnosed with carpal tunnel syndrome for which he underwent surgery by Dr. Rhode in 2009. The Petitioner testified that he recovered from that surgery and returned to his regular full-duty work on the rivet machines after the surgeries. The Petitioner testified that after his symptoms returned, he spoke with Bryan Dorsey on two or three occasions to let him know his hand condition was getting worse and that both hands were numb and tingling all the time. The Petitioner testified that on the day he was laid off, he told Brian Crader that he had already spoken with Bryan Dorsey about his hands and that he was going to get his hands "looked at" during the lay off because they felt the same as the previous time. Brian Crader denied that the Petitioner came to him before the layoff and reported that he was going to go to his doctor to have his hands checked out. But he acknowledged that Mr. Dorsey was a more direct point of contact for the Respondent's employees. Mr. Dorsey did not testify.

Again, the Arbitrator notes that Petitioner's testimony at the hearing was persuasive as to the repetitive and forceful nature of his work. The video demonstration of the job activities confirmed that the riveter position required repetitive forceful grasping and repetitive exposure to vibration, especially when the rivets were being hammered in by the rivet machine. The Petitioner had previously been diagnosed with carpal tunnel syndrome as a result of his performance of the same job activities for the Respondent and the Respondent was aware of that previous diagnosis and treatment. It is not difficult to conclude that after a period of time performing the same job activities, the Petitioner again became symptomatic and notified his supervisor of the return of those symptoms.

The Arbitrator notes that the Petitioner's testimony that he told his supervisor, Bryan Dorsey, about his hand complaints was not contradicted or rebutted and the Arbitrator finds the Petitioner's testimony in that regard to be credible and persuasive.

Based upon the foregoing, and having considered the totality of the persuasive credible evidence adduced at hearing, the Arbitrator finds that timely notice of the injury was provided to the Respondent.

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:

After reviewing the testimony of the Petitioner, Dr. Rhode, Dr. Vender, and Mr. Crader, and reviewing all of the evidence in question, the Arbitrator finds that the medical treatment provided by Dr. Hoffman and Dr. Trudeau was reasonable and necessary, but the medical treatment provided by Dr. Blair Rhode was neither reasonable nor necessary. In reviewing PX 9, the Arbitrator notes that Dr. Rhode is alleging outstanding charges totaling $41,516.69 from January 15, 2014 through June 18, 2014. In reviewing the medical records and the bills, it appears that Dr. Rhode has merely performed examinations on a biweekly basis since January 15, 2014 with one epicondyle injection,

the biweekly dispensing of medication, and the preparation of a hand written work status report. The Arbitrator notes that Dr. Rhode charges $100.00 for the preparation of a work status report, as referenced in his evidence deposition under CPT code 99199, which likely takes less than one minute to complete. The Arbitrator also notes that while Dr. Rhode indicated that the Petitioner insisted on coming in for the biweekly short appointments, the Petitioner testified that Dr. Rhode's office told him to come in every two weeks. These periodic appointments served no purpose other than to "run up" a medical bill on a claim that was disputed by Respondent. As a consequence, the Arbitrator finds the charges of Dr. Rhode to be unreasonable and awards only the following amounts to the Petitioner:

Dr. Daniel Hoffman:	$330.95 (8.2 allowable amount for $400.00 in charges)
Dr. Edward Trudeau:	$1,999.99 (8.2 allowable amount for $2,822.00 in charges)
Orland Park Orthopedics:	$1,081.61 (8.2 allowable for 1/15/14 and 1/29/14 less the 99199 charges for the work statuses)
Total:	**$3,412.55**

Additionally, the Arbitrator orders that the Respondent pay the appropriate fee schedule for the prescription drugs for the J8499 charges on January 15, 2014 and January 29, 2014. No charges other than the foregoing are reasonable and necessary.

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:

Having found for the Petitioner on the issues of accident and causation, the Arbitrator finds that the left carpal tunnel release and left cubital tunnel release prescribed for him by Dr. Rhode are reasonable and causally related medical treatment to which the Petitioner is entitled pursuant to Section 8(a) of the Act.

In Support of the Arbitrator's Decision relating to (L.), What temporary benefits are due, the Arbitrator finds and concludes as follows:

The Petitioner testified that his last day of work for the Respondent was November 8, 2013 and the evidence indicates that he was laid off on or about November 11, 2013. The Petitioner began his course of treatment on November 11, 2013 when he saw Dr. Hoffman. The Petitioner testified that subsequent to his layoff by the Respondent, the Respondent called him back to work but could not accommodate his then current restrictions. There was no testimony as to when that call back occurred. There was also no testimony as to what those restrictions were or when they commenced. The Petitioner testified that, in anticipation of the layoff, he had obtained part time employment as a security guard and that he maintained that employment through the present time. The Petitioner testified that he earns $10.00 per hour in his current employment and that he works about thirty hours per week.

As the Arbitrator has found for the Petitioner on the issues of accident and causation, the Arbitrator finds that the Petitioner is entitled to Temporary Partial Disability benefits commencing on November 11, 2013 and continuing through the date of hearing. The Petitioner's average weekly wage was stipulated to be $754.08 and the Petitioner is currently earning $300.00 per week, resulting in a diminution of earnings in the amount of $454.08. Thus, the Petitioner is entitled to Temporary Partial Disability benefits of $302.72 per week ($454.08 x .666 = $302.72) from November 11, 2013 through August 19, 2015, a period of 92 3/7 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

EAGAN, DAVID Case# **15WC012683**
Employee/Petitioner

MIDWEST DRILLED FOUNDATIONS & ENGINEERING
Employer/Respondent

On 10/16/2015, 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 0.08% 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:

1505 SLAVIN & SLAVIN LLC
DAVID VANOVERLOOP
20 S CLARK ST SUITE 510
CHICAGO, IL 60603

0445 RODDY LAW LTD
PAUL KRAUTER
303 W MADISON ST SUITE 1900
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

David Eagan
Employee/Petitioner

Case # **15** WC **12683**

v.

Consolidated cases: **N/A**

Midwest Drilled Foundations & Engineering
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 **Ketki Steffen**, Arbitrator of the Commission, in the city of **Chicago**, on **8/17/15**. 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. [x] What temporary benefits are in dispute?
[ ] TPD [x] Maintenance [x] 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. [x] Other **Vocational Rehabilitation and Maintenance under Section 8(a)**

FINDINGS

On **11/11/13**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $**78,312.00**; the average weekly wage was $**1,506.00**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **1** dependent children.

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

Respondent has paid or will pay, and agrees to indemnify and hold Petitioner harmless for, all bills relating to right knee treatment for dates of service from November 11, 2013 through the August 17, 2015 date of Hearing for all medical providers (including their referrals) that were disclosed to the Respondent prior to August 17, 2015. All bills are subject to the parties' respective rights under Section 8(a) and the fee schedule.

Respondent shall be given a credit of $**84,686.58** for TTD and/or maintenance benefits, $**603.98** for TPD, and $**0.00** for other benefits, for a total credit of $**85,290.56**.

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 $1,004.00/week for 26-3/7 weeks, commencing 11/13/13 through 5/16/14, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits of $1,004.00/week for 62-5/7 weeks, commencing 5/17/14 through 2/8/15 and 2/28/15 through 8/17/15 as provided in Section 8(a) of the Act.

Respondent shall be given a credit of $84,686.58 for temporary total disability and maintenance benefits that have been paid.

Respondent shall pay to Petitioner incurred vocational rehabilitation costs of $874.00, as provided in Section 8(a) of the Act. Request for future tuition payment is declined.

Respondent shall pay for vocational rehabilitation, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner ongoing maintenance benefits of $1,004.00/week throughout the duration of Petitioner's vocational rehabilitation, commencing 8/18/15, as provided in Section 8(a) 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.

Ketki S. Steffen 10/15/15

Signature of Arbitrator Ketki Shroff Steffen Date

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OCT 16 2015

FACTUAL HISTORY

Petitioner, David Eagan, was involved in an undisputed work accident on November 11, 2013, while working for Respondent, Midwest Drilled Foundations & Engineering. Petitioner found his employment with Midwest Drilled Foundations & Engineering through his union, Local 150 Operating Engineers. On the date of the accident, Petitioner had not yet reached journeyman status with the Union, however he had completed 4-1/2 years of apprenticeship work. Petitioner testified that the job duties of an apprentice Operating Engineer vary, but include working in deep tunnel situations where there is a lot of squatting and physical demand, as well as working on an elevator or a tower crane. (Testimony of Petitioner, "TX")

On November 11, 2013, Petitioner was working in the job position of an oiler, and his specific job duties at that time were comprised of servicing machines such as cranes and drill rigs, as well as assisting operators. While in the process of servicing a drill rig on November 11, 2013, Petitioner was trying to avoid a pipe being hoisted and jumped down a 5-6 foot grade, landing on his right leg. Petitioner testified he tumbled after landing, and thereafter had difficulty standing due to pain in his right knee. Petitioner testified he had never experienced pain like that in his right knee before. (TX)

Petitioner notified his supervisor, and went to Advocate Medical Group. Petitioner was given restrictions and began a course of conservative treatment including physical therapy at Athletico. On December 23, 2013, Petitioner was referred to an orthopedic specialist due to ongoing symptoms in his right leg and was recommended to remain off work until cleared by the orthopedic specialist. (TX, Pet. Ex. 1, Pet. Ex. 2)

On the referral from Advocate Medical Group, Petitioner then began his treatment with Dr. Garapati at Illinois Bone and Joint Institute. Dr. Garapati continued the course of conservative treatment with more therapy, as well as administering injections in Petitioner's right knee on January 17, 2014 and March 7, 2014. Petitioner testified that the injections did not provide any lasting relief. Throughout his treatment of Petitioner, Dr. Garapati kept Petitioner on light duty. (Pet. Ex. 3)

On January 27, 2014, Petitioner presented to Dr. Kevin Tu for a Section 12 Examination at the Respondent's request. In his February 12, 2014 report authored following the examination, Dr. Tu opined that Petitioner suffered from a right knee MCL sprain and patellar tendonitis, related to the work injury. Dr. Tu recommended a work conditioning program as well as continued restrictions of no lifting, pushing or pulling greater than 15 pounds, and to avoid any kneeling or squatting activities. (Pet. Ex. 5)

On March 17, 2014 Petitioner underwent an ultrasound of his right knee at Dr. Garapati's request. Following the ultrasound, Dr. Garapati recommended work conditioning. Petitioner underwent the work conditioning at Athletico. On May 16, 2014, Petitioner returned to Dr. Garapati, who then opined Petitioner to be at maximum medical improvement. Dr. Garapati recommended Petitioner undergo a functional capacity evaluation ("FCE") for determination of restrictions. (Pet. Ex. 3)

On June 30, 2014, Petitioner returned to Dr. Kevin Tu at Respondent's request for a second Section 12 Examination. In his July 15, 2014 report authored following the second examination, Dr. Tu confirmed his initial diagnosis and related continued quadriceps atrophy and weakness in Petitioner's lower extremity accompanied by medial joint line tenderness. Dr. Tu noted that Petitioner had completed work conditioning, and opined that Petitioner had reached maximum medical improvement.

Dr. Tu likewise recommended an FCE to determine the extent of permanent work restrictions required. (Pet. Ex. 6)

Petitioner testified that once Dr. Garapati advised him that he would have permanent restrictions he realized he would not be able to face the physical demands of an Operating Engineer and began to seek alternative employment. Through his own research he identified computer-aided drawing ("CAD") as a career path that would not present the same physical demands and stresses, and would be a fit with his past education and talent for drawing, as well as providing a suitable income that would allow him to continue to support his three and a half year old son. (TX)

Petitioner testified that his research revealed CAD certification classes available at Harper College as an opportunity to pursue this field, and enrolled in such classes. After withdrawing once due to difficulty assimilating back into the classroom setting, Petitioner completed the first of four semesters required for the certification in September of 2014. As of the date of hearing, Petitioner was enrolled in the second semester of classes which had not yet begun, and had paid $874.00 in tuition and related expenses for the first two semesters. (TX, Pet. Ex. 8, 9)

After Petitioner began taking the CAD classes, Respondent offered Petitioner an accommodated position that consisted of office work and a little bit of errand running. The position was described to Petitioner as a permanent position; however, the position only lasted 3 weeks in February of 2015. While Petitioner performed the accommodated work, Petitioner received TPD benefits for any difference between his average weekly wage at the time of the undisputed work accident and his weekly earnings in the accommodated position. After the position ended, Respondent resumed off-work benefits in their entirety. (TX, Arb. Ex. 1)

Petitioner also attempted to generate income by starting a dog walking service named "Woofie Pals." Despite creating a dedicated website as well as a Facebook page with reviews and even running special offers for discounted services, Petitioner testified that in the entire year of existence of "Woofie Pals" he had had only two customers, one of whom was his next door neighbor who wrote the sole review on his Facebook website. Throughout that year Petitioner generated an estimated total earning of $75.00. (TX, Res. Ex. 5-7)

Petitioner ultimately did undergo an FCE on April 29, 2015 at Athletico. The examination identified Petitioner as demonstrating maximum voluntary effort during testing, as well as objective findings of limitations in pushing, pulling and lifting evaluations. Further, the examination documented observable edema surrounding Petitioner's right patella following musculoskeletal evaluation and testing. (Pet. Ex. 2)

On May 14, 2015, Petitioner presented for a third Section 12 Examination at Respondent's request. However, instead of returning to Dr. Tu, Respondent requested Petitioner be seen by Dr. Brian Cole. Dr. Cole performed a physical examination and noted tenderness to palpation in the right knee at the patellar tendon origin. Dr. Cole diagnosed Petitioner with recalcitrant chronic right knee patellar tendinitis, and recommended use of a counterforce strap as well as Voltaren topical gel and consideration for a platelet-rich plasma injection. Dr. Cole also recommended additional physical therapy, as well as manipulation in the tendon and eccentric strengthening of the quads. (Res. Ex. 1)

Petitioner testified that he did not wish to proceed with the treatment plan recommended by Dr. Cole as he "had been poked and prodded over the past year and a half" and did not believe further measures would help his knee. (TX)

Petitioner returned to Dr. Garapati on May 18, 2015. Dr. Garapati reviewed the FCE results from Athletico, and opined that the test appeared valid, as Petitioner gave full physical effort, and showed Petitioner capable of performing at the limited heavy physical demand level. Dr. Garapti also noted the presence of swelling and ecchymosis in Petitioner's right knee following the examination. Dr. Garapati released Petitioner with permanent restrictions consistent with the FCE, noting Petitioner was unable to return to his preinjury job, but was able to perform work at a limited heavy demand level without significant heavy lifting on a chronic basis. (Pet. Ex. 4)

Petitioner testified that prior to November 11, 2013, he had suffered injuries before in his line of work as an Apprentice Operations Engineer. On October 23, 2010 he injured his back and proceeded with a Workers' Compensation claim for that injury. Petitioner underwent surgery for his back and ultimately had an FCE relative to that injury. His treating surgeon for that injury, Dr. Phillips, reviewed the FCE and released Petitioner to full duty work without restrictions. Petitioner acknowledged receiving a settlement in resolution of that Workers' Compensation case. (TX, Pet. Ex. 7, Res. Ex. 2)

Petitioner further testified that in 2006 he was involved in a motor vehicle accident that resulted in a fractured right femur requiring surgical repair. Petitioner testified that in the years since treatment ended for that injury he has not had any problems with his right knee until the undisputed work accident of November 11, 2013. (TX)

Petitioner testified that he continues to have a throbbing, sharp pain in the right front of his kneecap with occasional swelling. He is unable to participate in athletics, fishing, hockey or golf, as he could prior to the injury. (TX, Pet. Ex. 9)

FINDINGS/ANALYSIS

(K) In support of the Arbitrator's decision regarding whether Petitioner is entitled to TTD, maintenance or both, the Arbitrator concludes the following:

There is no issue as to accident or causation and the parties have further stipulated to TPD, and Petitioner testified that he was appropriately paid TPD during his short period of accommodated work with Respondent. There is also no dispute that Petitioner is entitled to benefits for his time off work for the periods of November 13, 2013 through February 8, 2015 and February 28, 2015 through May 22, 2015. The issue in dispute is Petitioner's entitlement to maintenance benefits from May 23, 2015 through the August 17, 2015 (hearing date).

"Maintenance is awarded incidental to vocational rehabilitation." *Interstate Scaffolding v. Ill. Workers' Comp. Comm'n*, 385 Ill.App.3d 1040, 1049 (3rd Dist. 2008). Section 8(a) of the Act provides for an award of maintenance benefits while an employee is engaged in a prescribed rehabilitation program. *Nascote Indus. v. Indus. Comm'n (Berry)*, 353 Ill. App. 3d 1067, 1075 (5th Dist. 2004); *Connell v. Industrial Comm'n*, 170 Ill. App. 3d 49, 55 (1988)). There is also no prohibition against claimant-created and directed vocational rehabilitation programs, although they are disfavored. *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 505-506 (5th Dist. 2004).

The Arbitrator finds Petitioner is entitled to maintenance benefits for May 17, 2014 through February 8, 2015 and February 28, 2015 through August 17, 2015. The Arbitrator finds the opinion of Dr. Garapati and Dr. Tu to be more credible than the opinion of Dr. Cole. Dr. Garapati maintained Petitioner on light duty restrictions throughout the course of conservative treatment rendered, ultimately releasing the Petitioner with permanent restrictions determined by a valid FCE. Dr. Garapati's opinions are mirrored by Respondent's Section 12 Examiner Dr. Tu, who confirmed Dr.

Garapati's diagnosis and recommended treatment plan following his first examination of Petitioner, and likewise confirmed Petitioner's ongoing symptoms and the necessity of an FCE to determine the extent of the permanent restrictions warranted by Petitioner's right knee condition following his second examination. Furthermore, the valid FCE identified specific objective findings resulting in recommended restrictions in line with both Dr. Garapati's and Dr. Tu's opinions; Dr. Garapati memorialized these findings as permanent restrictions following his May 18, 2015 final visit with Petitioner.

In contract, Respondent's second Section 12 examiner, Dr. Cole opines that Petitioner was capable of work without restrictions. However, the Arbitrator finds Dr. Cole's opinion regarding Petitioner's ability to work to be unpersuasive. First, Dr. Cole examined Petitioner at Respondent's request only after Respondent's primary Section 12 examiner, Dr. Tu, had twice agreed with Petitioner's treating physician, Dr. Garapati, regarding Petitioner's need for ongoing restrictions. Second, Dr. Cole identified specific ongoing symptomatology in Petitioner's right knee that he related to the undisputed work accident. As a result, Dr. Cole prescribed a detailed, comprehensive treatment plan to address Petitioner's ongoing symptoms, including the apparent ongoing weakness in Petitioner's quadriceps. The Arbitrator finds Dr. Cole's opinion that the Petitioner is capable of work without any restrictions to be contrary to the remainder of his report, particularly wherein he identified ongoing difficulties to the extent that further treatment was warranted. As such, Dr. Cole's opinion that Petitioner is capable of working without restrictions is not credible.

Accordingly, the Arbitrator gives more weight to the opinions of Drs. Garapati and Tu. In doing so, the Arbitrator finds Petitioner unable to work without restrictions, and

that Petitioner has permanent restrictions as outlined in the valid FCE recommended by both Drs. Garapati and Tu, and specifically adopted by Dr. Garapati.

Regarding TTD benefits, the Arbitrator notes Petitioner was entitled to TTD compensation from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Interstate Scaffolding, Inc. v. Com'n, 923 N.E.2d 266 (Ill. 2010 In this case, the Arbitrator finds Petitioner to have reached MMI on May 16, 2014 when Dr. Garapati opined Petitioner was at MMI and recommended an FCE to determine permanent restrictions. The Arbitrator notes Respondent stipulated to owing TTD during this period, and Respondent will receive a credit for all benefits paid.

Further, by case law a claimant is entitled to maintenance after he reaches MMI until either Petitioner finds work within his restrictions or the Respondent can show that there are jobs reasonably available within Petitioner's restrictions. Illinois Workers' Compensation Comm'n v. Intermet Decatur Foundry Wagners Castings, 01 IL. W.C.41704, 2009 WL 3269722. Moreover, pursuant to Rule 7110.10 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission, when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which engaged at the time of injury, or when the period of total incapacity for work exceeds 120 continuous days, whichever first occurs... [t]he employer or his representative, in consultation with the injured employee... shall prepare a written assessment of the course of medical care, and, if appropriate, rehabilitation required to return the injured worker to employment. 50 Ill.Adm.Code 7110.10(a) (2009). However, there is no rule prohibiting claimant-created and directed vocational rehabilitation programs. Greaney v. Industrial Com'n, 832

N.E.2d 331 (Ill.App. 1 Dist. 2005), citing Roper Contracting, 812 N.E.2d 65 (Ill.App. 5 Dist. 2004). Moreover, a Petitioner can be entitled to maintenance while undergoing a diligent self-directed vocational rehabilitation plan, and taking the appropriate steps to obtain a certification required in a specified career field can be evidence of such diligent vocational rehabilitation efforts. (See W.B. Olson, Inc., v. Workers' Compensation, 981 N.E.2d 25 (Ill.App. 1 Dist. 2012) where the Commission's award of maintenance for a period during which the claimant was preparing to obtain a CDL pursuant to his self-directed plan to seek a truck-driving position was not against the manifest weight of the evidence).

As discussed above, the Arbitrator finds that from May 17, 2014 and continuing through the August 17, 2015 date of hearing, Petitioner had ongoing restrictions relative to his right knee as a result of the undisputed work accident.

Respondent presented no evidence that there are jobs reasonably available within Petitioner's restrictions. Furthermore, Petitioner has not found suitable employment within his restrictions. The only period of time during which Respondent was able to accommodate Petitioner's restrictions was from February 9, 2015 through February 27, 2015 when Petitioner was performing the office work and errands. Thereafter, Respondent resumed paying benefits to Petitioner.

There is nothing in the record to indicate Respondent complied with Rule 7110.10. After Respondent's own Section 12 Examiner, Dr. Tu, opined that Petitioner had reached MMI and would likely have permanent restrictions following his July 30, 2014 examination of Petitioner, it could be reasonably determined that Petitioner would be unable to resume the regular duties in which he was engaged at the time of the injury. However, instead of coordinating a rehabilitation plan, Respondent first

developed an accommodated position for Petitioner that, although advertised as being permanent, only lasted three weeks. Thereafter, Respondent made no further efforts to return Petitioner to employment and instead sought the opinion of a different Section 12 Examiner to obtain a full duty release to work.

Rule 7110.10 clearly dictates that it is Respondent's obligation to institute a plan to return Petitioner to work, Petitioner testified that he decided to obtain a CAD (Computer Assisted Drawing) certification, His efforts to complete the course are lacking and there is little or no evidence to show that this certification will result in gainful employment. It is noted that as of the date of hearing, Petitioner had completed only one of four semesters towards the CAD certification and is enrolled to take the second semester in the upcoming fall.

The Petitioner has also started an online dog walking service. The success of this endeavor is abysmal with "Woofie Pals" having earned the Petitioner approximately $75.00 in a year's time. Although "Woofie Pals" or CAD certification may provide stable employment to some, in Petitioner's case both are close to utter failures. In the Arbitrator's estimation neither side has presented proof that Petitioner is or can be employed in a stable, competitive labor market under his current efforts and without Vocational Assessment and or guidance.

For the foregoing reasons, the Arbitrator finds Petitioner is entitled to TTD for November 13, 2013 through May 16, 2014, and maintenance benefits for the periods of May 17, 2014 through February 8, 2015 and February 28, 2015 through August 17, 2015. The Arbitrator notes all TPD alleged has been stipulated and paid. Respondent is given a credit for all other benefits paid.

(O) In support of the Arbitrator's decision regarding whether the Petitioner is entitled to vocational rehabilitation and ongoing maintenance under Section 8(a) of the Act, the Arbitrator concludes the following:

The Arbitrator finds that the Petitioner is entitled to Vocational Rehabilitation under Section 8(a) of the Act, and all maintenance costs and expenses incidental thereto.

Section 8(a) of the Illinois Workers' Compensation Act ("Act") plainly states certain obligations imposed upon employers with regard to vocational rehabilitation and states, in pertinent part: "The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including *maintenance* costs and expenses incidental thereto." 820 ILCS 305/8(a) (*emphasis added*).

As discussed above, Petitioner has permanent restrictions relative to his right knee resulting from the undisputed work accident of November 11, 2013. As further discussed above, Respondent has shown that it has no permanent position to accommodate Petitioner's restrictions, and has made no good faith effort to assist Petitioner in returning to gainful employment as is required by Rule 7110.10. The Arbitrator finds Petitioner's self-directed job search with CAD classes or "Wolfie Pals" to be a very poor substitute for a proper, vocational rehabilitation plan. Although, there is no rule prohibiting claimant-created and self-directed vocational rehabilitation program; in this case the Arbitrator declines to award the same. Greaney, 832 N.E.2d at 347 Petitioner's inadequate progress and inability to generate even a minimum wage employment for himself has convinced the Arbitrator to decline his request for a self-directed plan. To do so will force the Respondent to pay long term maintenance benefits while the Petitioner travels towards assured failure.)). This reasoning is

echoed in *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500, 505-506 (5th Dist. 2004) which reasoned that although there is also no prohibition against claimant-created and directed vocational rehabilitation programs, although they are disfavored.

In spite of her ruling denying a self-directed job search or training the Arbitrator awards Petitioner incurred vocational rehabilitation costs of $874.00, as provided in Section 8(a) of the Act. Although the Arbitrator found the Petitioner's program lacking, the Petitioner undertook the same in good faith. Based of Respondent's failure to provide any program or guidance in job search, the Arbitrator awards this sum. Petitioner's request for future tuition is declined.

Instead, the Arbitrator hereby awards Petitioner Vocational Rehabilitation and orders the Respondent to provide a well-regarded, certified or otherwise appropriate and qualified vocational program for the Petitioner. Additionally, Respondent shall pay maintenance benefits during this period.

It should be noted that "Maintenance is awarded incidental to vocational rehabilitation." *Interstate Scaffolding v. Ill. Workers' Comp. Comm'n*, 385 Ill.App.3d 1040, 1049 (3rd Dist. 2008). Section 8(a) of the Act provides for an award of maintenance benefits while an employee is engaged in a prescribed rehabilitation program. *Nascote Indus. v. Indus. Comm'n (Berry)*, 353 Ill. App. 3d 1067, 1075 (5th Dist. 2004); *Connell v. Industrial Comm'n*, 170 Ill. App. 3d 49, 55 (1988

Respondent shall pay Petitioner ongoing maintenance benefits of $1,004.00/week throughout the duration of Petitioner's vocational rehabilitation, commencing 8/18/15, as provided in Section 8(a) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MERCADO, LORETO Case# **11WC013385**

Employee/Petitioner

CENTEGRA HEALTH SYSTEM

Employer/Respondent

On 10/9/2015, 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 0.06% 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:

1067 ANKIN LAW OFFICE LLC
DEREK S LAX
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0481 MACIOROWSKI SACKMANN & ULRICH
ROBERT E MACIOROWSKI
105 W ADAMS ST SUITE 2200
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF MCHENRY)

- [ ] 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

Loreto Mercado
Employee/Petitioner
v.
Centegra Health System
Employer/Respondent

Case # **11 WC 13385**

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 Falcioni, Arbitrator of the Commission, in the city of Woodstock, on September 3, 2015. 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 December 20, 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.

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

In the year preceding the injury, Petitioner earned $59,043.40; the average weekly wage was $1,135.45.

On the date of accident, Petitioner was 68 years of age, married with no dependent children.

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

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

Respondent shall be given a credit of $ -0- for TTD, $ -0- for TPD, $ -0- for maintenance, and $2,196.76 for other benefits, for a total credit of $2,196.76 for short term disability paid.

Respondent is entitled to a credit under Section 8(j) of the Act for all benefits paid under group or short term disability.

ORDER

Petitioner's claim for benefits denied based upon failure to prove accidental injuries arising out of and in the course of employment.

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 Johnson

Signature of Arbitrator

10/5/15

Date

ICArbDec p. 2

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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 the following facts:

On December 10,2010, ten days prior to the alleged injury in question, the petitioner was seen by his treating doctor complaining of knee pain, "started years ago but lately worsening." Based on those complaints, Dr. Bigol had the petitioner submit to right-knee x-rays, history of no recent trauma, revealed mild medial joint compartment osteoarthritic changes and small marginal osteophytes.

On the date in question, the petitioner was performing his regular duties as a Lab Technician, working with vials weighing ounces, when he turned the wrong way and felt his knee crack. There was no testimony that his foot got stuck on the floor or that he slipped or tripped or was carrying anything of excessive weight. The petitioner testified that his job did require him to stand and walk to various locations in the laboratory and that there were no anti-fatigue mats used in the laboratory.

The petitioner's co-worker provided a written statement, Respondent's Exhibit No. 3, indicating that the petitioner advised her that his knee was hurting and he must have "turned the wrong way" and "heard his knee crack." The witness statement revealed that the petitioner, prior to the occurrence, was wearing an elastic wrap around his knee and that he did complain to her of right-knee pain since December 13, 2010 when he returned from vacation.

The petitioner came under the care of Dr. Luke at Barrington Orthopaedics. The records of Barrington Orthopaedics were admitted into evidence as Respondent's Exhibit No. 3, and indicated that petitioner was standing at work and pivoted from a standing position when he heard his knee pop. There was a history of the petitioner having knee pain for three weeks prior to the work incident.

An MRI was performed on December 23, 2010 that showed a tear of the posterior horn of the medial meniscus.

On January 14, 2011, the petitioner underwent diagnostic arthroscopy of the right knee, chondroplasty of the medial femoral condyle and medial tibial plateau, partial medial and lateral meniscectomy.

The petitioner was followed by Barrington Orthopaedics, Dr. Luke, after the surgery, and was released to return to work, no restrictions, on April 11, 2011.

After his release to return to work, the petitioner continued to complain of on-going knee pain.

At the request of the Respondent, Dr. Troy Karlsson performed a records review on June 11, 2014.

The deposition of Dr. Luke was taken at the request of the petitioner, on June 13, 2014 and admitted into evidence. Dr. Luke testified that the history given to him was of the petitioner pivoting from a standing position and feeling a snap in his knee. He testified that he did not have an opportunity to review Dr. Bigol's records concerning prior complaints and treatment. He acknowledged during his deposition that there was no history of anything being on the floor to cause his foot to stick or of his foot being caught on any object or tripping. He begrudgingly admitted that twisting and turning were every-day activities. He admitted that there was nothing concerning the examination or MRI to tell whether or not the tear actually occurred on the date of the alleged occurrence.

The deposition of Dr. Karlsson was taken October 27, 2014. He testified to his review of records to include prior treatment and complaints. His understanding of the occurrence at work was that the petitioner turned the wrong way and felt his knee crack and that he was wearing a knee brace at the time prior to the incident in question. He testified to his review of the MRI and the operative report. He found the meniscal tear to be degenerative in nature and opined that the incident of turning or twisting did not cause or aggravate the condition for which he was treated, that being the degenerative osteoarthritis and degenerative medial and lateral meniscal tears. He testified that there was nothing unique about the activity of turning in his employment versus turning outside of the work environment and that in his opinion, the activity performed was not a risk greater than what the general public is exposed to. He testified that what was described was an every-day activity, such as turning from a sink, turning in the bathroom, getting in and out of a car, walking around a store, and turning in an aisle.

The Arbitrator finds that based upon the testimony of the petitioner, the statement of the witness and the medical records offered, that the petitioner on the date of December 20, 2010, was performing an every-day activity with no risk greater than the general public, and further finds, based upon the testimony of Dr. Karlsson, given the

prior complaints, x-rays and MRI that the tear found was degenerative in nature and not caused or aggravated by the incident in question.

The Arbitrator, therefore, based on the record as a whole, finds that the petitioner failed to prove accidental injuries arising out of and in the course of his employment and denies the petitioner's claim for compensation. All other issues are moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DUAX, DAVID Case# **10WC000158**

Employee/Petitioner

THUNDERBIRD ENTERPRIZES INC

Employer/Respondent

On 10/28/2015, 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 0.15% 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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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

David Duax

Employee/Petitioner

v.

Thunderbird Enterprizes, Inc.

Employer/Respondent

Case # **10 WC 00158**

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 **Ketki Steffen**, Arbitrator of the Commission, in the city of **Chicago**, on **August 12, 2015**. 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

- [ ] 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 present 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 Respondentpaid 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 **12/18/2009**, 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 $**29,900**; the average weekly wage was **$575.00**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **4** 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 $**31,378.24** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**31,378.24**.

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

ORDER

- Respondent shall pay Petitioner temporary total disability benefits in the amount of **$383.33**/week for **81-6/7** weeks, for the period of **12/19/2009** through **11/4/2012 (intermittently)**, which is the period of temporary total disability for which compensation is due.
- Respondent shall pay Petitioner the sum of **$345.00**/week for a further period of **164.45** weeks, as provided in Section 8(e)10 of the Act because the injuries sustained to the right arm caused a **65%** loss of use of the right arm.
- Respondent shall pay Petitioner the sum of **$345.00**/week for a further period of **82** weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained to the right wrist and hand caused a **40%** loss of use to the right hand.
- Respondent shall pay Petitioner the sum of **$345.00**/week for a further period of **126.5** weeks, as provided in Section 8(e)10 of the Act because the injuries sustained to the left arm caused a **50%** loss of use of the left arm.
- Respondent shall pay Petitioner the sum of **$345.00**/week for a further period of **82** weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained to the left wrist and hand caused a **40%** loss of use to the left hand.
- Respondent shall pay Petitioner the compensation accrued from **12/18/2009** through **8/12/2015** and shall pay the remainder of the award, if any in weekly payments.
- See Rider attached hereto and made a part of hereof.

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.

Ketki S. Steffen 10/27/15

Signature of Arbitrator Ketki Shroff Steffen Date

OCT 28 2015

PROCEDURAL HISTORY

Evidence in the above-captioned claim was presented to Arbitrator Steffen on August 12, 2015. On that date, the Arbitrator heard the testimony of Petitioner. The Arbitrator also received into evidence various exhibits, which included: 1) the medical records from multiple providers; 2) multiple operative reports; 3) medical reports of Dr. Jeffery Coe and Dr. Paul Papierski; 4) transcripts of the evidence depositions of Dr. Coe and Dr. Papierski; and 5) photographs of Petitioner's left and right upper extremities depicting his scars. The Arbitrator is considering the disputed issue of nature and extent of the injury.

Before making a finding of law in connection with this case, the Arbitrator makes the following findings of fact:

FACTUAL HISTORY

Petitioner testified before the Arbitrator on August 12, 2015. The Arbitrator finds that Petitioner's testimony was credible. The Arbitrator notes that Petitioner's testimony was unrebutted. The Arbitrator also finds that Petitioner's testimony was consistent with the histories, treatment and objective findings documented in the medical records, which were offered into evidence at the time of the hearing.

Work History and Background

Petitioner testified that at the time of hearing he was 49 years old. On December 18, 2009, he was employed by Respondent as a manager. Petitioner had been a manager for Respondent for 15 years prior to December 18, 2009. Petitioner is right handed.

Petitioner testified regarding his job duties for Respondent. Petitioner oversaw the day to day operations of the company. The day to day operations included maintenance, running catering routes, checking customers in and out of the commissary and performing any other duties that needed to be performed. Petitioner's job duties also included hiring and firing employees and preparing schedules.

Petitioner testified that if Respondent was short of employees, he would handle a delivery route. On the routes, the salesperson would load their merchandise in the commissary, put the merchandise in the

truck, drive the truck to different sites where they would vend food to customers. In the afternoon, the salesperson would reload the dry merchandise, such as soda and juice, into the back of the truck for the next day. A route salesperson lifted food items, such as cases of soda, juice, water and other beverages, from the commissary into a cart and then into a truck. Petitioner lifted up to 50 pounds. Petitioner would load the truck whether he was working on the route or not. Petitioner loaded the truck two times a day, five days per week if he was filling in for a salesperson. Petitioner would fill in for a salesperson from one to five times per week. When Petitioner was driving routes, he would load ice for the truck. He would use a large shovel and scoop the ice into the truck. The shovel required the use of both hands to operate.

Petitioner would also maintain the equipment and building. Petitioner worked in a large warehouse. In the warehouse, Petitioner fixed equipment in the kitchen, fixed broken pipes and made repairs. Petitioner would use sledge hammers, screwdrivers, hammers, pipe wrenches and power tools.

Petitioner also maintained the ice house on the premise. Petitioner made repairs on machines in the ice house. He would climb to the top of the ice house. In the ice house, Petitioner would climb a vertical ladder affixed to the building and would also climbed ladders to access the roof of the building to maintain the ice house.

Prior Medical Treatment

Prior to the work-related accident of December 18, 2009, Petitioner lifted weights, bowled and golfed. Petitioner lifted free weights, dumbbells and barbells on a daily basis. Prior to December 18, 2009, Petitioner had not received any medical treatment for his right or left upper extremities.

Work-Related Accident of December 18, 2009

On December 18, 2009, Petitioner was working on a ladder for Respondent performing maintenance work. The ladder was located on the outside of the building. Petitioner was working two stories, or twenty feet, above the ground in the ice house. Petitioner finished repairing a heater in the ice house. He was climbing to the top of the ice house to collect some tools and close everything. It was raining and snowing outside. When Petitioner moved to grab the last rung of the ladder, his right hand slipped. Then

his foot slipped causing Petitioner to fall backwards. Petitioner fell and caught himself in a push-up position on the concrete floor with his hands outstretched. Petitioner's hands struck the ground first.

Petitioner tried to sit up, but could not push off the ground with his arms. He was in pain. Petitioner saw that his hands were "cocked in a funny position." Petitioner knew that his arms were broken. He sat on the ground and waited for someone to call 911.

Medical Treatment After Work Accident of 12/-18/09

Petitioner was taken via ambulance to Stroger Hospital on December 18, 2009. (PX 1). X-rays of the right and left upper extremities were taken at Stroger. (PX 1). X-rays of the right forearm revealed a right midshaft ulnar fracture with radial head dislocation. (PX 1). The x-rays of the left upper extremity revealed a comminuted fracture of the ulnar and radial diaphysis with mild displacement and angulation and complex fracture involving the distal radius epiphytes. (PX 1).

Petitioner was transferred to Good Samaritan Hospital. (PX 2). He received medical treatment from Dr. Casini. (PX 2). Petitioner was admitted at Good Samaritan Hospital from December 18, 2009 through December 25, 2009. (PX 2). Petitioner testified that while he was in the hospital, both of his forearms became very swollen and he was experiencing a lot of pain. Petitioner underwent bilateral fasciotomies on December 19, 2009 for bilateral compartment syndrome. (PX 3). Petitioner then underwent an irrigation, debridement, open reduction and internal fixation ("ORIF") of the right ulna, closed reduction of the right radial head dislocation, ORIF of the left ulnar fracture and closed reduction and application of external fixation of the left radius fracture. (PX 3). On December 22, 2009, Petitioner underwent skin grafts for both of his arms. (PX 3). The skin grafts were related to the fasciotomies. (PX 2). The skin graft was harvested from the skin on the left thigh and applied to the openings of the fasciotomy. (PX 3).

Following his discharge from the hospital, Petitioner remained under the medical care of Dr. Casini. (PX 4). On January 18, 2010, Dr. Casini performed a left carpal tunnel release for left traumatic carpal tunnel syndrome. (PX 3). Petitioner's continued medical treatment included remaining off work,

physical therapy and follow up visits with Dr. Casini. (PX 4). Petitioner participated in physical therapy at Athletico from February 16, 2010 to May 19, 2010. (PX 5).

On March 3, 2010, at the recommendation of Dr. Casini, Petitioner underwent an MRI study of the right elbow and left shoulder. (PX 6). The MRI of the left shoulder was negative. (PX 6). The MRI study of the right elbow revealed a slight offset of the anterior medial aspect of the radial head at the site of the intra-articular extension of the medical fracture, complete disruption of the lateral collateral ligament complex and disruption of the all or the majority of the common extensor tendon, retracted tear of the distal biceps tendon and elbow joint effusion. (PX 6).

Based on the recommendations of the physical therapist at Athletico, Petitioner sought treatment with Dr. Mark Cohen. Petitioner was initially evaluated by Dr. Cohen on March 5, 2010. (PX 7). Dr. Cohen recommended that Petitioner undergo surgery for his left wrist. (PX 7). Petitioner underwent an ORIF of the left radius nonunion with locked plating and iliac crest bone graft, open reduction of the distal radioulnar joint, tenotomy of the brachioradialis and neurolysis of the radial nerve on March 11, 2010. (PX 8). In connection with the surgery, Petitioner was admitted to Rush Hospital from March 11, 2010 through March 13, 2010. (PX 8). A bone graft was taken from Petitioner's left hip and a fixation device was affixed to Petitioner's left hand. (PX 8). The fixator was affixed for approximately 8 weeks. Petitioner remained under the post-operative care of Dr. Cohen. (PX 8). Petitioner participated in physical therapy at Athletico. (PX 5).

Petitioner continued to experience pain in his right elbow. (PX 7). Dr. Cohen recommended that Petitioner undergo a right elbow replacement. (PX 7). Petitioner underwent the recommended surgery on July 8, 2010. (PX 8). Dr. Cohen performed a right forearm nonunion repair with internal fixation and distal radius autograft, implant removal, radial head arthroplasty, elbow release and debridement of the coronoid and radial fossae and lateral collateral ligament repair at the epicondyle. (PX 8). In connection with the elbow replacement, bone was taken from Petitioner's right wrist. (PX 8). Petitioner continued under the post-operative care of Dr. Cohen, which included follow up visits and activity modification. (PX 8).

On November 5, 2010, Dr. Cohen recommended that Petitioner undergo a biceps reconstruction. (PX 7). Petitioner underwent a right biceps reconstruction utilizing a allograft form the hamstring, biceps tenolysis and neurolysis of the lateral antebrachiocutaneous nerve at Rush Hospital on December 2, 2010. (PX 8). Petitioner remained under the post-operative medical care of Dr. Cohen. (PX 7).

Dr. Cohen referred Petitioner to Dr. Kouris, a plastic surgeon, for further medical treatment. (PX 7). Petitioner was initially evaluated by Dr. Kouris on March 14, 2011. (PX 9). Dr. Kouris recommended that Petitioner undergo several surgical procedures on both upper extremities. (PX 9).

On March 19, 2011, Dr. Kouris performed an excision of the skin graft on the left forearm. (PX 10). The surgery involved removal of the skin grafts from the fasciotomy. (PX 10). On June 6, 2011, Dr. Kouris performed an excision of the skin graft of the right forearm with reconstruction of the flap repair. (PX 10). The area from the fasciotomy was repaired on June 6, 2011. (PX 10). Petitioner underwent a total excision of the skin graft of the right forearm and serial excision of the skin graft of the left forearm on September 18, 2012. (PX 10).

Petitioner was examined by Dr. Cohen on May 11, 2011. (PX 7). Dr. Cohen recommended that Petitioner return to work with a restriction of no lifting more than 20 pounds. (PX 7).

Petitioner was last examined by Dr. Cohen on July 18, 2012. (PX 7). Dr. Cohen documented that Petitioner had constant soreness in the right elbow and occasional increased elbow pain. (PX 7). A physical examination revealed proximal migration of the biceps, grip strength of 60 pounds on the right and 100 on the left. (PX 7). Dr. Cohen recommended annual radiographic evaluations of the radiohead arthroplasty. (PX 7). Dr. Kouris set forth that Petitioner could return to work on November 19, 2012. (PX 9).

Petitioner was unable from December 19, 2009 through November 4, 2012. Petitioner received temporary total disability benefits during this time. Following November 4, 2012, Petitioner intermittently worked for Respondent. When Petitioner returned to work, he did not perform any physical labor.

Medical Opinions of Dr. Jeffery Coe

The narrative report (PX 11) and transcript of the evidence deposition of Dr. Coe (PX 12) were admitted into evidence. In his narrative report and deposition, Dr. Coe summarized the significant medical treatment that Petitioner received as a result of the work-related accident of December 18, 2009. (PX 11); (PX 12). Dr. Coe documented Petitioner's subjective complaints. (PX 11); (PX 12). Petitioner experienced pain in both forearms, wrists and elbows. (PX 11); (PX 12 at 31). He had cramping in his right biceps with exertion. (PX 11); (PX 12 at 31). Petitioner also experienced cramping in both hands and loss of dexterity in both hands. (PX 11); (PX 12 at 31-32). Petitioner had stiffness in his right elbow and forearm and left forearm. (PX 11); (PX 12 at 32). Petitioner set forth that he had difficulty gripping tools and requires assistance in performing heavy lifting, forceful pushing and pulling and climbing. (PX 11); (PX 12 at 32).

Dr. Coe objectively measured Petitioner's range of motion in Petitioner's upper extremities. (PX 11); (PX 12). Petition's range of motion in his arms was with extension 160 degrees on the right, 180 on the left, normal being 180; with flexion 130 on the right, 140 on the left, with normal being 140; with pronation 90 degrees on the right, 90 on the left with normal being 90; with supination 45 degrees on the right, 65 on the left with normal being 90. (PX 11); (PX 12 at 36-37). With regard to the wrists, Petitioner had range of motion with flexion 55 degrees on the right, 55 on the left, with normal being 80; with extension 60 degrees on the right, 65 on the left, with normal being 80; with radial deviation 40 degrees on the right, 45 on the left, with normal being 45; with ulnar deviation 35 degrees on the right, 35 on the left, with normal being 45. (PX 11); (PX 12 at 37).

Dr. Coe opined that as a result of the work-related accident of December 18, 2009, Petitioner sustained comminuted fractures of the left radius and ulna and complex open fracture of the right ulna and dislocation of the right radial head with right elbow ligamentous injury and right distal biceps tendon rupture. (PX 11). Dr. Coe set forth a diagnosis of status post complex multiple fractures of both upper extremities with posttraumatic and postsurgical complications including bilateral upper extremity compartment syndrome and left carpal tunnel syndrome, posttraumatic arthritis in the right elbow and

partial dislocation of the left wrist. (PX 12 at 40). As a result of the injuries, Petitioner underwent multiple surgeries, which were complicated by bilateral compartment syndrome requiring fasciotomies and bilateral posttraumatic carpal tunnel syndrome requiring left carpal tunnel release. (PX 11). Healing of the upper extremity fractures was limited by nonunion of the left radius fracture and right ulnar fracture and nonunion of the radial head. (PX 11). Petitioner also had continued right elbow and forearm stiffness and right biceps spasms. (PX 11).

Dr. Coe noted that Petitioner had decreased range of motion in the right elbow with flexion and extension, decreased range of motion of both forearms in supination, in both wrists with flexion, extension, in the right wrist with radial and ulnar deviation and left wrist with ulnar deviation. (PX 11). Petitioner had decreased sensation in both forearms due to extensive scaring and atrophy in the right arm and swelling in the right elbow and proximal forearm. (PX 11).

Dr. Coe set forth that Petitioner's current condition of ill-being in connection with his upper extremities was casually related to the work-related accident of December 18, 2009 based on the history, medical records and clinical examination. (PX 12 at 41). Dr. Coe found that the condition in Petitioner's upper extremity was permanent. (PX 12 at 44).

Dr. Coe testified that Petitioner would require ongoing medical treatment of annual follow up visits with his orthopedic physician and possible surgery as a prosthesis can become unstable for the right arm. (PX 12 at 43). Dr. Coe noted that because Petitioner sustained an intraarticular fracture in the left wrist with left wrist subluxation and partial dislocation, he was at an increased risk of posttraumatic arthritis in the left wrist. (PX 12 at 45). He testified that posttraumatic arthritis would cause pain. (PX 12 at 71). As a result of the posttraumatic arthritis, Petitioner may require anti-inflammatory medication, joint injections, limitation in movement through bracing and if intolerantly symptomatic, a partial or full fusion. (PX 12 at 72).

Dr. Coe also opined that Petitioner would require work restrictions as it related to his upper extremities. (PX 12 at 46). Dr. Coe set forth that Petitioner could return to work with limitations of climbing ladders, use of large power tools and being able to change positions and rest his arms frequently

throughout the work day. (PX 11). Dr. Coe based the need for work restrictions on the stiffness in both upper extremities, numbness and atrophy. (PX 12 at 46). Dr. Coe noted that Dr. Cohen placed similar work restrictions on Petitioner of no working at heights, no pushing or pulling and no lifting more than 20 pounds. (PX 12 at 48). Dr. Coe noted that based on Dr. Papierski's report, Petitioner had a grip strength of 40 pounds weaker in his right hand over left. (PX 12 at 50).

On December 29, 2014, Dr. Coe prepared an addendum report addressing the opinions of Dr. Paul Papierski, Respondent's Section 12 physician. (PX 11). Dr. Coe noted that Dr. Papierski agreed with his diagnosis, causation opinion and need for ongoing medical treatment. (PX 12 at 42). Dr. Coe set forth that the opinions of Dr. Papierski did not change his previously expressed opinions. (PX 11).

Medical Opinions of Dr. Paul Papierski, Respondent's Section 12 Physician

At the request of Respondent, Petitioner was examined by Dr. Paul Papierski on May 18, 2011 (RX 1) and June 11, 2014. (RX 2). The reports of the examinations (RX 1); (RX 2) and the transcript of the evidence deposition of Dr. Papierski were admitted into evidence. (RX 3).

On May 18, 2011, Dr. Papierski reviewed the medical records of Petitioner and performed a physical examination of Petitioner. (RX 1). Dr. Papierski noted that Petitioner could elect to undergo a skin revisions, a wrist arthroscopy with ulnar shortening and hardware removal. (RX 1). He set forth that Petitioner's fractures had healed so there was no reason why he could not return unrestricted work. (RX 1). Dr. Papierski noted that Petitioner lacked about 15 degrees of extension on the right elbow and minimal limitations of flexion on the left. (RX 3 at 15). Petitioner had crepitation in the right elbow and tenderness on the right ulna and left ulna and radial side. (RX 3 at 16). Petitioner could not bring his palm upwards on the right side. (RX 3 at 16). Petitioner had limitations of wrist range of motion on both sides and limitations with range of motion in his fingers. (RX 3 at 16).

On June 11, 2014, Dr. Papierski noted that Petitioner complained of numbness, sharp shooting pain and cramping in his bilateral forearms. (RX 2). Dr. Papierski noted range of motion of -10 degrees extension and 130 flexion on the right elbow and -5 degrees flexion and 140 on the left elbow. (RX 2). The distal radioulnar joint had 75 degrees of supination and 40 degrees pronation on the right and 75

degrees supination and 60 degrees pronation on the left. (RX 2). Papierski found Petitioner's range of motion to be improved bilaterally. (RX 3 at 27). On the right side, Petitioner lacked 5 degrees of extension and some limited pronation and supination. (RX 3 at 27). Petitioner had stiffness of the joint in his hands. (RX 3 at 28). Dr. Papierski recommended future medical treatment in the form of occasional use of over the counter medication, annual orthopedic follow up appointments and possible surgery for the radial head replacement. (RX 2).

Dr. Papierski documented a diagnosis of status post bilateral upper extremity radius and ulnar fractures with right distal biceps tendon repair and bilateral ulna impaction syndrome and status post radial head replacement on the right. (RX 3 at 31). Dr. Papierski did not comment regarding Petitioner's ability to return to work. (RX 3 at 36).

With regard to work restrictions, Dr. Papierski stated that Petitioner was not prevented from attempting to return to unrestricted work. (RX 3 at 23). However, Dr. Papierski acknowledged that Petitioner's grip strength was less than normal. (RX 3 at 24). Dr. Papierski acknowledged that Dr. Cohen never formally lifted the work restrictions of no lifting more than twenty (20) pounds. (RX 3 at 77). He admitted that reasonable restrictions for one doctor may be different than restrictions for another doctor. (RX 3 at 79). Dr. Papierski testified that when he mentioned unrestricted work, he was relatively unspecific and did not necessarily state that Petitioner could go back to his job or any other job. (RX 3 at 80). He acknowledged that it was speculative as to whether Petitioner could perform heavy physical work. (RX 3 at 80). He noted that Petitioner's subjective complaints were not unreasonable. (RX 3 at 88).

Dr. Papierski testified that Petitioner's fracture on the right radial head broke the skin. (RX 3 at 43). Further, Petitioner sustained a dislocation of the right radial head which caused significant tearing of the ligaments in the elbow. (RX 3 at 43). On the left side the fracture extended into Petitioner's wrist. (RX 3 at 46).

Current Subjective Complaints

Petitioner testified regarding his current subjective complaints. He testified that he has significant scaring on his right and left upper extremity. Pictures were taken of Petitioner's scars. Eight pictures of Petitioner's significant scars on the right and left upper extremity were admitted into evidence. (PX 13). Further, Petitioner's right biceps is malformed compared to the left. It is also weaker than the left arm.

Petitioner returned to work for Respondent. He testified that currently it is more difficult for him to lift or carry anything. He has difficulty working with tools and turning a screwdriver causes pain in his biceps. Petitioner does not lift anything heavier than tools, food items and boxes of doughnuts. When Petitioner lifts objects, he experiences cramping in his right biceps, pain in his right wrist, pain in his right forearm and pain in his left wrist and forearm. Petitioner tries to use his left hand to use the screwdriver because turning the screwdriver in his right hand causes pain in the biceps. However, Petitioner also has pain with turning in his left wrist. Petitioner avoids using ladders at work. When he does use A-frame ladders, he is not confident and he experiences pain. Petitioner has an assistant to help him perform physical activities. Petitioner does not drive routes anymore.

Petitioner does not participate in recreational activities anymore. He does not bowl and only golfs a little. Petitioner testified that he lacks the range of motion in his arms to golf. Petitioner struggles to grip objects. He drops objects and cannot perform small tasks with his fingers. He also has spams and cramps in his hands. Petitioner does not write very often and has difficulty texting because his fingers lock up and cramp. He did not have any problems texting prior to the work-related accident of December 18, 2009. He has difficulty typing on a computer because of the pain. He also lacks range of motion to bend his wrists.

Petitioner testified he experiences numbness in his arms where he received skin grafts. He applies lotion to the areas. He constantly experiences numbness in the left forearm. Petitioner takes Ibuprofen and Tylenol for the pain. Petitioner is scheduling a follow up appointment with Dr. Cohen.

FINDINGS/ANALYSIS

In support of the Arbitrator's decision relating to "L," nature and extent of the injury, the Arbitrator concludes as follows:

In rendering her decision, the Arbitrator notes that the accident and severity of the accident and the injuries resulting from the fall are uncontested. There is little or no disagreement regarding the long, complex and serious nature of the medical treatment that follows. There is also little disagreement that in spite of the procedures, the Petitioner is not restored to his old state of health or well-being. On the contrary, it is obvious and clearly evident that Petitioner is able to do only a fraction of his work duties. To their credit and commendation, the employer and other fellow employees have helped to accommodate the Petitioner and the Petitioner has chosen the noble and honest path of returning back to full duty employment under circumstances which would have caused many to falter. Petitioner's age of 49 indicates at least 15 plus years of long work life ahead of him in an occupation which is not desk bound or predominantly cerebral but requires use of his physical person and mastery of many large and small skills. The effect and restrictions on Petitioner's private and personal life and enjoyment thereof is debilitating and onerous. In the Arbitrator's estimation the extensive injuries to both arms and wrists greatly enhances the Petitioner's permanent partial disability because Petitioner is unable to rely upon the other arm and hand to compensate for weakness or limitations in his dominant arm. This factor weighs heavily in the Arbitrator's estimation of Petitioner's sum total disability.

The Arbitrator finds that Petitioner sustained a permanent injury to the right arm to the extent of 65% loss of use of the right arm, 40% loss of use of the right hand, 50% loss of use of the left arm and 40% loss of use of the left hand. In support of this conclusion, the Arbitrator finds Petitioner's testimony to be credible, unrebutted and corroborated by the medical records submitted into evidence. The Arbitrator relies on the medical records of Dr. Casini and the medical records and testimony of Dr. Cohen. The Arbitrator also notes that the testimony of Dr Papierski, Respondent's Section 12 physician, supports a finding that Petitioner sustained a permanent and serious injury to his right and left arm and right and left hand.

The Arbitrator finds that as a result of the work-related accident of December 18, 2009, Petitioner required permanent work restrictions as it relates to both his upper extremities. The Arbitrator relies on the opinions of Dr. Cohen and Dr. Coe. Dr. Cohen set forth that Petitioner could return to work with the restrictions of no working at heights, no pushing or pulling and no lifting more than 20 pounds. Dr. Coe opined that Petitioner should not work on ladders or scaffolding, not using tools above shoulder height and be able to rest his arms as needed. Dr. Coe based the need for work restrictions was based on the stiffness in both upper extremities, numbness and atrophy.

The Arbitrator considered the opinions of Dr. Papierski that Petitioner could return to work without restrictions. She rejects the opinions of Dr. Papierski since Petitioner has objective weakness and loss of range of motion in his upper extremities. Further, Dr. Papierski's opinions were equivocal and speculative. Specifically, Dr. Papierski testified that he was relatively unspecific when he set forth that Petitioner could return to unrestricted work and did not necessarily state that Petitioner could go back to his job or any other job. He acknowledged that it was speculative as to whether Petitioner could perform heavy physical work. The Arbitrator also relies on the holding in *International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979) (holding that the Commission can accord greater weight to the medical opinions of the claimant's treating physicians).

In support of her award of permanent partial disability, the Arbitrator also relies on the significant scarring that Petitioner sustained as a result of the accident, surgeries performed and complications to the surgeries. The extensive scarring is clearly documented in the photographs admitted into evidence.

With regard to the right arm, Petitioner sustained right ulna and complex open and dislocation of the right radial head with right elbow ligamentous injury and right distal biceps tendon rupture. As a result of the work-related accident, Petitioner underwent seven surgeries to the right arm, including an ORIF of the right ulnar and radius, fasciotomy, skin grafts, a radial head arthroplasty and biceps reconstruction.

Petitioner testified regarding multiple subjective complaints related to his right arm. Petitioner experienced pain and stiffness his right forearm and elbow. He had cramping in his right biceps with exertion. Petitioner set forth that he has difficulty gripping tools and requires assistance in performing

heavy lifting, forceful pushing and pulling and climbing. Further, Petitioner's right biceps is malformed and weaker compared to the left.

Petitioner also had objective deficits as it relates to his right arm. Dr. Coe noted that Petitioner had decreased range of motion in the right elbow with flexion and extension and decreased range of motion of in the right forearm with supination. Petitioner had decreased sensation in both forearms due to extensive scaring and atrophy in the right arm and swelling in the right elbow and proximal forearm. Dr. Coe's findings were consistent with the findings of Dr. Papierski, Respondent's Section 12 physician.

As a result of the work-related accident, Petitioner will require additional medical treatment as it relates to the right arm, including follow up visits with the orthopedic surgeon and a possible revision of the right elbow arthroplasty. The necessity of ongoing medical treatment is corroborated by the opinions of Dr. Coe and Dr. Papierski.

Petitioner also sustained significant injuries to his right wrist and hand as a result of the work-related accident of December 18, 2009. The fractures that Petitioner sustained in his right arm extended into his right wrist and necessitated the need for surgery in the right wrist. Petitioner has objective loss of range of motion in his right wrist. Dr. Coe noted that Petitioner had decreased range of motion in his right wrist with flexion, extension and the right wrist with radial and ulnar deviation

As a result of the accident, Petitioner had subjective complaints regarding his right wrist and hand. Petitioner experienced pain and cramping in his right wrist. He has loss of dexterity in his right hand. Petitioner set forth that he has difficulty gripping tools. When Petitioner lifts objects, he experiences pain in his right wrist. Petitioner struggles to grip objects. He drops objects and cannot perform small tasks with his fingers. He also has spams and cramps in his hands. Petitioner does not write very often and has difficulty texting because his fingers lock up and cramp. He did not have any problems texting prior to the work-related accident of December 18, 2009. He has difficulty typing on a computer because of the pain. He also lacks range of motion to bend his right wrist.

With regard to the left arm, Petitioner sustained comminuted fractures of the left radius and ulna. Petitioner underwent multiple surgeries to the left arm, including ORIFs, fasciotomy and skin grafts.

Petitioner experienced pain and stiffness in his left forearm and elbow. Petitioner also has objective loss of range of motion in the left arm. Dr. Coe noted that Petitioner had decreased range of motion in the left forearm with supination. Petitioner had decreased sensation the left forearm. Dr. Papierski's report is consistent with the findings of Dr. Coe.

Petitioner also sustained significant injuries to his left wrist and hand as a result of the work-related accident of December 18, 2009. The fractures that Petitioner sustained in his left arm extended into his left wrist and necessitated the need for surgery in the left wrist. Petitioner also developed carpal tunnel syndrome in the left wrist, which required surgical repair.

Petitioner experienced pain in his left wrist. Petitioner also experienced cramping in his left hand and loss of dexterity in his left hand. Petitioner set forth that he has difficulty gripping tools. Petitioner tries to use his left hand to use the screwdriver because turning the screwdriver in his right hand causes pain in the biceps. However, Petitioner also has pain with turning in his left wrist. Petitioner struggles to grip objects. He drops objects and cannot perform small tasks with his fingers. He also has spams and cramps in his left hand.

Petitioner has objective findings as it relates to his left hand. Dr. Coe noted that Petitioner had decreased range of motion in the left wrist with ulnar deviation. His findings are consistent with the findings of Dr. Papierski.

Dr. Coe and Dr. Papierski both testified that Petitioner was at risk to develop posttraumatic arthritis in the left wrist. As a result of the posttraumatic arthritis, Petitioner may require future medical treatment such as anti-inflammatory medication, joint injections, limitation in movement through bracing and if intolerantly symptomatic, a partial or full fusion.

The Arbitrator finds that all of Petitioner's subjective complaints were corroborated by the treating medical records of Dr. Cohen and the report of Dr. Coe. Further, Respondent's Section 12 physician testified that the complaints were reasonable given the type of injury and surgeries that Petitioner underwent.

The Arbitrator also relies on the fact that as a result of the work-related accident and injuries to his bilateral upper extremities and hands, Petitioner performs his job differently than prior to his work-related accident. Petitioner testified that currently it is more difficult for him to lift or carry anything. He has difficulty working with tools and turning a screwdriver causes pain in his right biceps. Petitioner does not lift anything heavier than tools, food items and boxes of doughnuts. When Petitioner lifts objects, he experiences cramping in his right biceps and pain in his right forearm. Petitioner avoids using ladders at work. When he does use A-frame ladders, he is not confident and he experiences pain. Petitioner has an assistant to help him perform physical activities. Petitioner does not drive routes anymore. Petitioner does not participate in recreational activities anymore.

Further, Petitioner is not able to perform his pre-injury hobbies because of his injuries. Specifically, Petitioner does not bowl and only golfs a little. He lacks the range of motion in his arms to golf.

Based on the testimony of Petitioner and the medical evidence submitted at trial, the Arbitrator finds that Petitioner sustained a permanent partial injury to the right arm to the extent of 65% loss of use of the right arm, 40% loss of use of the right hand, 50% loss of use of the left arm and 40% loss of use of the left hand.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DUAX, DAVID Case# **10WC000158**

Employee/Petitioner

THUNDERBIRD ENTERPRIZES INC

Employer/Respondent

On 10/28/2015, 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 0.15% 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:

1987 RUBIN LAW GROUP LTD
ARNOLD G RUBIN
20 S CLARK ST SUITE 1810
CHICAGO, IL 60603

4234 RIPES NELSON BAGGOT KALOBRATSO
STEVEN F MARTELLA
2353 HASSELL RD SUITE 115
HOFFMAN ESTATES, IL 60169

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

David Duax

Employee/Petitioner

v.

Thunderbird Enterprizes, Inc.

Employer/Respondent

Case # **10 WC 00158**

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 **Ketki Steffen**, Arbitrator of the Commission, in the city of **Chicago**, on **August 12, 2015**. 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

- [ ] 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 present 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 Respondentpaid 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 **12/18/2009**, 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 $**29,900**; the average weekly wage was **$575.00**.

On the date of accident, Petitioner was **43** years of age, ***single*** with **4** 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 $**31,378.24** for TTD, $**-0-** for TPD, $**-0-** for maintenance, and $**-0-** for other benefits, for a total credit of $**31,378.24**.

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

ORDER

- Respondent shall pay Petitioner temporary total disability benefits in the amount of **$383.33**/week for **81-6/7** weeks, for the period of **12/19/2009** through **11/4/2012 (intermittently)**, which is the period of temporary total disability for which compensation is due.
- Respondent shall pay Petitioner the sum of **$345.00**/week for a further period of **164.45** weeks, as provided in Section 8(e)10 of the Act because the injuries sustained to the right arm caused a **65%** loss of use of the right arm.
- Respondent shall pay Petitioner the sum of **$345.00**/week for a further period of **82** weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained to the right wrist and hand caused a **40%** loss of use to the right hand.
- Respondent shall pay Petitioner the sum of **$345.00**/week for a further period of **126.5** weeks, as provided in Section 8(e)10 of the Act because the injuries sustained to the left arm caused a **50%** loss of use of the left arm.
- Respondent shall pay Petitioner the sum of **$345.00**/week for a further period of **82** weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained to the left wrist and hand caused a **40%** loss of use to the left hand.
- Respondent shall pay Petitioner the compensation accrued from **12/18/2009** through **8/12/2015** and shall pay the remainder of the award, if any in weekly payments.
- See Rider attached hereto and made a part of hereof.

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.

Ketki S. Steffen 10/27/15

Signature of Arbitrator Ketki Shroff Steffen Date

OCT 28 2015

PROCEDURAL HISTORY

Evidence in the above-captioned claim was presented to Arbitrator Steffen on August 12, 2015. On that date, the Arbitrator heard the testimony of Petitioner. The Arbitrator also received into evidence various exhibits, which included: 1) the medical records from multiple providers; 2) multiple operative reports; 3) medical reports of Dr. Jeffery Coe and Dr. Paul Papierski; 4) transcripts of the evidence depositions of Dr. Coe and Dr. Papierski; and 5) photographs of Petitioner's left and right upper extremities depicting his scars. The Arbitrator is considering the disputed issue of nature and extent of the injury.

Before making a finding of law in connection with this case, the Arbitrator makes the following findings of fact:

FACTUAL HISTORY

Petitioner testified before the Arbitrator on August 12, 2015. The Arbitrator finds that Petitioner's testimony was credible. The Arbitrator notes that Petitioner's testimony was unrebutted. The Arbitrator also finds that Petitioner's testimony was consistent with the histories, treatment and objective findings documented in the medical records, which were offered into evidence at the time of the hearing.

Work History and Background

Petitioner testified that at the time of hearing he was 49 years old. On December 18, 2009, he was employed by Respondent as a manager. Petitioner had been a manager for Respondent for 15 years prior to December 18, 2009. Petitioner is right handed.

Petitioner testified regarding his job duties for Respondent. Petitioner oversaw the day to day operations of the company. The day to day operations included maintenance, running catering routes, checking customers in and out of the commissary and performing any other duties that needed to be performed. Petitioner's job duties also included hiring and firing employees and preparing schedules.

Petitioner testified that if Respondent was short of employees, he would handle a delivery route. On the routes, the salesperson would load their merchandise in the commissary, put the merchandise in the

truck, drive the truck to different sites where they would vend food to customers. In the afternoon, the salesperson would reload the dry merchandise, such as soda and juice, into the back of the truck for the next day. A route salesperson lifted food items, such as cases of soda, juice, water and other beverages, from the commissary into a cart and then into a truck. Petitioner lifted up to 50 pounds. Petitioner would load the truck whether he was working on the route or not. Petitioner loaded the truck two times a day, five days per week if he was filling in for a salesperson. Petitioner would fill in for a salesperson from one to five times per week. When Petitioner was driving routes, he would load ice for the truck. He would use a large shovel and scoop the ice into the truck. The shovel required the use of both hands to operate.

Petitioner would also maintain the equipment and building. Petitioner worked in a large warehouse. In the warehouse, Petitioner fixed equipment in the kitchen, fixed broken pipes and made repairs. Petitioner would use sledge hammers, screwdrivers, hammers, pipe wrenches and power tools.

Petitioner also maintained the ice house on the premise. Petitioner made repairs on machines in the ice house. He would climb to the top of the ice house. In the ice house, Petitioner would climb a vertical ladder affixed to the building and would also climbed ladders to access the roof of the building to maintain the ice house.

Prior Medical Treatment

Prior to the work-related accident of December 18, 2009, Petitioner lifted weights, bowled and golfed. Petitioner lifted free weights, dumbbells and barbells on a daily basis. Prior to December 18, 2009, Petitioner had not received any medical treatment for his right or left upper extremities.

Work-Related Accident of December 18, 2009

On December 18, 2009, Petitioner was working on a ladder for Respondent performing maintenance work. The ladder was located on the outside of the building. Petitioner was working two stories, or twenty feet, above the ground in the ice house. Petitioner finished repairing a heater in the ice house. He was climbing to the top of the ice house to collect some tools and close everything. It was raining and snowing outside. When Petitioner moved to grab the last rung of the ladder, his right hand slipped. Then

his foot slipped causing Petitioner to fall backwards. Petitioner fell and caught himself in a push-up position on the concrete floor with his hands outstretched. Petitioner's hands struck the ground first.

Petitioner tried to sit up, but could not push off the ground with his arms. He was in pain. Petitioner saw that his hands were "cocked in a funny position." Petitioner knew that his arms were broken. He sat on the ground and waited for someone to call 911.

Medical Treatment After Work Accident of 12/-18/09

Petitioner was taken via ambulance to Stroger Hospital on December 18, 2009. (PX 1). X-rays of the right and left upper extremities were taken at Stroger. (PX 1). X-rays of the right forearm revealed a right midshaft ulnar fracture with radial head dislocation. (PX 1). The x-rays of the left upper extremity revealed a comminuted fracture of the ulnar and radial diaphysis with mild displacement and angulation and complex fracture involving the distal radius epiphytes. (PX 1).

Petitioner was transferred to Good Samaritan Hospital. (PX 2). He received medical treatment from Dr. Casini. (PX 2). Petitioner was admitted at Good Samaritan Hospital from December 18, 2009 through December 25, 2009. (PX 2). Petitioner testified that while he was in the hospital, both of his forearms became very swollen and he was experiencing a lot of pain. Petitioner underwent bilateral fasciotomies on December 19, 2009 for bilateral compartment syndrome. (PX 3). Petitioner then underwent an irrigation, debridement, open reduction and internal fixation ("ORIF") of the right ulna, closed reduction of the right radial head dislocation, ORIF of the left ulnar fracture and closed reduction and application of external fixation of the left radius fracture. (PX 3). On December 22, 2009, Petitioner underwent skin grafts for both of his arms. (PX 3). The skin grafts were related to the fasciotomies. (PX 2). The skin graft was harvested from the skin on the left thigh and applied to the openings of the fasciotomy. (PX 3).

Following his discharge from the hospital, Petitioner remained under the medical care of Dr. Casini. (PX 4). On January 18, 2010, Dr. Casini performed a left carpal tunnel release for left traumatic carpal tunnel syndrome. (PX 3). Petitioner's continued medical treatment included remaining off work,

physical therapy and follow up visits with Dr. Casini. (PX 4). Petitioner participated in physical therapy at Athletico from February 16, 2010 to May 19, 2010. (PX 5).

On March 3, 2010, at the recommendation of Dr. Casini, Petitioner underwent an MRI study of the right elbow and left shoulder. (PX 6). The MRI of the left shoulder was negative. (PX 6). The MRI study of the right elbow revealed a slight offset of the anterior medial aspect of the radial head at the site of the intra-articular extension of the medical fracture, complete disruption of the lateral collateral ligament complex and disruption of the all or the majority of the common extensor tendon, retracted tear of the distal biceps tendon and elbow joint effusion. (PX 6).

Based on the recommendations of the physical therapist at Athletico, Petitioner sought treatment with Dr. Mark Cohen. Petitioner was initially evaluated by Dr. Cohen on March 5, 2010. (PX 7). Dr. Cohen recommended that Petitioner undergo surgery for his left wrist. (PX 7). Petitioner underwent an ORIF of the left radius nonunion with locked plating and iliac crest bone graft, open reduction of the distal radioulnar joint, tenotomy of the brachioradialis and neurolysis of the radial nerve on March 11, 2010. (PX 8). In connection with the surgery, Petitioner was admitted to Rush Hospital from March 11, 2010 through March 13, 2010. (PX 8). A bone graft was taken from Petitioner's left hip and a fixation device was affixed to Petitioner's left hand. (PX 8). The fixator was affixed for approximately 8 weeks. Petitioner remained under the post-operative care of Dr. Cohen. (PX 8). Petitioner participated in physical therapy at Athletico. (PX 5).

Petitioner continued to experience pain in his right elbow. (PX 7). Dr. Cohen recommended that Petitioner undergo a right elbow replacement. (PX 7). Petitioner underwent the recommended surgery on July 8, 2010. (PX 8). Dr. Cohen performed a right forearm nonunion repair with internal fixation and distal radius autograft, implant removal, radial head arthroplasty, elbow release and debridement of the coronoid and radial fossae and lateral collateral ligament repair at the epicondyle. (PX 8). In connection with the elbow replacement, bone was taken from Petitioner's right wrist. (PX 8). Petitioner continued under the post-operative care of Dr. Cohen, which included follow up visits and activity modification. (PX 8).

On November 5, 2010, Dr. Cohen recommended that Petitioner undergo a biceps reconstruction. (PX 7). Petitioner underwent a right biceps reconstruction utilizing a allograft form the hamstring, biceps tenolysis and neurolysis of the lateral antebrachiocutaneous nerve at Rush Hospital on December 2, 2010. (PX 8). Petitioner remained under the post-operative medical care of Dr. Cohen. (PX 7).

Dr. Cohen referred Petitioner to Dr. Kouris, a plastic surgeon, for further medical treatment. (PX 7). Petitioner was initially evaluated by Dr. Kouris on March 14, 2011. (PX 9). Dr. Kouris recommended that Petitioner undergo several surgical procedures on both upper extremities. (PX 9).

On March 19, 2011, Dr. Kouris performed an excision of the skin graft on the left forearm. (PX 10). The surgery involved removal of the skin grafts from the fasciotomy. (PX 10). On June 6, 2011, Dr. Kouris performed an excision of the skin graft of the right forearm with reconstruction of the flap repair. (PX 10). The area from the fasciotomy was repaired on June 6, 2011. (PX 10). Petitioner underwent a total excision of the skin graft of the right forearm and serial excision of the skin graft of the left forearm on September 18, 2012. (PX 10).

Petitioner was examined by Dr. Cohen on May 11, 2011. (PX 7). Dr. Cohen recommended that Petitioner return to work with a restriction of no lifting more than 20 pounds. (PX 7).

Petitioner was last examined by Dr. Cohen on July 18, 2012. (PX 7). Dr. Cohen documented that Petitioner had constant soreness in the right elbow and occasional increased elbow pain. (PX 7). A physical examination revealed proximal migration of the biceps, grip strength of 60 pounds on the right and 100 on the left. (PX 7). Dr. Cohen recommended annual radiographic evaluations of the radiohead arthroplasty. (PX 7). Dr. Kouris set forth that Petitioner could return to work on November 19, 2012. (PX 9).

Petitioner was unable from December 19, 2009 through November 4, 2012. Petitioner received temporary total disability benefits during this time. Following November 4, 2012, Petitioner intermittently worked for Respondent. When Petitioner returned to work, he did not perform any physical labor.

Medical Opinions of Dr. Jeffery Coe

The narrative report (PX 11) and transcript of the evidence deposition of Dr. Coe (PX 12) were admitted into evidence. In his narrative report and deposition, Dr. Coe summarized the significant medical treatment that Petitioner received as a result of the work-related accident of December 18, 2009. (PX 11); (PX 12). Dr. Coe documented Petitioner's subjective complaints. (PX 11); (PX 12). Petitioner experienced pain in both forearms, wrists and elbows. (PX 11); (PX 12 at 31). He had cramping in his right biceps with exertion. (PX 11); (PX 12 at 31). Petitioner also experienced cramping in both hands and loss of dexterity in both hands. (PX 11); (PX 12 at 31-32). Petitioner had stiffness in his right elbow and forearm and left forearm. (PX 11); (PX 12 at 32). Petitioner set forth that he had difficulty gripping tools and requires assistance in performing heavy lifting, forceful pushing and pulling and climbing. (PX 11); (PX 12 at 32).

Dr. Coe objectively measured Petitioner's range of motion in Petitioner's upper extremities. (PX 11); (PX 12). Petition's range of motion in his arms was with extension 160 degrees on the right, 180 on the left, normal being 180; with flexion 130 on the right, 140 on the left, with normal being 140; with pronation 90 degrees on the right, 90 on the left with normal being 90; with supination 45 degrees on the right, 65 on the left with normal being 90. (PX 11); (PX 12 at 36-37). With regard to the wrists, Petitioner had range of motion with flexion 55 degrees on the right, 55 on the left, with normal being 80; with extension 60 degrees on the right, 65 on the left, with normal being 80; with radial deviation 40 degrees on the right, 45 on the left, with normal being 45; with ulnar deviation 35 degrees on the right, 35 on the left, with normal being 45. (PX 11); (PX 12 at 37).

Dr. Coe opined that as a result of the work-related accident of December 18, 2009, Petitioner sustained comminuted fractures of the left radius and ulna and complex open fracture of the right ulna and dislocation of the right radial head with right elbow ligamentous injury and right distal biceps tendon rupture. (PX 11). Dr. Coe set forth a diagnosis of status post complex multiple fractures of both upper extremities with posttraumatic and postsurgical complications including bilateral upper extremity compartment syndrome and left carpal tunnel syndrome, posttraumatic arthritis in the right elbow and

partial dislocation of the left wrist. (PX 12 at 40). As a result of the injuries, Petitioner underwent multiple surgeries, which were complicated by bilateral compartment syndrome requiring fasciotomies and bilateral posttraumatic carpal tunnel syndrome requiring left carpal tunnel release. (PX 11). Healing of the upper extremity fractures was limited by nonunion of the left radius fracture and right ulnar fracture and nonunion of the radial head. (PX 11). Petitioner also had continued right elbow and forearm stiffness and right biceps spasms. (PX 11).

Dr. Coe noted that Petitioner had decreased range of motion in the right elbow with flexion and extension, decreased range of motion of both forearms in supination, in both wrists with flexion, extension, in the right wrist with radial and ulnar deviation and left wrist with ulnar deviation. (PX 11). Petitioner had decreased sensation in both forearms due to extensive scaring and atrophy in the right arm and swelling in the right elbow and proximal forearm. (PX 11).

Dr. Coe set forth that Petitioner's current condition of ill-being in connection with his upper extremities was casually related to the work-related accident of December 18, 2009 based on the history, medical records and clinical examination. (PX 12 at 41). Dr. Coe found that the condition in Petitioner's upper extremity was permanent. (PX 12 at 44).

Dr. Coe testified that Petitioner would require ongoing medical treatment of annual follow up visits with his orthopedic physician and possible surgery as a prosthesis can become unstable for the right arm. (PX 12 at 43). Dr. Coe noted that because Petitioner sustained an intraarticular fracture in the left wrist with left wrist subluxation and partial dislocation, he was at an increased risk of posttraumatic arthritis in the left wrist. (PX 12 at 45). He testified that posttraumatic arthritis would cause pain. (PX 12 at 71). As a result of the posttraumatic arthritis, Petitioner may require anti-inflammatory medication, joint injections, limitation in movement through bracing and if intolerantly symptomatic, a partial or full fusion. (PX 12 at 72).

Dr. Coe also opined that Petitioner would require work restrictions as it related to his upper extremities. (PX 12 at 46). Dr. Coe set forth that Petitioner could return to work with limitations of climbing ladders, use of large power tools and being able to change positions and rest his arms frequently

throughout the work day. (PX 11). Dr. Coe based the need for work restrictions on the stiffness in both upper extremities, numbness and atrophy. (PX 12 at 46). Dr. Coe noted that Dr. Cohen placed similar work restrictions on Petitioner of no working at heights, no pushing or pulling and no lifting more than 20 pounds. (PX 12 at 48). Dr. Coe noted that based on Dr. Papierski's report, Petitioner had a grip strength of 40 pounds weaker in his right hand over left. (PX 12 at 50).

On December 29, 2014, Dr. Coe prepared an addendum report addressing the opinions of Dr. Paul Papierski, Respondent's Section 12 physician. (PX 11). Dr. Coe noted that Dr. Papierski agreed with his diagnosis, causation opinion and need for ongoing medical treatment. (PX 12 at 42). Dr. Coe set forth that the opinions of Dr. Papierski did not change his previously expressed opinions. (PX 11).

Medical Opinions of Dr. Paul Papierski, Respondent's Section 12 Physician

At the request of Respondent, Petitioner was examined by Dr. Paul Papierski on May 18, 2011 (RX 1) and June 11, 2014. (RX 2). The reports of the examinations (RX 1); (RX 2) and the transcript of the evidence deposition of Dr. Papierski were admitted into evidence. (RX 3).

On May 18, 2011, Dr. Papierski reviewed the medical records of Petitioner and performed a physical examination of Petitioner. (RX 1). Dr. Papierski noted that Petitioner could elect to undergo a skin revisions, a wrist arthroscopy with ulnar shortening and hardware removal. (RX 1). He set forth that Petitioner's fractures had healed so there was no reason why he could not return unrestricted work. (RX 1). Dr. Papierski noted that Petitioner lacked about 15 degrees of extension on the right elbow and minimal limitations of flexion on the left. (RX 3 at 15). Petitioner had crepitation in the right elbow and tenderness on the right ulna and left ulna and radial side. (RX 3 at 16). Petitioner could not bring his palm upwards on the right side. (RX 3 at 16). Petitioner had limitations of wrist range of motion on both sides and limitations with range of motion in his fingers. (RX 3 at 16).

On June 11, 2014, Dr. Papierski noted that Petitioner complained of numbness, sharp shooting pain and cramping in his bilateral forearms. (RX 2). Dr. Papierski noted range of motion of -10 degrees extension and 130 flexion on the right elbow and -5 degrees flexion and 140 on the left elbow. (RX 2). The distal radioulnar joint had 75 degrees of supination and 40 degrees pronation on the right and 75

degrees supination and 60 degrees pronation on the left. (RX 2). Papierski found Petitioner's range of motion to be improved bilaterally. (RX 3 at 27). On the right side, Petitioner lacked 5 degrees of extension and some limited pronation and supination. (RX 3 at 27). Petitioner had stiffness of the joint in his hands. (RX 3 at 28). Dr. Papierski recommended future medical treatment in the form of occasional use of over the counter medication, annual orthopedic follow up appointments and possible surgery for the radial head replacement. (RX 2).

Dr. Papierski documented a diagnosis of status post bilateral upper extremity radius and ulnar fractures with right distal biceps tendon repair and bilateral ulna impaction syndrome and status post radial head replacement on the right. (RX 3 at 31). Dr. Papierski did not comment regarding Petitioner's ability to return to work. (RX 3 at 36).

With regard to work restrictions, Dr. Papierski stated that Petitioner was not prevented from attempting to return to unrestricted work. (RX 3 at 23). However, Dr. Papierski acknowledged that Petitioner's grip strength was less than normal. (RX 3 at 24). Dr. Papierski acknowledged that Dr. Cohen never formally lifted the work restrictions of no lifting more than twenty (20) pounds. (RX 3 at 77). He admitted that reasonable restrictions for one doctor may be different than restrictions for another doctor. (RX 3 at 79). Dr. Papierski testified that when he mentioned unrestricted work, he was relatively unspecific and did not necessarily state that Petitioner could go back to his job or any other job. (RX 3 at 80). He acknowledged that it was speculative as to whether Petitioner could perform heavy physical work. (RX 3 at 80). He noted that Petitioner's subjective complaints were not unreasonable. (RX 3 at 88).

Dr. Papierski testified that Petitioner's fracture on the right radial head broke the skin. (RX 3 at 43). Further, Petitioner sustained a dislocation of the right radial head which caused significant tearing of the ligaments in the elbow. (RX 3 at 43). On the left side the fracture extended into Petitioner's wrist. (RX 3 at 46).

Current Subjective Complaints

Petitioner testified regarding his current subjective complaints. He testified that he has significant scaring on his right and left upper extremity. Pictures were taken of Petitioner's scars. Eight pictures of Petitioner's significant scars on the right and left upper extremity were admitted into evidence. (PX 13). Further, Petitioner's right biceps is malformed compared to the left. It is also weaker than the left arm.

Petitioner returned to work for Respondent. He testified that currently it is more difficult for him to lift or carry anything. He has difficulty working with tools and turning a screwdriver causes pain in his biceps. Petitioner does not lift anything heavier than tools, food items and boxes of doughnuts. When Petitioner lifts objects, he experiences cramping in his right biceps, pain in his right wrist, pain in his right forearm and pain in his left wrist and forearm. Petitioner tries to use his left hand to use the screwdriver because turning the screwdriver in his right hand causes pain in the biceps. However, Petitioner also has pain with turning in his left wrist. Petitioner avoids using ladders at work. When he does use A-frame ladders, he is not confident and he experiences pain. Petitioner has an assistant to help him perform physical activities. Petitioner does not drive routes anymore.

Petitioner does not participate in recreational activities anymore. He does not bowl and only golfs a little. Petitioner testified that he lacks the range of motion in his arms to golf. Petitioner struggles to grip objects. He drops objects and cannot perform small tasks with his fingers. He also has spams and cramps in his hands. Petitioner does not write very often and has difficulty texting because his fingers lock up and cramp. He did not have any problems texting prior to the work-related accident of December 18, 2009. He has difficulty typing on a computer because of the pain. He also lacks range of motion to bend his wrists.

Petitioner testified he experiences numbness in his arms where he received skin grafts. He applies lotion to the areas. He constantly experiences numbness in the left forearm. Petitioner takes Ibuprofen and Tylenol for the pain. Petitioner is scheduling a follow up appointment with Dr. Cohen.

FINDINGS/ANALYSIS

In support of the Arbitrator's decision relating to "L," nature and extent of the injury, the Arbitrator concludes as follows:

In rendering her decision, the Arbitrator notes that the accident and severity of the accident and the injuries resulting from the fall are uncontested. There is little or no disagreement regarding the long, complex and serious nature of the medical treatment that follows. There is also little disagreement that in spite of the procedures, the Petitioner is not restored to his old state of health or well-being. On the contrary, it is obvious and clearly evident that Petitioner is able to do only a fraction of his work duties. To their credit and commendation, the employer and other fellow employees have helped to accommodate the Petitioner and the Petitioner has chosen the noble and honest path of returning back to full duty employment under circumstances which would have caused many to falter. Petitioner's age of 49 indicates at least 15 plus years of long work life ahead of him in an occupation which is not desk bound or predominantly cerebral but requires use of his physical person and mastery of many large and small skills. The effect and restrictions on Petitioner's private and personal life and enjoyment thereof is debilitating and onerous. In the Arbitrator's estimation the extensive injuries to both arms and wrists greatly enhances the Petitioner's permanent partial disability because Petitioner is unable to rely upon the other arm and hand to compensate for weakness or limitations in his dominant arm. This factor weighs heavily in the Arbitrator's estimation of Petitioner's sum total disability.

The Arbitrator finds that Petitioner sustained a permanent injury to the right arm to the extent of 65% loss of use of the right arm, 40% loss of use of the right hand, 50% loss of use of the left arm and 40% loss of use of the left hand. In support of this conclusion, the Arbitrator finds Petitioner's testimony to be credible, unrebutted and corroborated by the medical records submitted into evidence. The Arbitrator relies on the medical records of Dr. Casini and the medical records and testimony of Dr. Cohen. The Arbitrator also notes that the testimony of Dr Papierski, Respondent's Section 12 physician, supports a finding that Petitioner sustained a permanent and serious injury to his right and left arm and right and left hand.

The Arbitrator finds that as a result of the work-related accident of December 18, 2009, Petitioner required permanent work restrictions as it relates to both his upper extremities. The Arbitrator relies on the opinions of Dr. Cohen and Dr. Coe. Dr. Cohen set forth that Petitioner could return to work with the restrictions of no working at heights, no pushing or pulling and no lifting more than 20 pounds. Dr. Coe opined that Petitioner should not work on ladders or scaffolding, not using tools above shoulder height and be able to rest his arms as needed. Dr. Coe based the need for work restrictions was based on the stiffness in both upper extremities, numbness and atrophy.

The Arbitrator considered the opinions of Dr. Papierski that Petitioner could return to work without restrictions. She rejects the opinions of Dr. Papierski since Petitioner has objective weakness and loss of range of motion in his upper extremities. Further, Dr. Papierski's opinions were equivocal and speculative. Specifically, Dr. Papierski testified that he was relatively unspecific when he set forth that Petitioner could return to unrestricted work and did not necessarily state that Petitioner could go back to his job or any other job. He acknowledged that it was speculative as to whether Petitioner could perform heavy physical work. The Arbitrator also relies on the holding in *International Vermiculite Company v. Industrial Commission*, 77 Ill.2d 1, 394 N.E.2d 1166 (1979) (holding that the Commission can accord greater weight to the medical opinions of the claimant's treating physicians).

In support of her award of permanent partial disability, the Arbitrator also relies on the significant scarring that Petitioner sustained as a result of the accident, surgeries performed and complications to the surgeries. The extensive scarring is clearly documented in the photographs admitted into evidence.

With regard to the right arm, Petitioner sustained right ulna and complex open and dislocation of the right radial head with right elbow ligamentous injury and right distal biceps tendon rupture. As a result of the work-related accident, Petitioner underwent seven surgeries to the right arm, including an ORIF of the right ulnar and radius, fasciotomy, skin grafts, a radial head arthroplasty and biceps reconstruction.

Petitioner testified regarding multiple subjective complaints related to his right arm. Petitioner experienced pain and stiffness his right forearm and elbow. He had cramping in his right biceps with exertion. Petitioner set forth that he has difficulty gripping tools and requires assistance in performing

heavy lifting, forceful pushing and pulling and climbing. Further, Petitioner's right biceps is malformed and weaker compared to the left.

Petitioner also had objective deficits as it relates to his right arm. Dr. Coe noted that Petitioner had decreased range of motion in the right elbow with flexion and extension and decreased range of motion of in the right forearm with supination. Petitioner had decreased sensation in both forearms due to extensive scaring and atrophy in the right arm and swelling in the right elbow and proximal forearm. Dr. Coe's findings were consistent with the findings of Dr. Papierski, Respondent's Section 12 physician.

As a result of the work-related accident, Petitioner will require additional medical treatment as it relates to the right arm, including follow up visits with the orthopedic surgeon and a possible revision of the right elbow arthroplasty. The necessity of ongoing medical treatment is corroborated by the opinions of Dr. Coe and Dr. Papierski.

Petitioner also sustained significant injuries to his right wrist and hand as a result of the work-related accident of December 18, 2009. The fractures that Petitioner sustained in his right arm extended into his right wrist and necessitated the need for surgery in the right wrist. Petitioner has objective loss of range of motion in his right wrist. Dr. Coe noted that Petitioner had decreased range of motion in his right wrist with flexion, extension and the right wrist with radial and ulnar deviation

As a result of the accident, Petitioner had subjective complaints regarding his right wrist and hand. Petitioner experienced pain and cramping in his right wrist. He has loss of dexterity in his right hand. Petitioner set forth that he has difficulty gripping tools. When Petitioner lifts objects, he experiences pain in his right wrist. Petitioner struggles to grip objects. He drops objects and cannot perform small tasks with his fingers. He also has spams and cramps in his hands. Petitioner does not write very often and has difficulty texting because his fingers lock up and cramp. He did not have any problems texting prior to the work-related accident of December 18, 2009. He has difficulty typing on a computer because of the pain. He also lacks range of motion to bend his right wrist.

With regard to the left arm, Petitioner sustained comminuted fractures of the left radius and ulna. Petitioner underwent multiple surgeries to the left arm, including ORIFs, fasciotomy and skin grafts.

Petitioner experienced pain and stiffness in his left forearm and elbow. Petitioner also has objective loss of range of motion in the left arm. Dr. Coe noted that Petitioner had decreased range of motion in the left forearm with supination. Petitioner had decreased sensation the left forearm. Dr. Papierski's report is consistent with the findings of Dr. Coe.

Petitioner also sustained significant injuries to his left wrist and hand as a result of the work-related accident of December 18, 2009. The fractures that Petitioner sustained in his left arm extended into his left wrist and necessitated the need for surgery in the left wrist. Petitioner also developed carpal tunnel syndrome in the left wrist, which required surgical repair.

Petitioner experienced pain in his left wrist. Petitioner also experienced cramping in his left hand and loss of dexterity in his left hand. Petitioner set forth that he has difficulty gripping tools. Petitioner tries to use his left hand to use the screwdriver because turning the screwdriver in his right hand causes pain in the biceps. However, Petitioner also has pain with turning in his left wrist. Petitioner struggles to grip objects. He drops objects and cannot perform small tasks with his fingers. He also has spams and cramps in his left hand.

Petitioner has objective findings as it relates to his left hand. Dr. Coe noted that Petitioner had decreased range of motion in the left wrist with ulnar deviation. His findings are consistent with the findings of Dr. Papierski.

Dr. Coe and Dr. Papierski both testified that Petitioner was at risk to develop posttraumatic arthritis in the left wrist. As a result of the posttraumatic arthritis, Petitioner may require future medical treatment such as anti-inflammatory medication, joint injections, limitation in movement through bracing and if intolerantly symptomatic, a partial or full fusion.

The Arbitrator finds that all of Petitioner's subjective complaints were corroborated by the treating medical records of Dr. Cohen and the report of Dr. Coe. Further, Respondent's Section 12 physician testified that the complaints were reasonable given the type of injury and surgeries that Petitioner underwent.

The Arbitrator also relies on the fact that as a result of the work-related accident and injuries to his bilateral upper extremities and hands, Petitioner performs his job differently than prior to his work-related accident. Petitioner testified that currently it is more difficult for him to lift or carry anything. He has difficulty working with tools and turning a screwdriver causes pain in his right biceps. Petitioner does not lift anything heavier than tools, food items and boxes of doughnuts. When Petitioner lifts objects, he experiences cramping in his right biceps and pain in his right forearm. Petitioner avoids using ladders at work. When he does use A-frame ladders, he is not confident and he experiences pain. Petitioner has an assistant to help him perform physical activities. Petitioner does not drive routes anymore. Petitioner does not participate in recreational activities anymore.

Further, Petitioner is not able to perform his pre-injury hobbies because of his injuries. Specifically, Petitioner does not bowl and only golfs a little. He lacks the range of motion in his arms to golf.

Based on the testimony of Petitioner and the medical evidence submitted at trial, the Arbitrator finds that Petitioner sustained a permanent partial injury to the right arm to the extent of 65% loss of use of the right arm, 40% loss of use of the right hand, 50% loss of use of the left arm and 40% loss of use of the left hand.

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

LOPEZ, STEVEN Case# **15WC011075**

Employee/Petitioner

IRON MOUNTAIN INC

Employer/Respondent

On 10/15/2015, 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 0.08% 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:

2356 DONALD FOHRMAN & ASSOCIATES
JANNA M MILLER MIDURA
101 W GRAND AVE SUITE 500
CHICAGO, IL 60614

0766 HENNESSY & ROACH PC
DAVID R LARSON
140 S DEARBORN ST 7TH FL
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION § 19(b) DECISION

Steven Lopez
Employee/Petitioner
v.
Iron Mountain, Inc.
Employer/Respondent

Case # **15** WC **11075**

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 **May 27, 2015**. 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?
[x] TPD [ ] Maintenance [ ] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [x] Other **8(a) Petition for Prospective Medical**

FINDINGS

On the date of accident, **March 17, 2015**, 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 $**38,480.00**; the average weekly wage was $**740.00**.

On the date of accident, Petitioner was **38** years of age, ***single*** with **0** dependent children.

The parties agreed to defer the issue of medical bills until resolution of these issues pursuant to § 19(b).

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 parties agreed to defer any issue of credit due until resolution of these issues pursuant to §19(b).

ORDER

Petitioner failed to prove that he sustained an accident that arose out of his employment by Respondent on March 17, 2015. As a result, past and prospective medical care and past and prospective temporary 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.

Signature of Arbitrator

October 9, 2015
Date

ICArbDec19(b)

OCT 15 2015

Steven Lopez v. Iron Mountain
15 WC 11075

INTRODUCTION

This matter proceeded to § 8(a) hearing on May 27, 2015 before Arbitrator Steven Fruth. The disputed issues were: ***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 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;* ***O:*** Is Petitioner entitled to prospective medical care?

Petitioner, Jaryl Norman, and Amanda Martinez testified at the hearing.

STATEMENT OF FACTS

Petitioner is a truck driver for Respondent. His job duties include transporting toter bins with shredded materials and loading and unloading his vehicle at customer stops along a specific route. Petitioner testified that his accident occurred while exiting his vehicle at the end of his shift on March 17, 2015. At the end of a shift Petitioner must complete paperwork, clean the truck cab, and return the truck to the yard.

Petitioner testified that he was injured as he stepped down from the cab of the truck. He testified that he "came down awkward on my right leg" when he reached the ground and his leg buckled. There are 2 steps from the cab to the ground. It is 2 feet from the bottom step to the ground. Petitioner proceeded to the warehouse and noted more pain while walking. He did not report the incident to his supervisor on the date of his injury because he had to pick up his daughter after school but informed another employee, Omar Redding, that his knee was bothering him when he turned in his paperwork and equipment for the day.

Petitioner reported for work the following day, March 18. He testified that he told his coordinator, Noel Rosario, that his knee hurt but that he would try to finish his shift. When he tried to enter his truck he felt increased right knee pain when he tried to climb into the truck cab. Petitioner returned to the office and told Noel that he wanted to go to the doctor. Petitioner drove himself to Concentra Occupational Health Center (PX #1) for examination of his right knee pain.

Petitioner was seen by Dr. George Bridgeforth at Concentra on March 18, 2015. Petitioner's recorded history was that "he was walking yesterday in the warehouse when he felt a crack in his right knee." Pain was 6/10. This is a note under the heading "Reason For Visit", any entry commonly made by administrative personnel. It was noted in "History of Present Illness" that Petitioner reported "he was walking through

the warehouse at work when he felt a 'pop' in his right knee which was followed by diffuse pain and soreness." He had trouble bending the knee and trouble with stairs. Petitioner reported that his knee was not giving out but that he had increased pain with prolonged standing and walking. This is a note usually made by a healthcare professional.

On examination Dr. Bridgeforth noted mild swelling, diffuse soreness, and antalgic gait on the right. An x-ray of Petitioner's right knee revealed no gross fractures or dislocations. There was a diffuse McMurray's but varus and valgus strain were intact. Dr. Bridgeforth diagnosed a strain of the right knee. He ordered an Ace wrap, use a cane, and to apply a cold pack on his right knee. Dr. Bridgeforth also ordered physical therapy and suggested an MRI scan of the right knee if no improvement in 3 to 4 weeks. Petitioner was to return on March 25. Finally, Dr. Bridgeforth authorized Petitioner to return to work with restrictions of 90% sitting and use of a cane.

Petitioner was also evaluated by Physical Therapist Alex Kruse at Concentra on March 18. Mr. Kruse noted Petitioner's report that "he felt/heard a series of clicking in his knee while walking that resulted in the onset of persistent and worsening pain." Symptoms were worse with bending, ascending and descending stairs. On examination Mr. Kruse found a positive McMurray's, a positive varus, and a positive Thessly's in the right knee. He assessed an acute right knee meniscus tear and right knee strain.

Petitioner saw Dr. Bridgeforth at Concentra again on March 19. Petitioner reported his knee was popping and clicking. His pain was 6. Motor strength was 4/5. There was mild swelling, soreness along the medial joint line, pain with squatting and McMurray's, and antalgic gait. The physical assessment was unchanged. There was no amendment to the history of the onset of complaints. Dr. Bridgeforth added meniscus tear to his diagnoses and ordered an MRI of the right knee. He anticipated MMI within 8 weeks. He authorized Petitioner to return to work with restrictions of sitting 90% of the time.

Petitioner was seen by therapist Kruse at Concentra for physical therapy on March 20, 23, 26, 27, and 31, 2015. Petitioner's made moderate progress through physical therapy. There were no notes amending the history of onset of complaints. Petitioner also saw Dr. Bridgeforth one last time on March 26. Petitioner reported his pain was 4/10 on that day. Although therapy was helping Petitioner was still having difficulty with his right knee. Dr. Bridgeforth noted decreased swelling, pain and soreness along the medial joint line, trouble squatting, and a normal gait. Dr. Bridgeforth did not note an amendment in Petitioner's history of onset on this day. Dr. Bridgeforth authorized Petitioner to return to work with restrictions of sitting or standing as tolerated and clearance to drive the company vehicle.

Petitioner returned to work after his initial examination at Concentra. At that time, he met with Transportation Supervisor Jaryl Norman to provide a description of his injury. Petitioner testified "I told him what happened when I exited the truck at the

end of the day the previous day when I came off the last step. I felt a little awkward on my right leg; and my knee, you know, buckled a little bit, but I tried to shake it off."

Petitioner also described a good relationship with Mr. Norman. He noted that Mr. Norman chose him to be a sentinel coach. A sentinel coach mentors and helps train new employees.

Petitioner called Petitioner's supervisor, Jaryl Norman, to testify pursuant to subpoena. Mr. Norman testified that he had been Petitioner's direct supervisor for about a year. Mr. Norman testified that in Petitioner's capacity as a Sentinel Coach, or peer trainer, such an employee is selected by the management by a person's performance and overall excellence in what they do. There are only 2 Sentinel Coaches at Respondent's place of employment, selected out of about 40 drivers, and the Sentinel Coaches have to uphold a higher standard than regular employees. Mr. Norman found Petitioner to be a credible person, based upon his knowledge of him as an employee.

Jaryl Norman testified about his meeting with Petitioner to complete the Illinois Form 45: Employer's First Report of Injury. (RX #1) He noted that his position as a transportation supervisor required him to fill out these reports and indicated that he completed about twenty per year. Mr. Norman reviewed the process for completing a first report of injury. He testified "I sit down and ask, you know, questions pertaining to the incident at hand. And then from there, I also ask the employee to in their own words provide a written statement as to the - - your recollection of what occurred and what happened." Mr. Norman indicated that the copy of the First Report of Injury (RX #1) did not contain Petitioner's written statement about his accident. He mentioned, however, that he reviews the employee's written statement as part of his process for preparing the first report of injury.

On March 18, 2015, Mr. Norman filled out an Employers' Report of Injury, or ERMS reporting (RX #1), as it is referred to at the Respondent's place of employment. While Mr. Norman fills out approximately 20 such reports a year, he does not remember all the details of the reports he prepares. He testified that Petitioner told him he hurt his knee while walking back to the transportation office, as noted in RX #1. He further testified that it is possible that Petitioner may have told him that he stepped off the truck and twisted his knee, but that that information about the details of the reporting the incident did not make it into the report. He further testified that he has no reason to disbelieve that Petitioner reported to him that he stepped off a truck and twisted his knee and then felt further pain when he walked into the warehouse. Mr. Norman was shown RX #1 and was questioned about the reporting of the incident. He testified that Petitioner's written description of the incident was missing; the form on which the employee would write out in his own words his statement of the incident.

Mr. Norman also noted that his position as a transportation supervisor required him to serve as a point of contact for claims adjusters at ESIS Claims requesting additional information about accidents or injuries involving the respondent's employees. He indicated that either Claims Adjusters Amanda Martinez or Kara

Hanson will send him a series of questions via e-mail regarding the employee, his or her alleged accident, witnesses to the accident, and the employee's work restrictions. (RX #2) Mr. Norman stated that he relies on the first report of injury that he prepares for an incident to answer these questions. Mr. Norman wrote in an e-mail to Kara Hanson on March 23, 2015, the following response to a question about how the petitioner became injured: "Steven felt the pop in his right knee while walking back to the Transportation office."

Petitioner acknowledged that he spoke to Claims Adjuster Amanda Martinez from ESIS Claims following his accident.

Respondent called claims adjuster Amanda Martinez to testify on its behalf. She testified that she spoke with Petitioner over the telephone on March 20, 2015 concerning a work incident that occurred on March 17, 2015. Ms. Martinez testified that Petitioner reported that he was walking through the warehouse and felt a pop in his knee. However, Ms. Martinez did not transcribe the conversation after it occurred and admitted that she did not remember the Petitioner's job description. She admitted that there are other pieces of information about the conversation with him that day that she could not recall.

Ms. Martinez also communicated by e-mail with Mr. Norman in further investigation of Petitioner's claim.

Petitioner consulted Dr. Sajjad Murtaza at Illinois Orthopedic Network (PX #2) on April 2, 2015 for right knee pain. Petitioner reported "that he was stepping off of a large truck, of which the landing was approximately 2 feet off the ground. He felt a pop in the knee with acute pain." He stated that he continued working but that his knee becomes very swollen. He was currently worked light duty with mostly driving only. On examination Dr. Murtaza noted medial joint line effusion, tenderness to palpation along the medial joint line, and pain and popping with McMurray's exam along the medial joint line. Lachman's and anterior drawer were negative. Dr. Murtaza ordered an MRI scan of the right knee and follow up in 1 to 2 weeks to review the results. Finally, Dr. Murtaza authorized Petitioner's return to work at light duty with no carrying, lifting, pushing, or pulling more than 15 lbs., and no bending, squatting, kneeling, stooping, climbing, or stairs.

Petitioner presented for a follow-up with Dr. Murtaza on April 10, 2015. Petitioner repeated his description of the accident, describing the truck as an "18 wheeler". Dr. Murtaza examined the MRI and confirmed a radial tear at the junction of the posterior horn in the medial body of the meniscus, small supra patellar effusion, and bone marrow edema within the tibial plateau. The radiologist described the radial tear as small. Dr. Murtaza diagnosed Petitioner with right knee pain and medial meniscus tear. He ordered physical therapy 2 to 3 times per week but wanted to consider surgery. Finally, Dr. Murtaza authorized the petitioner to return to work at light duty with no carrying, lifting, pushing, or pulling more than 10 lbs., and no bending, squatting, climbing, or stairs. He wanted Petitioner to follow up with an orthopedic surgeon.

Petitioner consulted orthopedic surgeon Dr. Thomas Poepping at Illinois Orthopedic Network on April 22, 2015. (PX #2) Petitioner reported that he jumped off his work truck and twisted his right knee on March 17, 2015. He felt a pop in the knee and immediate pain. He was experiencing occasional giving-way type symptoms with no locking. Dr. Poepping examined the right knee and noted moderate effusion, full range of motion, and mild retropatellar tenderness to palpation. There was medial joint line tenderness with a positive medial Apley's, a negative medial McMurray's, and a negative Lachman's. The knee joint was stable. Dr. Poepping diagnosed a right knee medial meniscus tear and right knee bone bruise. He Petitioner would be an excellent candidate for right knee arthroscopy and likely partial meniscectomy. In the meantime, Dr. Poepping ordered the petitioner to continue physical therapy and authorized him return to work at light duty with no carrying, lifting, pushing, or pulling more than 10 lbs., and no bending, squatting, climbing, or stairs.

Petitioner presented to Dr. Manal Elmusa Mid-City Rehabilitation (PX #3) on April 17, 2015. Petitioner reported that he injured his right knee March 17, 2015 when stepping off an 18-wheeler. He reported that he did not seek medical care immediately. Petitioner tried to work the next day but it was too painful. Petitioner went to Concentra that next day. He had 6 sessions of physical therapy for a diagnosed sprain/strain. Petitioner reported that his lawyer referred him to Illinois Orthopedic Network. Pain was 4/10. The knee examination was within normal limits except for a positive McMurray's and internal/external rotation extension, which elicited pain and clicking.

Dr. Elmusa recommended various therapeutic modalities, exercises, and activities for Petitioner's right knee to reduce discomfort, improve flexibility, strength, range of motion, and function. Dr. Elmusa felt Petitioner should receive treatment 3 times a week for 6 weeks.

Petitioner testified that he still receives physical therapy and goes at a time when he would normally be working. He continues to work for Respondent but noted that he did not work as a transportation driver since the accident. He testified that he did a lot of cleaning, cleaning up the warehouse, straightening out carts and then pushing empty bins, getting them ready for the drivers so they could load the trucks.

Respondent retained orthopedic surgeon Dr. G. Klaud Miller (RX #5) to review Petitioner's medical records and give his opinions on Petitioner's whether current condition was related to the accident. On May 5, 2015 Dr. Miller reviewed the March 18 accident report, records from Concentra, and Dr. Mutaza's April 10 records.

Dr. Miller noted that Petitioner gave 2 different histories of injury. Dr. Miller could not believe that the Petitioner suffered a meniscus tear based upon the original history that he was simply walking. Dr. Miller indicated, however, that the second history of jumping down from his truck could have caused a knee injury. Dr. Miller felt a torn meniscus with an effusion could require surgery. In the end, Dr. Miller could not come to a conclusive opinion regarding causal connection to the accident because of the discrepancies between Petitioner's 2 different histories.

CONCLUSIONS OF LAW

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

The Arbitrator concludes that Petitioner did not sustain an accidental injury arising out of his employment by Respondent on March 17, 2015. In support of this conclusion, the Arbitrator finds that Petitioner was not credible in his description of his claimed accident on March 17, 2015.

Petitioner testified that he injured his knee as he was dismounting from his truck. This testimony is contrary to the history of injury contained in Petitioner's Concentra records. (PX #1) The Concentra clinical notes on March 18, 2015 have 3 different entries by 3 different individuals, the administrative assistant, Dr. Bridgeforth, and therapist Alex Kruse. All 3 documented that Petitioner reported that he felt a pop and pain in his right knee as he walked through Respondent's warehouse. There was no amendment to this history in any of the subsequent visits by Petitioner at Concentra.

Jaryl Norman and Amanda Martinez both testified at the hearing that Petitioner stated that he sustained his injury while walking in the warehouse.

Mr. Norman testified that he recorded Petitioner's statement that he sustained his injury while walking through the warehouse in Illinois Form 45: Employer's First Report of Injury (RX# 1). Mr. Norman also testified that normal protocol for reporting workplace injuries included the employee's personal account of the accident. That account was not a part of Respondent's Exhibit #1. The failure of a party to produce evidence exclusively under its control, without giving an excuse for its absence, may give rise to an inference that the evidence is adverse to the party, see Illinois Pattern Jury Instructions-Civil 5.01. The Arbitrator does not draw that adverse inference due to the overwhelming evidence within the Concentra records as well as the credible testimony of both Mr. Norman and Ms. Martinez contradicting Petitioner's evidence.

The Arbitrator takes note that the history of dismounting the truck was given by Petitioner to Drs. Murtaza, Poepping, and Elmusa. However, the Arbitrator also takes note that this history first appeared of record after Petitioner retained an attorney, see Petitioner's Exhibit #3. While it may be coincidental that Petitioner reported that he was injured while dismounting from his truck after he consulted a lawyer, the coincidence adds evidence of Petitioner's lack of credibility.

Petitioner presented evidence of Petitioner's character for truthfulness. The Arbitrator did not give weight to the irrelevant character evidence. Petitioner's character for truthfulness was not put in issue. Impeachment of a witness's credibility does not put that witness's character in issue.

Petitioner did not prove that his right knee injury arose out of his employment by Respondent. Walking through one's workplace where there is no evidence of defect in

the area does not satisfy Petitioner's burden of proving that the injury arose of out of his employment by Respondent. Absent a defect or distraction merely walking about the workplace does not create an inherent risk of injury or a risk incidental to Petitioner's employment.

F: Is Petitioner's current condition of ill-being causally related to the accident?

The Arbitrator's finding that Petitioner did not sustain an accidental injury arising out of his employment by Respondent on March 17, 2015, renders the issue of the cause of Petitioner's current condition of ill-being moot.

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?

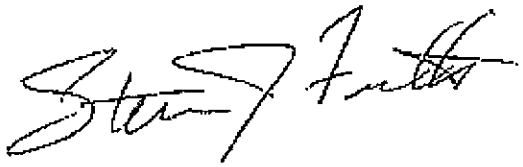
The Arbitrator's finding that Petitioner did not sustain an accidental injury arising out of his employment by Respondent on March 17, 2015, renders the issue of the necessity and reasonableness of his medical care moot.

K: What temporary benefits are in dispute? ***TPD***

The Arbitrator's finding that Petitioner did not sustain an accidental injury arising out of his employment by Respondent on March 17, 2015, renders the issue of Petitioner's entitlement to past and prospective temporary benefits moot. Thus, the Arbitrator denies that Petitioner is due any past or prospective temporary benefits.

O: Is Petitioner entitled to prospective medical care?

The Arbitrator's finding that Petitioner did not sustain an accidental injury arising out of his employment by Respondent on March 17, 2015, renders the issue of Petitioner's entitlement for prospective medical care moot.



October 9, 2015

Steven J. Fruth Arbitrator

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KRAMER, CHERI
Employee/Petitioner

Case# **12WC002229**

AA CONSTRUCTION MANAGEMENT
Employer/Respondent

On 10/9/2015, 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 0.06% 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:

0274 HORWITZ HORWITZ & ASSOC
MITCHELL W HORWITZ ESQ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

2097 GRANT & FANNING
BLAKE T LYNCH
300 S RIVERSIDE PLZ SUITE 2050
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

Cheri Kramer
Employee/Petitioner

v.

A.A. Construction Management
Employer/Respondent

Case # **12** WC **2229**

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 **Maria S. Bocanegra**, Arbitrator of the Commission, in the city of **Chicago**, on **September 9, 2015**. 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. [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. [ ] 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 **Wage Loss benefits. Parties agree to wage loss benefit under 8(d)(1) commencing 2/7/14.**

FINDINGS

On the date of accident, **03/25/2011**, Respondent ***was*** operating under and subject to the provisions of the act.

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

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 **$84,304.48**; the average weekly wage was **$1,621.24**.

On the date of the 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 reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**62,940.97** for TTD, $**95,566.99** for maintenance, and $**70,238.59** for other benefits, for a total credit of $**228,746.55**

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits totaling **$62,940.97**, which represents temporary total disability benefits in the amount of **$1,080.83/week** for **62-6/7th weeks**, commencing **3/26/11** through **6/7/12**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner maintenance benefits totaling **$95,566.99**, which represents maintenance benefits in the amount of **$1,080.83/week** for **88-3/7th weeks**, commencing **6/8/12** through **2/16/14**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits, commencing **2/17/14** because the injuries caused a weekly wage loss of $1,294.01/week, resulting in a wage differential rate of $862.67/week. The respondent shall pay petitioner **$862.67 per week** for the duration of the disability, as provided in Section **8(d)1** of the Act.

Respondent shall pay reasonable and necessary medical services of **$3,816.50** as provided in Sections 8(a) and 8.2 of the Act, of Dr. Wayne Kelly. Medical bills after 6/7/12 are hereby ***denied,*** including the bills of Advantage MRI of Carol Stream (10/26/12) and Salt Creek Surgery Center (12/19/12) as they are unrelated.

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 Maria Bocanegra

10-8-15
Date

OCT 9 2015

FINDINGS OF FACT

Up through the beginning of 2011, Cheri Kramer ("Petitioner"), was employed as a millwright by A. A. Construction Management ("Respondent"). The Petitioner had worked as a millwright since 1986. The Petitioner's job duties included installing heavy machinery, operating hand tools, welding, the use of a hand torch, and heavy lifting. The Petitioner's profession required her, among other things, to bend, stoop, lift heavy objects upwards of 80 pounds, and climb on machinery.

Petitioner worked as a millwright up through the date of her accident, March 25, 2011. On that date, the Petitioner was working on a mezzanine level with an overhead platform where there were multiple I-beams overhead. Petitioner, who was wearing a helmet at the time, stood up and hit her head on an overhead I-beam, which caused her to fall on her back. As a result, the Petitioner began to experience pain in her neck, lower back, and left leg.

The Petitioner first sought treatment on April 6, 2011 with Dr. Steven Mash at M & M Orthopedics. Px3. Dr. Mash identifies her fall at work, wherein she struck her head and then fell directly on her bottom as coinciding with the onset of back pain and radicular symptomology into her left lower extremity. He notes that Petitioner had prior problems with her low back, however that she had never previously had radicular symptoms. Dr. Mash referred the Petitioner to physical therapy and restricted her to "sitting job/minimal walking" only, which Respondent did not accommodate.

Pursuant to the referral from Dr. Mash, the Petitioner began physical therapy on April 7, 2011 at AthletiCo. Px1. Therapies continued through 10/30/11. Dr. Mash read Petitioner's lumbar spine MRI as showing disc protrusions at L4-L5 and L5-S1, as well as spondyloarthropathy throughout the lumbar spine. Px3.

On 5/12/11, Petitioner saw Dr. Ellen Voronov, a physiatrist and pain medicine and management physician, at the referral of Dr. Mash. Px3. Dr. Voronov notes that the Petitioner's low back and neck pain started after her date of accident. Dr. Voronov ordered a cervical MRI, which showed herniation at C5-C6 and C6-C7. Dr. Voronov diagnosed the Petitioner with lumbago, cervicalgia and displacement of intervertebral disc without myelopathy and recommended L4-L5 and L5-S1 lumbar epidural steroid injections, which she administered beginning on June 22, 2011. Petitioner testified that the injections did help for a little while, but relief was temporary. Petitioner followed up with Dr. Mash in July 2011, who noted that Petitioner suffered from a discogenic disease for which he did not believe she would ever recover enough to return to her heavy construction job. He recommended she continue with Dr. Voronov, continue with restrictions and he released her from care.

Petitioner testified that the symptoms in her neck began to improve in September 2011. In October 2011, the Petitioner testified that she continued physical therapy and began work hardening. Records show Petitioner began therapy with ATI Physical Therapy. Px2. Petitioner underwent a medical exam with Dr. Andreshak at the request of Respondent. The doctor diagnosed pre-existing degenerative disc disease temporarily aggravated by the work accident. The Petitioner reported that she injured herself during work conditioning; she was sent for x-rays of her chest and ribs and the radiologist, Dr. James Zelch, determined that she did not fracture her ribs. Px3.

The Petitioner underwent an FCE on December 15, 2011. Px6. Petitioner's job as a millwright was noted to be at the heavy physical demand level. Dr. Voronov reviewed the FCE report with the Petitioner and placed Petitioner with permanent restrictions at a medium to heavy physical demand level. Px3. Dr. Voronov presented Petitioner with three options; consultation with a spinal surgeon, a second epidural steroid injection,

or placing her at a permanent lifting restriction of 50 lbs. Petitioner chose to undergo another injection and declined to see a surgeon. Px3.

On February 22, 2012, upon referral from Dr. Voronov, Dr. Wayne Kelly performed a left sided L5 and S1 selective transforaminal nerve root injection. Px4. Petitioner again reported only temporary relief. The Petitioner followed up with Dr. Kelly on March 7, 2012. Dr. Kelly released the Petitioner to return to work on "light to moderate duty." Dr. Kelly reports that the Petitioner will require periodic left L5-S1 selective transforaminal nerve root injections, on an as needed basis. Dr. Kelly recommended another lumbar spine MRI to document the underlying worsening of the herniated disc at the L5-S1 level based on her clinical symptoms since the March 2011 injury. At the March 7, 2012 appointment, Dr. Kelly found Petitioner's current condition of ill-being was secondary to her herniated L5-S1 disc, which was likely worsened significantly since her injury of March 25, 2011. On April 12, 2012, Dr. Voronov placed Petitioner with permanent work restrictions of minimal bending and stooping and a 50 pound maximum lifting restriction. Px3.

The Petitioner testified that she began looking for employment within her restrictions in April of 2012, that she kept a job search log beginning 4/17/12 through 1/17/14 and that she looked for work anywhere outside of construction. Px10.

On June 7, 2012, Dr. Voronov placed the petitioner at maximum medical improvement. Dr. Voronov's impression of the Petitioner's current condition of ill being is that she has degenerative disease of the lumbar spine and a degenerative disc protrusion at L4-L5 and L5-S1.

The Petitioner participated in vocational rehabilitation with Steven Blumenthal, CRC. Px7. After the initial vocation evaluation dated 6/12/2012, Mr. Blumenthal determined that the Petitioner would be able to earn between $8.82 and $12.26 an hour.

The Petitioner continued vocational rehabilitation until she obtained employment as a plant caregiver with Plant Rentals. The Petitioner began work as a plant technician for Plant Rentals on February 17, 2014 at a rate of $11.00 per hour with gross earnings of $544.50 and net earnings of $472.94. Px8. According to the vocational rehabilitation progress report of May 5, 2014, though the employment began as part time and was expected to become full time. Px8.

At the time of trial, the Petitioner had outstanding medical bills at Advantage MRI in Carol Stream in the amount of $1,300.00, Salt Creek Surgery Center in the amount of $1,004.00, and with Dr. Wayne Kelly's office in the amount of $3,854.66, for dates of service after June 7, 2012. Ax1, Px11. Petitioner testified that she has a GED, is a certified dog groomer and completed trade school. She has not had any new or other injuries since her undisputed work accident. She currently experiences good and bad days of pain or sciatica. Regarding her neck, she testified she has nerve pinching type pain that comes and goes.

CONCLUSIONS OF LAW

ISSUE (O) Other Wage Loss benefits. Parties agree to wage loss benefit under 8(d)(1) commencing 2/7/14.

The Arbitrator finds the lumbar and cervical herniated discs are related to the accident, and that Petitioner reached maximum medical improvement for this work related injury and treatment on June 7, 2012, which is the date in which Dr. Voronov placed Petitioner at maximum medical improvement. The remaining diagnosis is degenerative disc disease. The Arbitrator denies medical treatment after June 7, 2012 as not being related to the accident as the condition was degenerative and Petitioner had already reached maximum medical improvement for her work related injury and treatment.

Petitioner has proven and the parties have stipulated to a wage loss differential under Section 8(d)(1). If Petitioner was able to work presently as a Millwright, she would be earning $44.35 per hour. The parties stipulated to a wage loss rate under Section 8(d)(1) of the Act of $862.67 commencing February 17, 2014. This yields a weekly wage loss of $1,294.01 per week under the Act. Respondent shall pay Petitioner permanent partial disability benefits, commencing **2/17/14** because the injuries caused a weekly wage loss of $1,294.01/week, resulting in a wage differential rate of $862.67/week. The respondent shall pay petitioner **$862.67 per week** for the duration of the disability, as provided in Section **8(d)1** of the Act.

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?

The Arbitrator has reviewed all evidence and testimony in this case and hereby adopts the opinions Drs. Voronov, Kelly and Mash regarding the reasonableness and necessity of the Petitioner's medical treatment and finds that the current condition of ill-being in the Petitioner's neck and back is causally related to her work related accident of March 25, 2011.

The Arbitrator finds the medical bills of Dr. Wayne Kelly, HBPS Mt Prospect - $3,854.66 for dates of service 2/22/2012 through 5/24/2012, less the $38.16 charge by Dr. Kelly for the date of service May 24, 2012 as there is no corroborating medical record to explain this charge. Respondent shall pay Petitioner reasonable and necessary medical services of **$3,816.50** as provided in Sections 8(a) and 8.2 of the Act, of Dr. Wayne Kelly.

As detailed above, Dr. Voronov's unrebutted medical records indicate that the Petitioner was at maximum medical improvement as of June 7, 2012, and therefore the Arbitrator finds medical treatment after June 7, 2012 was related to a degenerative condition of the spine. Medical bills after June 7, 2012 are denied. Therefore, the bills of Advantage MRI of Carol Stream from October 26, 2012, $1,300, and Salt Creek Surgery Center of December 19, 2012 of $1,004 are denied as not being related to the accident of March 25, 2011.

ARBITRATOR SIGNATURE **10-8-15**
DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BENOIT, DEAN
Employee/Petitioner

Case# **08WC004063**

CROWN CORK & SEAL
Employer/Respondent

On 10/21/2015, 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:

2048 JASINSKI, GEORGE J
7330 W COLLEGE DR
SUITE 101
PALOS HGTS, IL 60463

1120 BRADY CONNOLLY & MASUDA PC
MARK VIZZA
10 S LASALLE ST SUITE 900
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Dean Benoit
Employee/Petitioner
v.
Crown Cork & Seal
Employer/Respondent

Case # **08 WC 04063**

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 9, 2015**. 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. 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 **December 10, 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 **$44,018.52**; the average weekly wage was **$846.51.**

On the 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* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$63,447.94** 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 **$564.34/week for 112-3/7 weeks,** commencing **12/11/2007 through 12/8/2009 and3/18/2011 through 5/15/2011,** as provided in § 8(b) of the Act.

Respondent shall pay Petitioner **permanent partial disability benefits** of **$507.91/week for 116.9 weeks** because the injuries sustained caused the **70% loss of use of Petitioner's right foot,** pursuant to §8(e) of the Act.

Respondent shall pay Petitioner all compensation that has accrued from 12/10/2007 through 4/9/2015, and shall pay the remainder of the award, if any, in weekly benefits.

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 21, 2015** Date

OCT 2 1 2015

FINDINGS OF FACT

Petitioner was employed by Respondent as a line mechanic. His job was to maintain and operate an assembly line for aerosol cans. His job required him to lift, crouch, walk, stand and climb. He was on his feet throughout the work day. Petitioner had worked for Respondent for 43 days as of the date of accident. Previously, he had worked for Grief Brothers for a number of years in a similar job.

The Parties stipulated that petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on December 10, 2007. Petitioner was changing a filter and he fell off a ladder, sustaining a severe fracture of his right heel.

Petitioner was taken by ambulance to Christ Hospital, where he was treated by Dr. Paul DeFrino of Parkview Orthopaedics. Petitioner was diagnosed by Dr. DeFrino with a comminuted intra-articular fracture of the calcaneus, Sanders II or III, and on December 19, 2007 underwent surgery which included an Open Reduction/ Internal Fixation. On February 18, 2009, Petitioner underwent a second surgery consisting of a removal of deep hardware, subtalar fusion and proximal tibial bone graft. Petitioner remained off work for approximately two years. On March 18, 2011, a third surgical procedure was performed, removing hardware from Petitioner's right heel. Throughout the course of these procedures, he actively participated in physical therapy. On July 14, 2011, Dr. DeFrino released Petitioner to work with permanent restrictions, namely "no extended walking, standing and limited crouching" (Petitioner's Exhibit 1).

Petitioner was paid TTD from December 11, 2007 through December 8, 2009 and from March 18, 2011 through May 15, 2011.

At the request of Respondent, Petitioner was examined by Dr. George Holmes of Midwest Orthopaedics at Rush. On August 9, 2012, Dr. Holmes opined that after review of a CT scan taken on July 18, 2012, there is an area of the anterior aspect of the joint that does not appear to have completely healed. "I would say, at best, this is questionably and debatably fused." Dr. Holmes suggested alternative treatment such as bracing versus topical medications with a Flector patch or Lidoderm patch or TENS Unit (Petitioner's Exhibit 2).

Dr. Holmes further evaluated Petitioner on November 8, 2012 and September 26, 2013. In his September 26, 2013 report, Dr. Holmes opined that Petitioner should be managed through his pain management group, and that Petitioner would be able to do probably a sedentary job or at a higher level, depending on his pain management issues. Petitioner was not in need of further orthopedic care (Petitioner's Exhibit 2).

In an effort to manage Petitioner's pain, Dr. DeFrino referred the Petitioner to Dr. Thomas Waidzunas, his primary care physician. Petitioner first treated with Dr. Waidzunas for pain related to his right foot in

December 2011 (Petitioner's Exhibit 4). While under the care of Dr. Waidzunas, Petitioner was referred to Dr. Shailesh Gandhi for injections into Petitioner's foot (Petitioner's Exhibit 3). Thereafter, he returned to the care of Dr. Waidzunas (Petitioner's Exhibit 4).

Currently, Petitioner continues to treat with Dr. Waidzunas. Dr. Waidzunas has altered Petitioner's medications, treating the Petitioner with NORCO, Celebrex and Tramadol. Due to the side effects of the aforementioned medicines and the narcotic effect of NORCO, Dr. Waidzunas opined that the Petitioner could not work around equipment of heavy machinery, while taking the narcotic NORCO, which the Petitioner relied upon to combat his pain. Dr. Waidzunas further opined that the Petitioner will require the use of pain medications for the balance of his life (Petitioner's Exhibit 4).

Respondent sent Petitioner to Dr. Kenneth Candido for a further §12 examination. In his December 10, 2013 report, Dr. Candido opines that the Petitioner is not limited to sedentary work, that the Petitioner did not require further pain management, and that a Lidoderm patch would be an effective form of treatment (Respondent's Exhibit 6).

Dr. Waidzunas testified via evidence deposition on behalf of Petitioner (Petitioner's Exhibit 4). Dr. Candido testified on behalf of Respondent via evidence deposition (Respondent's Exhibit 6). Dr. Waidzunas agreed with Dr. Defrino's return to work restrictions, except for the restrictions that would be added due to taking narcotics for pain. Dr. Waidzunas concurred with Dr. Holmes regarding the lack of efficacy for a pain patch on the heel. Dr. Candido did not feel that Petitioner needed additional pain management and could utilize a Lidoderm patch on the foot to aid in pain relief. Petitioner could work at a medium-heavy job.

Petitioner testified that he continually and repeatedly requested that his employer accommodate his permanent restrictions, however, Respondent refused. Petitioner was told to do his job, or leave. His foot continued to hurt and his pain worsened. Dr. Waidzunas re-prescribed Norco in July of 2013 and instructed Petitioner not to work around dangerous equipment when taking the narcotic. Petitioner was wearing a size 9-1/2 shoe on his right foot to accommodate the swelling in his foot. His normal shoe size was 8.

Petitioner was fired on July 22, 2013 after a disagreement with a co-worker (bumping the QC guy). Petitioner's unemployment claim was resolved in his favor. Petitioner began receiving unemployment compensation which lasted for 26 weeks through November 2013.

Petitioner testified that he tried to get a new job with several employers, but was unsuccessful. Dr. Waidzunas recommended a sedentary position, so that Petitioner would get off of his feet during the workday.

In September of 2014, in an effort to change careers, Petitioner paid tuition in the amount of $2,400.00 so he could attend classes to obtain his Commercial Drivers License. Petitioner completed the schooling in December 2014 and changed careers. He began driving a truck for Schneider, and currently is employed by

Silver Line Logistics (an independent contractor trucking company owned by his wife). The current job as an over the road truck driver accommodates his permanent restrictions and allows him to continue the use of pain medications as needed. However, Petitioner testified that he does not use narcotic pain medication any more. He stops driving work during the middle of the day so he can elevate his foot and seek comfort. Petitioner testified that without the use of pain medication his pain level is 10 on a 1 to 10 scale; with the use of pain medication, the level reduces to 6. Petitioner cannot sleep at night, has to sleep separate from his wife on a couch with his foot elevated, and his pain level is the same since the date of the accident. Obviously, Petitioner uses his right foot to drive his truck and to climb in and out of the truck.

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 (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's current condition of ill-being regarding his right foot (to wit: Status post calcaneus fracture, status post subtalar fusion and removal of hardware with permanent restrictions regarding standing, walking and crouching and with continued pain necessitating medication, including narcotics) is causally related to the injury, based upon the unrebutted testimony of Petitioner and the medical records.

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:

Petitioner is entitled to TTD for the stipulated time period of 112-3/7 weeks. The issue in dispute is TTD for the claimed period of July 23, 2013 to December 19, 2014 (between the time of the termination of Petitioner's employment by Respondent and his beginning work as a truck driver).

The medical records of Dr. DeFrino and the §12 opinions support the finding that Petitioner was at MMI from an orthopedic standpoint prior to the termination of his employment. Dr. DeFrino and Dr. Holmes deferred to Dr. Waidzunas for pain management treatment. Dr. Waidzunas re-instituted Norco as a form of pain management on July 2, 2013. As a result, Petitioner had restrictions regarding working around heavy machinery

and equipment at the time that he was fired. These restrictions would obviously restrict Petitioner from working as a line mechanic. The use of Norco prevents Petitioner from operating a tractor-trailer. Petitioner eventually stopped taking Norco and completed a CDL course allowing him to be a professional truck driver.

After his employment was terminated, Petitioner attempted to obtain employment at several employers, including Pepsi, Coke and Owens Corning. The Arbitrator assumes that these were similar jobs to that of a line mechanic. There was not a very extensive job search performed and this effort does not entitle Petitioner to maintenance benefits for the claimed lost time.

In order for Petitioner to be successful in a claim for TTD, he must show not only that he did not work, but that he was unable to work and the duration of said inability to work. Pietrzak v. Industrial Comm'n, 329 Ill. App. 3d 828 (2002) The evidence adduced does not support a finding in Petitioner's favor on the latter two factors.

The Arbitrator declines to award TTD beyond November 8, 2012 (the date that Dr. Holmes documents MMI). Petitioner was released from care by Dr. DeFrino with permanent restrictions and a recommendation for pain management by his PCP, as of July 14, 2011. He then returned to work and worked for two years, until he was discharged after a disagreement with another employee. Dr. Waidzunas' opinion that Petitioner will need lifetime pain medication does not convince the Arbitrator that Petitioner's condition had not stabilized. He was at MMI prior to being fired. TTD is not available after a claimant has reached MMI. Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission, 236 Ill. 2d 132 (2010) Accordingly, the claim for additional TTD is denied.

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner suffered a severe heal fracture as a result of the accident. He underwent an open reduction/internal fixation procedure with subsequent subtaler fusion and a later hardware removal procedure. The injuries limit Petitioner's ability to perform his regular occupation as a line mechanic, but he has been able to change careers to be a truck driver. Petitioner has significant subjective complaints, which appear to be supported by the medical records. Petitioner was 49 years old at the time of the injury and he likely will have to live with its effects for a long period of time.

Considering Petitioner's testimony and the medical records, the Arbitrator finds that Petitioner has suffered the 70% loss of use of the right foot, as provided in §8(e)11 of the Act.

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 Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SUE DANIELS,

Petitioner,

vs. NO: 13 WC 16880

15IWCC0777

CONTINENTAL TIRE NORTH AMERICA, INC.,

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 accident and being advised of the facts and applicable law, reverses the Decision of the Arbitrator and finds that Sue Daniels established that she sustained an accident arising out of and in the course of her employment on February 3, 2013.

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. Based on the evidence, the Commission finds that Petitioner sustained a work-related injury on February 3, 2013. As the result of the accident, the Petitioner is entitled to TTD benefits from September 5, 2013 through November 13, 2013, representing 9-6/7 weeks. The Petitioner is also entitled to all reasonable and necessary medical expenses. The Commission finds Ms. Daniels sustained 7.5 percent loss of use of the leg pursuant to Section 8(e) of the Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission makes the following findings:

1. According to the Application for Adjustment of Claim filed May 22, 2013, Petitioner was a 38 year old, married female with no dependants under the age of 18. Petitioner alleged injury to her "left lower extremity and other areas" while at work on February 3, 2013.

2. Sue Daniels had been employed by Continental Tire for 3 months at the time of her accident. On February 3, 2013, Ms. Daniels was working as a tire builder. She had to climb onto the guard rail to reach the tire tread as she was too short to reach the tread from the ground. Petitioner testified that she came down from the rail and turned back to her machine when her right leg went out from underneath her causing her to fall onto her left leg. T.16. She testified that both feet were on the ground at the time of the fall. T.45.

3. At the time of the accident, Petitioner was working in the tire builder training program. She would take the tread, put it on a roller, apply the cap strip, and then kick a pedal. The process took 45 seconds to complete. T.15. There are no mats on the floor and the concrete floor was very slick. T.21. There was no snow or water that was tracked into the building, and her shoes were dry and tied. T.51. She did not have anything in her hand nor was she reaching for anything when she fell. T.52. She was hurrying to get her job done. *Id.*

4. Petitioner testified that she was not sure what caused her to fall, but noticed there was "benny" (benzene) on the floor. She was not sure if she knocked it over as she came down from the guardrail, but thought that was what caused her to slip. T.17. Petitioner testified that it was possible the "benny" was not on the floor prior to her fall. T.50. "Benny" is an acetone that is applied to the tread so that it sticks to the drum. *Id.* Ms. Daniels noticed that she was wet after her fall and her skin started to burn. *Id.* The nurse gave her ointment a few days later for her chemical burn. T.53. She did not tell anyone at the hospital that she had a chemical burn as the burn did not form for a few days. *Id.*

5. Mr. Clay McDaniel is the plant safety coordinator and previously worked as a tire builder. T.59. He stated that the pace is constant but not hectic. They build close to 40 tires an hour. He stated that trainees do not have to worry about rates. T.62. He did not know how many tires Petitioner made per hour. T.75. He stated that the floors were not slick and are similar to any big box store, and are commercial grade finish. T.66. The Petitioner never reported to him that the floors were slick. T.69. He did not see any over spray from the machines. T.68. He was not working at the time of the fall and investigated the accident the next day. T.73. His investigation found no wet substance on the floor. There was nothing to fix or clean after the accident. T.71.

6. Mr. Jared Dowdy is the fire safety officer. He was aware of the incident and investigated the accident about 45 minutes after it occurred. His investigation concluded there were no objects on the floor, no slip hazards, or anything. It was normal. T.78. The floor was three years old and in a very pristine condition. He stated Ms. Daniels indicated there were no

objects or hazards that caused her to fall. T.79. She never mentioned that she burned herself from "benny." *Id.*

7. The following reports were completed following the accident:

   a. Theresa Payne, RN, completed a First Report of Injury on February 3, 2013. Per the report, Petitioner indicated that she was applying chemical to the tread. As she turned back towards the machine, she slipped on the concrete which caused her leg to collapse. Her left knee struck the floor. She had a left knee contusion. RX.4. Petitioner told the company nurse that she took some Aleve prior to her shift due to some left knee pain.

   b. According to the Health Services "MOM" report completed by K. Merkel, LPN on February 3, 2013, the cause of Petitioner's fall was "unknown." The report indicated that Petitioner slipped coming down off a ladder in "206" and landed with her left knee underneath. RX.5. Petitioner testified that she did not tell Health Services that she did not know how she fell; rather, she stated that she did not know exactly how she fell. T.42. She did not tell anyone that she fell while stepping off a ladder. T.43.

   c. According to the "Claimant's Statement of Events" completed by Ms. Daniels on February 3, 2013, Petitioner indicated that she slipped on concrete. She reported that she started to turn to move towards a machine when her left leg slid and went under her right leg. She indicated that she had a prior ACL replacement and partial removal of torn meniscus. RX.7.

   d. According to the Incident Report completed by Jared Dowdy on February 3, 2013, Petitioner reported that she was applying chemical to the tread and, when she turned toward the machine, she slipped on the concrete causing her leg to collapse. There was no substance on the floor. It was listed as an "unknown source cause." There was no unsafe condition. RX.8. Petitioner testified the report was not accurate as she told them there was "benny" on the floor. T.47.

   e. According to the witness statement from Michelle Duffy dated March 11, 2013, Ms. Duffy reported that her back was towards Ms. Daniels when she heard a "smack" noise. She turned and saw the Petitioner on the ground. The Petitioner advised that her knee had given out from underneath her and she was in a lot of pain. RX.9. Petitioner testified that she did not tell her co-worker that her knee gave out. T.50.

8. Following the accident, Petitioner presented to St. Mary's Good Samaritan. According to the emergency nursing record from 8:30 a.m., Petitioner "fell on 'wet' floor." She was unable to work. According to the emergency physician record from 9:14 a.m., the "lose

balance" part of the record was circled and it was noted Petitioner "slipped on snow." Petitioner was diagnosed with a knee contusion and taken off work. Petitioner testified that she did not tell the doctor that she slipped and fell on the snow. T.43. According to an e-mail from "MTV Nurse" to multiple employees of the Continental Tire, Petitioner slipped coming down off a ladder in 206 and landed with left knee underneath body. The e-mail was sent at 12:14 p.m. Edema was present and she was sent to the ER. PX.2.

9. Petitioner sustained a prior non work-related left ACL tear and meniscus injury on July 4, 2012 when she fell on a pool deck. A left knee MRI performed on July 19, 2012 revealed a complete disruption of the ACL. There was also a stretch injury in the medial and lateral collateral ligaments, but no frank tear was identified. The medial meniscus showed thinning and high signal internally with no frank tears seen. Dr. Davis performed left arthroscopic anterior cruciate ligament reconstruction with Achilles tendon allograft and left knee arthroscopic partial medial meniscectomy on August 14, 2012. RX.3. On November 5, 2012, Petitioner reported to her physical therapist that a Great Dane ran into her left knee and she was now doing worse.

10. On December 31, 2012, Dr. Davis noted Petitioner was doing very well. She had returned to work as her short term disability had been denied. There was no effusion and she had full range of motion with a stable Lachman and a negative pivot shift. She was prescribed a functional ACL brace to wear. She could work full-duty without restrictions. RX.3.

11. Per the January 29, 2013 physical therapy record, Ms. Daniels indicated that she had intermittent pain. She had met the goals of strength, range of motion, mobility and function. It was noted that Petitioner had stopped attending physical therapy. The last date of visit was listed as November 29, 2012. RX.3. Petitioner testified that she missed 1 to 2 sessions due to her father's death. T.39.

12. Ms. Daniels subsequently returned to work as a tire builder. Petitioner testified that her left knee was doing pretty good immediately prior to the February 3, 2013 accident. She had a little bit of pain, but nothing that she could not work through. She had no instability issues. T.24.

13. Petitioner testified that she was not wearing her brace at the time of her February 3, 2013 accident as she was told by Continental Tire security that she could not wear it into the building. T.41.

14. Ms. Daniels underwent an MRI of the left knee at Orthopaedic Institute of Southern Illinois on May 20, 2013. The MRI revealed a 3 cm medial meniscus posterior horn oblique tear extending into the posterior body. The tear extended to the inferior articular surface. There was also a grade 2 lateral collateral ligament sprain and small joint effusion. The replaced ACL was intact. PX.2.

15. On May 29, 2013, Dr. Davis of Orthopaedic Institute of Southern Illinois examined the Petitioner. Examination revealed that she lacked terminal 2 to 3 degrees of extension, and flexed back to 120 to 130 degrees. She had a stable Lachman's and some medial greater than lateral joint line tenderness. The assessment was status post ACL reconstruction with a re-injury and a medial meniscus tear. She was to work modified duty and undergo therapy. Dr. Davis was hesitant to recommend surgery since it was a non-displaced medial meniscus tear. PX.2.

16. Dr. Davis performed a left knee arthroscopic partial medial meniscectomy and left knee arthroscopic extensive debridement of the intra articular adhesions and thickened anterior cruciate ligament on September 10, 2013. PX.2.

17. Petitioner was paid short term disability from September 13, 2013 through November 15, 2013. RX.2. Petitioner was returned to regular duty work on November 14, 2013. RX.10.

18. Respondent obtained an AMA rating from Dr. George Paletta of the Orthopedic Center of St. Louis on March 3, 2014. Petitioner had pain in her knee located predominantly in the anterior knee. She had a positive grab and "movie" sign. She had difficulty ascending and descending stairs. She had occasional swelling of the knee and trouble getting the knee fully straight. She had no radiating pain or associated numbness. She had no mechanical symptoms of catching or locking. Dr. Paletta opined that the meniscus tear was consistent with the mechanism of injury and Petitioner was at MMI. The impression was persistent patellofemoral pain in the setting of known patellofemoral chondrosis. Dr. Paletta found that Petitioner had a 3 percent permanent partial disability rating of the lower extremity. RX. 11.

19. Petitioner testified that she returned to work full-duty and was having a lot of trouble trying to climb up on the rails and pushing the racks as it put a lot of stress on her leg. T.27. She worked three days and informed Continental Tire that she was not able to perform her job duties. She went back to the doctor and has not returned to work. *Id.*

20. Ms. Daniels testified that she currently works as a part-time cashier at Casey's. T.28. She can perform her job, but not without a lot of issues. She has to sit and ice her knee after a 5.5 hour shift. T.29. She cannot straighten out her left leg and does not have full range of motion. She has a stabbing pain in the knee. *Id.* Her knee swells when she stands for longer than a half hour. T.28. She can only walk about 15 minutes before she experiences pain. T.31. She cannot walk normally and going up and down stairs is difficult. *Id.* She cannot squat and has issues with it locking, popping, and instability. T.30. She does not take any medication and just does therapy. *Id.*

The Commission is not bound by the Arbitrator's findings, and may properly determine the credibility of witnesses, weigh their testimony and assess the weight to be given to the evidence. *R.A. Cullinan & Sons v. Industrial Comm'n*, 216 Ill. App. 3d 1048, 1054, 575 N.E.2d

1240, 159 Ill. Dec. 180 (1991). It is the province of the Commission to weigh the evidence and draw reasonable inferences therefrom. *Niles Police Department v. Industrial Comm'n*, 83 Ill. 2d 528, 533-34, 416 N.E.2d 243, 245, 48 Ill. Dec. 212 (1981). Interpretation of medical testimony is particularly within the province of the Commission. *A. O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536-37, 283 N.E.2d 875, 877 (1972).

The Court in *Vill. of Villa Park v. Ill. Workers' Comp. Comm'n,* 2013 IL App (2d) 130038WC, addressed the "arising out of employment" requirement. The Court stated that "an injury arises out of one's employment if, at 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." A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties." *Sisbro*, 207 Ill. 2d at 204 (quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d at 58).

"There are three categories of risk an employee may be exposed to: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 731 N.E.2d 795, 314 Ill. App. 3d 149, 247 Ill. Dec. 22 (2000). A fall caused by a weak knee is a personal risk. *Illinois Consolidated Telephone Company v. .Industrial Comm'n*, 314 Ill. App. 3d 347, 352-53, 732 N.E.2d 49, 247 Ill. Dec. 333 (2000) (Rakowski, J., specially concurring.). Injuries resulting from a fall caused by some personal weakness of the claimant, such as a weak knee, are not compensable under the Act unless the claimant's employment significantly contributes to the injury by placing him in a position of greater risk of falling. *Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 16, 668 N.E.2d 15, 217 Ill. Dec. 830 (1996). Falling while traversing stairs is a neutral risk, and the injuries resulting therefrom generally do not arise out of employment. *Illinois Consolidated Telephone Company*, 314 Ill. App. at 353. As with personal risks, however, an exception to noncompensability under the Act exists where the requirements of the claimant's employment create a risk to which the general public is not exposed. *Id.* "The increased risk may be qualitative or quantitative, such as where the claimant is exposed to a common risk more frequently than the general public." *Id.*

The Commission finds that the Arbitrator's reliance on the fact that Petitioner had ongoing symptoms from the prior injury, that there was nothing incidental to her employment, and that she could not explain how she fell is not supported by the evidence.

First, the Commission notes that Ms. Daniels did explain how she fell. She explained that she stepped down from the guard rail and turned to her machine when her knee gave out. Her history is largely consistent throughout all the medical records and all the forms. Further, the medical reports indicate that the floor was wet when she slipped.

Second, the Commission finds no support that Petitioner's knee was in a weakened state. While it is true that Ms. Daniels had a prior ACL surgery, it is equally true that she had been released back to work without restriction. The physical therapy record from January 29, 2013 indicated that she had met her goals for strength, range of motion, and stability. The Respondent offered no evidence to rebut this record.

Third, Dr. Davis, on December 31, 2012, returned Ms. Daniels to work and recommended that she wear a functional ACL brace. The Petitioner, however, testified that the Respondent would not allow her to wear the knee brace into the building. The Commission notes that the Respondent did not rebut this assertion, despite calling two witnesses on its behalf. The evidence further demonstrates that the Respondent was aware that Petitioner had to climb the railing in order to perform her job duties and did nothing to prevent Petitioner from having to climb up and down the guardrail.

Fourth, the medical records contradict Respondent's assertion that the floor was dry. While the physician record indicated Petitioner slipped on snow, the nurse's note immediately prior to the physician's record indicated that Petitioner slipped on the wet floor. The reports also indicate that Petitioner was applying a chemical to the tread. The nurse's note and the reports are consistent with Petitioner's testimony that the floor was wet.

Fifth, the Commission finds the testimony of Mr. McDaniel and Mr. Dowdy not persuasive. Neither Mr. McDaniel nor Mr. Dowdy were present at the time of the accident. Mr. McDaniel did not investigate the accident until the next day and Mr. Dowdy did not investigate the accident until 45 minutes after it had occurred. The Commission gives little weight to the investigation performed by Mr. McDaniel and Mr. Dowdy given the lapse of time between the accident and their investigation.

The Commission notes that the Respondent's arguments are clearly refuted by the evidence. Petitioner was not wearing her knee brace at the time of the injury as Respondent would not allow her to wear it at work. While Petitioner may have had set backs during physical therapy, the records reveal she was released back to work full-duty and without restriction. The Respondent also allowed Petitioner to continually climb up and down the guard rail to perform her job duties. Further, the medical record reveals that the floor was wet, a fact which the Respondent ignored completely.

The Commission finds Petitioner established that she sustained an accident arising out of and in the course of her employment and that her condition is causally related to the accident.

The Commission finds Ms. Daniels is entitled to TTD benefits from September 5, 2013 through November 13, 2013, representing 9-6/7 weeks. This was the period she was off work following her surgery. Petitioner is further entitled to all reasonable and necessary medical expenses to the left knee.

According to Section 8.1(b) of the Act, 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.

The Petitioner testified that she had to leave the Respondent's employ as she could no longer perform her job duties. She now works as a Cashier. She experiences pain and swelling when she stands at work. She lacks full range of motion and has a stabbing pain in her knee. She cannot walk normally and her knee locks up and pops. The Respondent obtained an AMA rating finding Petitioner sustained 3% permanent partial disability. Having reviewed all the evidence, the Commission finds Petitioner is entitled to 7.5% loss of use of the left leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 3, 2014 is hereby reversed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $450.11 per week for a period of 9-6/7 weeks, September 5, 2013 through November 13, 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 $405.10 per week for a period of 16.125 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 7.5% loss of use of the leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses under §8(a) of the Act and subject to the medical fee schedule. Respondent shall have a credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount for which it is receiving this credit, pursuant to Section 8(j) 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 $11,100.00. 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: OCT 2 2 2015

Michael J. Brennan

MJB/tdm
O: 8/24/15
052

Thomas J. Tyrrell

Dissent

I respectfully dissent from the decision of the majority. Arbitrator Kane's findings are thorough, well reasoned and grounded in the law. This decision is correct and should be affirmed

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DANIELS, SUE
Employee/Petitioner

Case# **13WC016880**

15IWCC0777

CONTIENTAL TIRE NORTH AMERICA INC
Employer/Respondent

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:

1312 BEMENT & STUBBLEFIELD PC
GARY BEMENT
PO BOX 23926
BELLEVILLE, IL 62223

0299 KEEFE & DePAULI PC
ANDREW J KEEFE
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

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

Sue Daniels
Employee/Petitioner

v.

Continental Tire North America, Inc.
Employer/Respondent

Case # **13** WC **16880**

Consolidated cases: _____

15IWCC0777

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 Commission, in the city of **Mt. Vernon**, on **July 9, 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 **02/03/13**, 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 $**8,101.96**; the average weekly wage was $**675.16**.

On the date of accident, Petitioner was **38** 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 $**3,685.00** for other benefits, for a total credit of $**3,685.00**.

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

ORDER

Petitioner failed to establish that she sustained an accident arising out of her employment. For reasons outlined in the Memorandum of the Arbitrator, Petitioner's request for benefits 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.

David A. Kane
Signature of Arbitrator

December 3, 2014
Date

DEC 3 - 2014

STATE OF ILLINOIS)
)SS
COUNTY OF JEFFERSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

SUE DANIELS
Employee/Petitioner

v. Case #: 13 WC 16880

CONTINENTAL TIRE, NORTH AMERICA, INC.
Employer/Respondent

15IWCC0777

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

This matter was heard by Arbitrator **Brandon Zanotti, who subsequently left the Commission before issuing a Decision in this matter. A transcript of the evidence and the records introduced at trial were provided to Arbitrator David A. Kane in order to render a Decision.**

Petitioner, 38 years of age, was hired by Respondent as a sorter on April 30, 2012. She worked approximately three months before injuring her left knee at home. She testified that she slipped and twisted her knee while on a pool deck. She came under the care of Dr. J. T. Davis and was taken off work. On August 14, 2012, Petitioner underwent a left knee ACL reconstruction, Achilles tendon allograft, and partial medial meniscectomy. Petitioner was given a brace and ordered to undergo therapy. She received non-occupational disability benefits. A therapy note dated November 2, 2012 reflects Petitioner reporting progression with therapy until a Great Dane ran into her over the weekend and the knee now seemed worse. (RX 3). Petitioner denied the report at trial.

Petitioner reported a "locked knee" in a November 12, 2012 therapy note. Dr. Davis' November 19, 2012 note reflects Petitioner was to continue protective body mechanics, home exercises, medications and progress with activities as tolerated. She was instructed to return in two to three months. Petitioner contacted Dr. Davis on November 21, 2012 requesting a note allowing her off work for an additional two months. As of December 31, 2012, Petitioner reported having some occasional achiness when hyperextending the knee when standing. She also reported that she was required to return to work because her short term disability was denied by Met Life. (RX 3). Petitioner denied the report at trial. Dr. Davis ordered a functional ACL brace for Petitioner to use at work for extra protection and reassurance. Petitioner was instructed to return to Dr. Davis in a couple of months for ongoing care. As of January 4, 2013, an additional month of physical therapy was ordered. A January 29, 2013 therapy note reflects Petitioner was discharged from therapy because she stopped attending for reasons unknown. The therapist documented that Petitioner continued having intermittent pain. (RX 3).

Petitioner returned to work on January 24, 2013 as a passenger tire builder trainee. She testified that her previous job as a sorter was no longer available. It was an easy job. She did not want to work as a passenger tire builder but it was the only position available. Petitioner described what she perceived were the job duties required of a passenger tire builder. Safety Supervisor Clay McDaniel clarified that Petitioner was a trainee and the job requirements differed from that of the actual passenger tire builder position. He testified that employees would train for three to six months and were not required to meet quotas. In his experience, a trainee would only be capable of building 20-25 tires per hour versus building 45 tires per hour as purported by Petitioner. Mr. McDaniel testified that trainees work at a comfortable pace, with ample time to check their surroundings.

Mr. McDaniel described the machine operations in the hall Petitioner worked. He testified the machines were up-to-date and more ergonomic friendly than machines in the old plant. He testified the operation ran more smoothly and less physical labor was required. Mr. McDaniel explained the floor next to Petitioner's machine was pristine concrete without nicks or indentation. He compared the floors to a Sam's Club or Home Depot. He testified there was no heavy foot traffic in the area Petitioner worked. There would be no over-spray from the machines on the floor. Other than Petitioner's claim, he never received a report that the concrete floors were slick or caused an employee to slip. Supervisor Jared Dowdy testified to similar facts.

On February 3, 2013 Petitioner purportedly fell while working in the trainee position. The Form 45 reflects Petitioner reported applying chemical to tread so that it sticks to the drum and as she turned back towards the machine, she slipped on the concrete, causing her leg to collapse and hit her left knee on the floor. (RX 4). Petitioner was taken to Midwest Occupational Medicine following the incident. EMT Copple recorded that Petitioner landed with her left leg falling under her but the cause of the fall was unknown. Petitioner declined pain relievers because she had taken Aleve prior to her shift. Nurse Merkel recorded that Petitioner slipped coming down off a ladder in 206 and landed with left knee underneath body. (RX 5). Petitioner denied the nurse's report at trial.

Petitioner presented to Good Samaritan Hospital following the incident. The staff physician recorded that Petitioner had slipped on snow. (RX 6). Petitioner denied this report at trial.

Petitioner filled out a statement of events following her return from the hospital. She reported slipping on concrete when she started to turn to move towards the machine. She reported it was not a new injury but re-occurrence of an old injury. (RX 7).

An Injury/Illness/Incident Report was completed the same day. The supervisor recorded that Petitioner was building tires when she turned back towards the machine and slipped on the concrete causing her leg to collapse and hitting her knee on the floor. There was no substance on the floor. The report reflects no unsafe action determined, no unsafe condition, and an unknown source cause of the fall. (RX 8). Mr. McDaniel and Mr. Dowdy confirmed that no remedial measures were required following the incident.

Petitioner's co-worker filled out a witness statement dated March 11, 2013. The statement reflects co-worker Ms. Duffy reporting that Petitioner's knee gave out from under her and she came down hard. (RX 9). Ms. Duffy did not actually witness the incident.

At trial, Petitioner testified that she is not certain how she fell. She confirmed that she was not ascending or descending a ledge when she fell. She testified that both feet were on the concrete floor when she fell. She testified her shoes were tied, dry, and she did not recall tripping over anything. She testified that she did not have any work tools in her hand when she fell. She testified that she was not reaching for anything. She testified that she was working at her regular pace, there were no emergencies, and the machines were working properly. She testified that she had ample space to work and there was no traffic in the area. She did not bump into anyone. She testified that there was not any snow or water on the floor. She stated it was possible that she knocked over a "benny pail" when falling, but the "benny pail" was not on the floor and did not cause her to fall. She testified the "benny" caused burns on her legs. There is no documentation of her receiving medical treatment at any facility for the purported burns. She did not make a claim for burn injuries at trial. Petitioner acknowledged that she was not wearing her knee brace at the time of the incident despite her doctor's orders. She testified her employer did not allow her to wear the knee brace, but Mr. Dowdy testified this was not the case. Petitioner confirmed her knee was achy before the shift and she had taken Aleve. (RX 5).

Mr. McDaniel and Mr. Dowdy testified they investigated the incident following Petitioner's report. Through the investigation Mr. McDaniel and Mr. Dowdy confirmed there was no substance on the floor and there was no explanation as to why Petitioner fell. Neither supervisor believed any remedial measures were required. It was noted that Petitioner had recently returned to work from a prior non-occupational injury.

Petitioner underwent an MRI on May 20, 2013 that was interpreted to reveal a possible medial meniscus tear. (PX 2). Dr. Davis noted Petitioner had minimal medial symptoms and did not want to jump into surgery. (PX 2). A course of therapy was ordered. Petitioner underwent therapy at NovaCare through September 2013. (PX 3). Petitioner underwent a left knee arthroscopy on September 10, 2013. The operative report reflects the ACL graft remained intact. A partial medial meniscectomy was performed. (RX 2). Petitioner underwent additional therapy and was released to return to work without restriction on November 14, 2013. (RX 10).

Dr. George Paletta examined Petitioner on March 3, 2014. He believed Petitioner had reached maximum medical improvement from the meniscus injury. He opined Petitioner had an impairment rating of 3% of the lower extremity in accordance with AMA Guidelines. (RX 11).

At trial, Petitioner testified to ongoing complaints regarding her left knee. She now works as a clerk at a gas station.

CONCLUSIONS OF LAW

Issue (C&F): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent and was Petitioner's left knee condition causally related to a work "accident?"

Petitioner did not establish that she sustained an accident arising out her employment.

An injury must arise out of the employment to be covered under workers' compensation. There must be a causal connection between the injury and the employment. *Union Starch v. Industrial Comm'n.,* 56 Ill.2d 272, 307 N.E.2d 118 (1974). The injury must be caused by some risk that is incidental to the employment. *Weis Paper Mill Co. v. Industrial Comm'n.,* 293 Ill. 284, 127 N.E. 732 (1920). A mere coincidence that an injury happened on the employer's premises is not enough to establish that it arose out of the employment. *Orsini v. Industrial Comm'n.,* 117 Ill.2d 38, 509 N.E.2d 1005 (1987). A decision by the Commission cannot be based upon speculation or conjecture. *Deer and Company v. Industrial Comm'n.,* 47 Ill.2d 144, 265 N.E.2d 129 (1970). A claimant must prove "accident" by a preponderance of credible evidence. *IIT v. Industrial Comm'n.,* 68 Ill. 2d 236, 369 N.E.2d 853 (1977).

As here, Petitioner testified that she was not certain how she fell, but acknowledged her left knee was achy before her shift. According to the records, she had not completed recommended treatment following her prior non-occupational left knee injury. She had not been released from Dr. Davis' care. The fact that Petitioner could not explain how she fell and had ongoing symptoms from the prior injury, establishes that she did not prove "accident" by the preponderance of the evidence. A finding of "accident" cannot be based on speculation or conjecture. Clearly, the fall was from an internal or personal origin.

The evidence as noted in the Fact Findings reflects there was nothing incidental to the employment that caused Petitioner to fall. Petitioner conceded that she had no work tools in hand, was not reaching for anything, both feet were on a pristine concrete floor, her shoes were tied, dry and she did not trip on anything. It was merely a coincidence the injury occurred on the employer's premises. As such, the claim must be denied. The Arbitrator further notes the credible testimony of Mr. McDaniel and Mr. Dowdy establishes Petitioner was not exposed to a greater risk than the public. There were no known defects with the floor or the machinery.

There was no substance on the floor when Petitioner fell. Petitioner was working at a regular trainee pace and there were no emergencies. The Arbitrator questions Petitioner's credibility due to the inconsistencies between her testimony and the records.

For the above outlined reasons, Petitioner's claim for compensation is denied and any remaining issues are deemed moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

REYNOLDS, DARREL Case# **14WC015049**

Employee/Petitioner

VESUVIUS USA

Employer/Respondent

On 10/15/2015, 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 0.08% 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:

1979 LAW OFFICE OF MICHAEL M WOJTAS
PO BOX 1055
ROSCOE, IL 61073

0358 QUINN JOHNSTON HENDERSON ET AL
JOHN F KARMIN
227 N E JEFFERSON ST
PEORIA, IL 61602

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

- [ ] 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

DARREL REYNOLDS
Employee/Petitioner

v.

VESUVIUS USA
Employer/Respondent

Case # **14** WC **15049**

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 **Urbana**, on **August 13, 2015**. 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? Liability
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 **3/4/2014**, 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 $**56,056.00**; the average weekly wage was $**1,078.00**.

On the date of accident, Petitioner was **45** 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 $**5,200.00** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**5,200.00**.

Respondent is entitled to a credit of $**11,391.30** for medical bills paid by its group medical plan for which credit is allowed under Section 8(j) of the Act.

ORDER

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF **$718.67/WEEK** FOR **12 4/7 WEEKS**, COMMENCING **9/23/2014 THROUGH 11/11/2014** AND **12/19/2014 THROUGH 1/26/2015**. RESPONDENT SHALL BE GIVEN A CREDIT OF $5,200.00.

RESPONDENT SHALL PAY REASONABLE AND NECESSARY MEDICAL SERVICES OF **$4,294.36**, SUBJECT TO THE MEDICAL FEE SCHEDULE AS PROVIDED IN SECTIONS 8(A) AND 8.2 OF THE ACT.

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF **$646.80/WEEK** FOR A FURTHER PERIOD OF **63.25 WEEKS** AS PROVIDED IN SECTION 8(E)10 OF THE ACT, BECAUSE THE INJURIES SUSTAINED CAUSED **12.5% LOSS OF THE USE OF EACH ARM.**

RESPONDENT SHALL PAY PETITIONER COMPENSATION THAT HAS ACCDRUED FROM MARCH 4, 2014 THROUGH JANUARY 26, 2015, AND SHALL PAY THE REMAINDER OF THE AWARD, IF ANY, IN WEEKLY INSTALLMENTS.

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 Bendeaf
Signature of Arbitrator

October 11, 2015
Date

OCT 1 5 2015

DARREL REYNOLDS v. VESUVIUS USA,
14 WC 015049

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was heard on 8/13/2015 in Illinois, pursuant to an agreement of the parties on the issues of accident, causal connection, TTD, medical (liability) and nature and extent as reflected in the Request for Hearing submitted as Arbitration Exhibit #1. Joe Blake was Respondent's representative at the hearing.

The Arbitrator finds:

A Supervisor's First Report of Accident indicates that on March 4, 2014 Petitioner reported a bilateral elbow strain. With regard to a description of the accident, the Report states that "While employee was using a garden claw to loosen mix in barrel he felt shooting pain starting at elbow down to hand." (PX 1)

Petitioner presented to Lincoln Trail (LT) Occupational Health on March 7, 2014 reporting bilateral elbow pain and requesting an MRI. Petitioner reported working with an auger or claw when the pain became very severe. He acknowledged noticing it many months earlier and added that the pain was worse on the right side with his arms going numb throughout the evening hours. Petitioner was using Aleve to no effect. Petitioner's physical exam was relatively benign with no swelling or bruising and both active and passive range of motion. Petitioner was able to flex and extend against resistance with some facial grimacing and minimal pain. Petitioner was diagnosed with "bilateral pain" and prescribed Motrin for seven days along with ACE bandages at work.

Petitioner returned to LT Occupational Health on March 14, 2014 with ongoing elbow complaints. No treatment changes were made. (PX 2) When Petitioner returned on the 25th of March he underwent bilateral nerve conduction testing. PA-C Steveley noted the "empirical upper limit of normal is 9.6 milliseconds; 12.1 milliseconds." (See also PX 4) An MRI was to be scheduled. Petitioner was to continue with his medications, the ACE bandage as needed, and no restrictions. (PX 2)

The MRI was performed on April 11, 2014. On the right elbow, it revealed findings consistent with ulnar neuropathy and findings suggestive of entrapment within the cubital tunnel and degenerative changes of the elbow joint with severe cartilage loss at the capitellum. The left elbow MRI revealed ulnar nerve entrapment within the cubital tunnel which appeared to be related to an anconeus epitrochlearis muscle and degenerative changes with chondromalacia, severe in the capitellum. (PX 5)

After the MRI Petitioner followed up with PA-C Stevely who noted the left elbow MRI showed ulnar nerve entrapment within the cubital tunnel and the right elbow MRI showed findings consistent with ulnar nerve neuropathy suggestive of cubital tunnel entrapment. No treatment recommendations were made except for the discontinuation of the ACE bandage. PA-C Stevely anticipated surgery but felt Petitioner needed an ortho referral. (PX 2)

Petitioner signed his Application for Adjustment of Claim herein on April 18, 2014. (AX 2)

Petitioner returned to see PA-C Stevely on April 28, 2014 and, while he reported discontinuation of the medications due to concerns about building up a tolerance, Petitioner was encouraged to continue with the none-steroidal anti-inflammatories which would help reduce inflammation within the nerve. Petitioner continued to report that his pain was worse at night and the burning sensation was increasing. Petitioner was diagnosed with bilateral ulnar nerve entrapment and an orthopedic consultation was pending. (PX 2)

PA-C Stevely re-examined Petitioner on May 12, 2014. No changes were made in the treatment plan. Primarily, a discussion was held regarding the status of Petitioner's referral to an orthopedist with Petitioner being advised that workers' compensation was probably sending him for a second opinion. Petitioner was to return in three weeks. (PX 2)

Petitioner underwent a Section 12 examination with Dr. James Williams on May 28, 2014. (RX 2) A written report followed. According to the report Petitioner had worked a variety of jobs over his 17 year career with Respondent. Over the last 8-9 years he had worked as a press filler which required him to take a garden claw and hit it into a mix to break it up. The claw had claws on the end and two handles requiring the use of both hands. Petitioner described how he performed each job he has held. Petitioner told the doctor he began having slight pain from his wrist up to his elbow in the fall of 2013 and just lived with it. He started getting a "shocking" feeling in his elbow around March 4, 2014. Dr. Williams had records from, LT Occupational Health, Midwest Orthpaedic and the First Report of Injury. He also had a copy of the MRIs, nerve conduction study, and functional job analysis. A physical exam was performed with findings noted in the report. It was Dr. Williams' impression that Petitioner had bilateral cubital tunnel syndrome symptoms despite some contraindications based upon his exam. He did not feel Petitioner had undergone adequate non-operative treatment as he felt Petitioner would benefit from an elbow extension splint. He also did not feel Petitioner's symptoms were caused or aggravated by his activities for Respondent. Rather, he felt Petitioner's left-sided complaints were due to his sleeping position and on the right side it was due to his sleeping position and the arthritis at his ulnotrochlear joint and osteophytes. Dr. Williams did not believe Petitioner's job involved any sustained, repetitive, forceful gripping or significant exposure to vibration. He felt Petitioner could continue working full duty and needed no further treatment except for the bilateral elbow extension splints. Dr. Williams noted no evidence of malingering or symptom magnification. (RX 2)

Petitioner next sought medical treatment at the Orthopedic Department at Carle Physicians Group on 7/28/2014 where he saw Kristine Anderson, PA -C. Petitioner gave a history of working for Respondent as a press filler for 17 years having injured himself on March 3, 2014 while using a garden claw to break up a very hard mix. Petitioner described how he had used the claw many times in the past and that the mixture was quite hard; however, on March 3rd he felt a shocking shooting pain from his elbow up and down his arm, with the right side worse than the left. Petitioner described shooting pains with numbness radiating into his entire hand and involving all four digits. Flexion of his elbow also aggravated the pain. Petitioner also reported being placed in some elbow braces at night about two weeks earlier which helped his hand complaints but he remained symptomatic with pain. Petitioner was under no work restrictions. Based upon her physical exam of both upper extremities, Ms. Anderson diagnosed Petitioner with mild symptoms of right medial epicondylitis. She noted the MRI had showed bilateral cubital tunnel syndrome reportedly (she lacked prior tests and records). Ms. Anderson ordered an EMG (PX 6) The EMG was performed on August 19, 2014 and was positive for bilateral cubital tunnel syndrome, as well as mild bilateral carpal tunnel syndrome, without denervation. (PX 7)

Following the EMG, Petitioner was seen by PA-C Anderson and Dr. James Sobeski on 8/27/2014 at which time Dr. Sobeski recommended cubital tunnel releases to both elbows (PX 9). On 9/23/2014, Petitioner underwent a cubital tunnel release with ulnar nerve transposition to the right upper extremity (PX. 13). Dr. Sobeski restricted Petitioner from returning to work from 9/23/2014 through 11/09/2014 (PX 9, 10).

As of November 10, 2014 Petitioner was doing "really well" regarding his right-sided cubital tunnel surgery. The numbness, tingling, and burning pain had resolved and he only mentioned some scar tenderness. He wished to proceed with surgery on the left elbow. (PX 9)

On December 19, 2014 Petitioner underwent a left cubital tunnel release with nerve transposition (PX 18) Dr. Sobeski restricted Petitioner from returning to work from 12/19/2014 through 1/26/2015 (PX 9, 10). There are no further follow-up office notes with Dr. Sobeski.

The parties stipulated that Petitioner received group disability benefits totaling $5, 200.00 while he was restricted from work following the surgeries. He did not receive any TTD benefits.

Petitioner was examined at his attorney's request by Dr. David Fletcher on January 8, 2015. A written report followed. Petitioner was noted to be right hand dominant. He gave a history of developing symptoms beginning on March 4, 2014 which he attributed to the repetitive use of a garden claw while working for Respondent. Petitioner reported having to put a garden claw into a barrel and turning the handles to break up mix in the barrels. On exam Petitioner had atrophy over both hypothenar eminences and bilateral interosseous hand strength. A decreased grip was noted. Dr. Fletcher felt Petitioner needed occupational therapy to build up his strength and endurance. It was Dr. Fletcher's opinion that Petitioner's condition was work-related as it was due to cumulative trauma disorder. He further noted his disagreement with Dr. Williams' causation opinion as Petitioner lacked any other risk factors for the development of his condition. He did not feel Petitioner was at maximum medical improvement and he felt temporary work restrictions were appropriate. As part of his report Dr. Fletcher reviewed all of Petitioner's prior medical records since the alleged accident date as well as a job summary. (PX 26, Ex. 2)

Dr. Fletcher re-examined Petitioner on February 5, 2015. Petitioner descried some tenderness in his elbows but thought it was almost gone. His pain level was "0". Petitioner denied any pain, only tenderness with pressure applied to the bottom of both elbows. Petitioner's Quick Dash rating was noted to be 2.3. Dr. Fletcher felt Petitioner was nearing maximum medical improvement and could return to full duty work as of that date. Dr. Fletcher spent fifteen minutes with Petitioner. (PX 26, Ex. 5)

Dr. Fletcher was deposed on April 28, 2015. Dr. Fletcher is board certified in occupational medicine. He performs independent medical examinations for both petitioners and respondents (45%; 55%) Dr. Fletcher testified consistent with his earlier written report. (PX 26, pp. 10 – 21) He reiterated his opinion that Petitioner's bilateral cubital tunnel syndrome was causally related to his work activities as press filler for Respondent. (PX 26, pages 16-17). Dr. Fletcher also testified that he saw Petitioner again on February 5, 2015 at which time Petitioner reported having undergone therapy and he was very pleased with the improvement in his strength. At that time Dr. Fletcher felt Petitioner could return to unrestricted activity. (PX 26, pp. 20-21)

On cross-examination Dr. Fletcher acknowledged that one can have an idiopathic onset of cubital tunnel syndrome and that heavy alcohol usage could result in someone passing out and striking their elbows. The literature supporting a relationship between alcohol usage and upper extremity complaints is primarily focused on median nerve issues. He also acknowledged that smoking can pose a risk although not a strong risk. Dr. Fletcher didn't believe Petitioner smoked; however, he chewed. Dr. Fletcher also didn't have any information from Petitioner to suggest any correlation/role between outside activities and Petitioner's elbows. He did believe Petitioner engaged in exercise three times a week but it was aerobic in nature, not weight lifting. (PX 26, pp. 21- 24)

Dr. Fletcher further testified that his causation opinion was based upon the accuracy of Petitioner's job description and he had not seen a video of Petitioner's job. He further acknowledged that the Supervisor's Report acknowledged just right-sided pain but Petitioner's problem was bilateral. Dr. Fletcher was also asked about the anconeus epitroclearis noted on the MRI and he explained that it was nothing of significance regarding causation as it is just an extra muscle growing over the ulnar nerve. He acknowledged some people feel it is a condition in and of itself that can cause compression of the ulnar nerve as it is a muscle directly over the nerve. He also agreed that not everyone has it and it actually predisposes one to be more susceptible to stress in that area. He also agreed that degenerative changes in certain structures of the elbow can cause damage or symptoms of compression within the ulnar nerve and that Petitioner had some significant degeneration of his right elbow. He did feel the degeneration in the right elbow was worse than that of the left elbow. He had not actually seen the MRI films, just the reports.

Dr. Fletcher testified that it is the torqueing to Petitioner's elbow stemming from the work activities that is problematic for Petitioner. He also felt, based upon Petitioner's description, that Petitioner had flexion/extension with the job. However, the job description didn't really address/describe the postures. Dr. Fletcher acknowledged that Petitioner has some underlying conditions which made him more susceptible to develop cubital tunnel syndrome. It was also his understanding that Petitioner spent about a third of his day engaged in the torqueing activities and that would meet NIOSH thresholds. (PX 26, pp. 24 – 32)

On redirect examination Dr. Fletcher clarified that the Supervisor's Report referenced both of Petitioner's elbows. (PX 26, p. 32)

Dr. Williams was deposed on May 28, 2015. (RX 1) He is a board certified orthopedic surgeon. Dr. Williams testified consistent with his earlier report adding that the medical treatment, including the surgeries, was reasonable (RX 1, page 48). Dr. Williams also testified that Petitioner's left cubital tunnel syndrome was caused by a muscular anomaly, the right was caused by degenerative changes, and that Petitioner's sleeping posture may be a possible etiology as well (R.E. #3, pages 18-19, 40). He did not believe that Petitioner's job involved any "cumulative" activity that would cause or aggravate cubital tunnel syndrome. He also disagreed that the existence of an extra muscle over the cubital tunnel was simply an irrelevant anatomical variant. In support thereof he acknowledged there are some articles discussing the relationship between cubital tunnel ulnoneuropathy and anconeus epitrochlearis muscles. (RX 2, p. 22) He testified that the muscle itself, regardless of any activity, can in and of its own cause cubital tunnel syndrome.

On cross-examination Dr. Williams acknowledged that the April 13, 2006 job description references that vibratory tools are used to settle the mix, a rake-like device (the claw), a rubber mallet, and an electric

drill. He also admitted that the job description did not contain information regarding the stress needed to use these tools or the torqueing/force used with the tools, or the manner in which the tools were held and used. He, too, did not review a job video. Dr. Williams' understanding of Petitioner's job was based upon what Petitioner told him at the time of their exam. He did not know what type of "mix" Petitioner used the claw to break up. He agreed that Petitioner's history of injury is consistent within the medical records. Dr. Williams acknowledged that Petitioner does not have the anconeus epitrochlearis muscle in the right arm and that the muscle can be a pre-existing factor making one more susceptible to the development of cubital tunnel syndrome. (RX 1, p. 44)

Dr. Williams was asked additional questions about the relationship between Petitioner's sleeping position and his cubital tunnel syndrome. He acknowledged that there would be no force while Petitioner was sleeping and added that cubital tunnel syndrome is not necessarily dependent on a force. He testified:

> [I]t also could be due to just a pressure placed over
>
> the elbow such as one that sits on a chair and keeps
>
> constant pressure over their elbow. It could be caused
>
> by constant flexion of the elbow. (RX 2, p. 46)

When asked to assume that Petitioner continued to be symptomatic even with the splints at night, Dr. Williams still did not feel the sleeping position was merely aggravating Petitioner's condition because it could also mean the condition was so severe that splinting wasn't enough to treat the condition. (RX 2, p. 47) Dr. Williams was under the impression that Petitioner's symptoms in his elbow were worse when he was sleeping. (RX 2,p. 47)

Dr. Williams acknowledged that 90% of his medical/legal work is done for the employer/respondent. He further testified that symptoms at night are a fairly common complaint if one is sleeping with their elbows bent. (RX 2, p. 53)

The Arbitration Hearing

Petitioner testified that he has been employed by Respondent since 1997 and for the last eight years he has been performing the duties of a press filler. Petitioner testified that the job duties of a press filler was accurately described in the written job description (P.E. #27 & 28) but, that in addition to the written description, Petitioner also performed the duties of mixing the compound. Petitioner testified that the mix compound would come in 55 gallon drums and he would have to break up the mix with a garden claw. Petitioner testified that the garden claw was a metal tool approximately chest high. On the far end of the garden claw were four (4) metal prongs and on the top was a key handle. In order to break up the mix compound, Petitioner would drive the garden claw into the mix compound and twist and turn the handle. In order to perform this action, Petitioner would hold the key handle with both hands in front of him and slam it down into the mix compound with enough force to break up the material. Petitioner testified he performed this maneuver 90 to 100 times a day for the last eight (8) years. Respondent's witness, Joe Walker, testimony was not contrary to Petitioner's description.

Petitioner testified that he noticed burning and stinging in his arms on March 4, 2014, told his supervisor, Joe Blake, and completed an Incident Report.

Petitioner testified that on March 4, 2014, Petitioner reported to Mr. Walker that he was experiencing shooting pain starting at his elbows down to the hands while using the garden claw to loosen the mix compound in the barrel (P.E. #1). Petitioner testified that he was sent by his supervisor to Michael Steveley, P.A. at LT Occupational Health. The history given to Mr. Steveley by Petitioner was that he was experiencing pain to both elbows while using a claw or auger over many months but, that it became severe on 3/4/2014 (P.E. #2, page 4).

Petitioner testified that he has been working his regular job (press filler) since returning to work on January 26, 2015. Petitioner denied any problems with his elbows before going to work for Respondent. He has noticed a loss of strength in that he can't push or pull without it hurting. The pre-surgical pain is gone but he still has some pain but it's "different."

Petitioner's medical bills were paid by his group insurance. He also paid $500.00 out-of-pocket for each surgery.

Petitioner admitted that when he first sought medical treatment with Occupational Health he noted he had noticed symptoms many months ago and that his pain was worse on the right side and that they would go to sleep in the evening hours.

An employee training package was admitted into evidence as PX 27. It included a Physical Demands Analysis form for a Press #1 Filler, including the amount of time during the work day spent standing, walking, sitting, lifting, and carrying. No information was provided regarding the amount of pushing or pulling. The job was described as having a combined strength of "heavy." Job tasks included lifting funnels, lifting bags (molds), lifting buckets of mix, lifting closures, lifting head and ears, lifting a vacuum, and lifting a "PUR." Other physical demands were listed on pages 3 through 6. (PX 27) A Functional Job Analysis was admitted as PX 28.

Petitioner's medical bills included:

LT Occupational Health -- $73.00 balance (PX 3)

Carle Foundation Hospital -- $0 balance (PX 8)

Carle Physician Group -- $0 balance (PX 11)

Carle Foundation Hospital -- $205.00 balance (PX 12)

Carle Foundation Hospital -- $11.70 balance (PX 14)

Carle Foundation Hospital -- $640.71 balance (PX 15)

Carle Foundation Hospital -- $205.00 balance (PX 17)

Hoopeston Regional Health Center - $290.00 balance (PX 19)

Carle Foundation Hospital -- $648.52 balance (PX 20)

Sarah Bush Lincoln -- $675.43 balance (PX 22)

Sarah Bush Lincoln -- $320.00 balance (PX 24)

Carle Foundation Hospital -- $225.00 balance (PX 25)

Altogether the outstanding medical bills total $3, 294.36.

The Arbitrator concludes:

Issues (C) Accident and (F) Causal Connection.

Petitioner sustained an accident on March 4, 2014 that arose out of and in the course of his employment with Respondent. He further proved that his current condition of ill-being in his elbows is causally connected to his accident of March 4, 2014.

For the last eight (8) years Petitioner has been performing the duties of a press filler, and his job required him to break up the mix compound with a garden claw, using both arms/hands on the handles, 90 to 100 times per day with a downward driving motion which placed a significant amount of force to both elbows which resulted in the gradual development of his bilateral cubital tunnel syndrome manifesting itself on 3/4/2014.

The Arbitrator finds the testimony of Petitioner credible. Respondent's witness's testimony was not contrary to that of Petitioner. The Arbitrator also found the medical histories of LT Occupational Health and Carle Physicians Group consistent with Petitioner's testimony.

On the issue of whether Petitioner's condition of ill-being is causally connected to the work accident, the Arbitrator finds Dr. Fletcher's testimony more persuasive than that of Dr. Williams. Dr. Fletcher was aware of Petitioner's work activities and provided an opinion that Petitioner's bilateral cubital tunnel syndrome was caused by Petitioner's work activities. The Arbitrator did not find Dr. William's testimony persuasive. The doctor made enough concessions during cross-examination to undermine his opinion regarding the role of Petitioner's sleep position and its relationship to Petitioner's upper extremity condition. The doctor acknowledged on cross-examination that Petitioner's condition could have been severe enough already that the sleeping position would be irrelevant. Petitioner's anatomical/pre-existing condition of his elbows may, as the doctors acknowledged, have made him more susceptible to the effects of his job duties. Based on the above, the Arbitrator finds a causal connection between Petitioner's bilateral cubital tunnel syndrome and the March 4, 2014 accident.

Issue (J) Medical Bills.

On the issue of medical bills, the Arbitrator notes Respondent's dispute was based solely on liability. As the Arbitrator has found the issues of accident and causal connection in favor of Petitioner she finds the treatment to be reasonable and necessary. It is ordered that Respondent pay all outstanding medical bills submitted by Petitioner into evidence:

LT Occupational Health -- $73.00 balance (PX 3)

Carle Foundation Hospital -- $0 balance (PX 8)

Carle Physician Group -- $0 balance (PX 11)

Carle Foundation Hospital -- $205.00 balance (PX 12)

Carle Foundation Hospital -- $11.70 balance (PX 14)

Carle Foundation Hospital -- $640.71 balance (PX 15)

Carle Foundation Hospital -- $205.00 balance (PX 17)

Hoopeston Regional Health Center - $290.00 balance (PX 19)

Carle Foundation Hospital -- $648.52 balance (PX 20)

Sarah Bush Lincoln -- $675.43 balance (PX 22)

Sarah Bush Lincoln -- $320.00 balance (PX 24)

Carle Foundation Hospital -- $225.00 balance (PX 25)

Altogether the outstanding medical bills total $3, 294.36. The award of medical bills is subject to the Medical Fee Schedule. In addition Respondent shall reimburse Petitioner the sum of $1,000.00 for his two $500.00 co-pays incurred with regard to his surgeries. Petitioner submitted one bill detailing the co-pay and his testimony regarding there being two co-pays was unrebutted. The total amount of the medical awarded is $4,294.36.

Issue (K) Temporary Total Disability Benefits.

Respondent did not dispute the dates of temporary total disability, only liability for them. Consistent with her liability determination, Petitioner is awarded temporary total disability benefits from 9/23/2014 through 11/11/2014 and 12/19/2014 through 1/26/2014 for a total period of 12 4/7 weeks.

Issue (L) Nature and Extent.

On the issue of nature and extent, the Arbitrator finds the claim is subject to Section 8.1(b) of the Illinois Workers' Compensation Act, and in accordance with Section 8.1(b), the Arbitrator has considered the following factors when rendering her decision regarding the issue of permanency:

i. **The reported level of impairment pursuant to subsection (a):**
No impairment rating was performed and no impairment rating report was submitted into evidence. The Arbitrator gives this factor no weight.

ii. **The occupation of the injured employee:**
Petitioner was employed as a press filler at the time of the accident. Following the treatment for his condition, Petitioner was able to continue to work for Respondent in the same position. The evidence presented shows Petitioner's job to be manual in nature and requires Petitioner to lift and move medium to heavy material. The Arbitrator gives this factor some weight.

iii. **The age of the employer at the time of the injury:**
Petitioner was 45 years old when he underwent medical treatment for the bilateral cubital tunnel syndrome. Due to Petitioner's young age, the Arbitrator finds it reasonable to infer that Petitioner's disability may have a greater impact than that of an older worker because he will

have to work with the injury for a longer time period. The Arbitrator gives this factor some weight.

iv. **The employee's future earning capacity:**
Petitioner was able to return to his regular job for Respondent. There was no evidence to show a loss of earning capacity. The Arbitrator gives this factor no weight.

v. **Evidence of disability corroborated by treating records:**
Petitioner sustained injuries to both elbows, for which Dr. Sobeski preformed a right cubital tunnel release with ulnar nerve transposition on 9/23/2014 and a left cubital tunnel release with ulnar nerve transposition on 12/19/2014. Petitioner testified he continues to experience some pain and soreness to his elbows. When his right elbow was last examined by Dr. Sobeski, Petitioner was doing very well with his only complaint being some tenderness in the area of the incision. There is no follow-up visit with Dr. Sobeski after the left-sided surgery. Petitioner testified to loss of strength as a result of his surgery but Dr. Sobeski's records don't corroborate this. Dr. Fletcher was not a treating physician. Thus, the treating records don't really corroborate Petitioner's testimony and the Arbitrator gives this some weight in determining disability.

Taking into account the aforementioned factors, the Arbitrator concludes that Petitioner sustained injuries resulting in permanent disability of 12.5% loss of use of each arm as provided by Section 8(e)10 of the Act.

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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

VARGAS, JOSE Case# **12WC030723**

Employee/Petitioner

CHICAGO MEAT AUTHORITY

Employer/Respondent

On 10/27/2015, 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 0.15% 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:

0491 SOSTRIN AND SOSTRIN PC
NEAL K WISHNICK
33 W MONROE ST SUITE 1510
CHICAGO, IL 60603

0560 WIEDNER & McAULIFFE LTD
TIMOTHY S McNALLY
ONE N FRANKLIN ST SUITE 1900
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

Jose Vargas
Employee/Petitioner

v.

Chicago Meat Authority, Inc.
Employer/Respondent

Case # **12 WC 30723**

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 **Maria S. Bocanegra**, Arbitrator of the Commission, in the city of **Chicago**, on **8/13/15**. 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 **5/10/12**, 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 **$24,944.40**; the average weekly wage was **$479.70**.

On the date of accident, Petitioner was **60** 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 $0.00 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 Arbitrator finds Petitioner to have sustained **7%** loss of use of his **RIGHT hand.** Respondent shall pay Petitioner **$287.20** for a further period of **14.35 weeks** as provided in Section 8(e) of the Act.

The Arbitrator finds Petitioner to have sustained **7%** loss of use of his **LEFT hand.** Respondent shall pay Petitioner **$287.20** for a further period of **14.35 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.

Signature of Arbitrator

10-29-2015
Date

OCT 27 2015

FINDINGS OF FACT

Jose Vargas ("Petitioner") testified, via Spanish interpreter/translator Karmen Kinney, that he was employed by Chicago Meat Authority, Inc. ("Respondent") as a butcher for 11 years prior to 5/10/12.

The duties of a butcher included de-boning meat. To de-bone, Petitioner held a knife in his right hand and hold a hook with his left hand. He would cut meat with his right hand and with his left hand; he used the hook to take bone out of the meat. The bone was thrown away and the meat was placed back on the line. Bones counted toward cuts per hour. He testified he performed this 8 hours per day, 5 days per week. Besides deboning meat he would trim meat and take the fat out. He wore a work coat and work gloves. Petitioner testified the inside work temperature was 29-30 degrees cold. The gloves would get wet and that his hands were cold and freezing all day. He would be required to debone or cut 60-100 pounds of meat per hour. He was expected to cut between 75 and 100 pieces per hour.

Petitioner testified that he eventually noticed his hands would freeze. He first noticed this around 2005 and told his supervisor, Casas. He told Casas his hands were hurting a lot and going to sleep a lot. He testified his supervisor then sent him to Mercy Works. Medical records show that on 6/9/05, Petitioner received treatment from Mercy Works for an "injury date" of 5/11/05. Px1. Dr. Hector Marino noted that Petitioner had been having pain in the right wrist and right hand with numbness of the right hand. Exam showed tenderness in the mid and lateral wrist area, full range of motion and increased pain on the palmar flexion, negative compression test, negative Tinel's, negative muscle atrophy and 3 out of 5 grip strength. The doctor diagnosed tenosynovitis of the right wrist and right hand and "possible early carpal tunnel syndrome." Petitioner was fitted with a wrist brace, placed on light duty and referred to Dr. Heller. On 6/28/05, Petitioner returned to Dr. Marino, who noted right wrist pain without numbness. Petitioner had seen Dr. Heller, who administered a cortisone injection.[1] Exam showed swelling and tenderness on the ulnar side of the wrist and increased pain on ulnar and radial deviation. Diagnosis was unchanged. Light duty was continued. On 7/12/05, Dr. Marino noted Petitioner felt better with occasional mild soreness. Petitioner had no swelling, 4 out of 5 grip strength and range of motion was within normal limits. Diagnosis was unchanged. Petitioner was released to full duty and to a home exercise program. Petitioner recalled sought treatment in June 2005, had injections to both hands and returned to work in July 2005. He testified he lost no time as a result as he was then placed in packing instead of deboning via light duty. He testified he was never told what the problem was by the doctors and returned to work full duty and back to deboning.

Petitioner testified that he continued in this same full duty capacity until June or July 2012. He said that between July 2005 and May 2012, he treated for his hands at Union Clinic.[2] In 2011, Petitioner was first diagnosed with diabetes. In February 2011, Petitioner sought treatment with Dr. Ruben Bermudez for a right shoulder injury occurring on or about 12/17/10. Rx4, Rx3. He continued treatment through March 2011.

Petitioner testified that in February 2012 and EMG test was done. Medical records show that on 2/11/12, Petitioner presented to Gold Standard Health Care for EMG/NCV testing. Px5. Under chief complaint, it was noted that Petitioner presented with numbness, tingling, pain and weakness in the right hand

[1] The medical record of Dr. Heller is not in evidence.
[2] The medical record of Union Clinic is not in evidence.

and 5th digit and that complaints "started after surgery on his right shoulder in Dec 2011." Impressions included sub acute C8 radiculopathy on the right with ongoing denervation of the right first dorsal interosseus. Clinical correlation was suggested for possible nerve root injury during surgery. In addition, impression showed evidence of mild peripheral sensory neuropathy bilaterally, of mixed etiology. Finally, impression showed evidence of mild bilateral carpal tunnel syndrome.

On 3/29/12, Petitioner was apparently evaluated by Dr. Pietro Tonino for his right shoulder. Px2. In Dr. Tonino's report, he noted that Petitioner was right hand dominant and had undergone a right shoulder surgery in December 2011 and that since then, he was reporting difficulty with the right upper extremity and clumsiness with the use of the right hand. Exam showed weakness in the ulnar innervated musculature of the right hand.

On 5/10/12, Petitioner followed up with Dr. Tonino. Petitioner complained of numbness in both hands and the doctor noted a referral for that. Petitioner was referred to Dr. Michael Bednar. Petitioner testified that in July 2012 he was diagnosed with carpal tunnel syndrome. He stated that prior to this, he was never told he had carpal tunnel syndrome.

On 3/14/13, Dr. Tonino re-evaluated Petitioner for bilateral upper extremity complaints and numbness of the hands. Px4.

On 6/3/14, Petitioner saw Dr. Michael Bednar. Px3. Petitioner said it the visit was not authorized by Respondent and he did not have money to pay for the treatment. The doctor diagnosed bilateral wrist pain, carpal tunnel syndrome on the left and pain the forearm.

Between 2005 and 2012, Petitioner said he noticed that while working, the knife would fall from his hand, "because my hand did not have the same strength." He testified he told his co-worker and supervisors about his hand. He also gave notes about his restrictions from Dr. Tonino to Cindy of human resources and to his foreman.

On 2/11/15, Dr. Liana Palacci evaluated Petitioner at the request of his attorney. Px4. She reviewed medical records, including medical evaluation from Dr. Paul Papierski and a job analysis.[3] She noted the analysis stated Petitioner's job required deboning pieces of meat at 75 pieces per hour in an 8 hour shift. She noted Petitioner's right shoulder injury in December 2010 and Dr. Papierski's notation of a gradual onset of pain related to the right shoulder. Dr. Palacci noted Dr. Papierski's review of a video job analysis showing Petitioner performing shoulder flexion-type activity. Dr. Palacci also noted Petitioner's February 2012 EMG/NCV following complaints of numbness, tingling and pain in the hands. Petitioner related to Dr. Palacci that he experienced these symptoms sometime in December 2010 and that he reported to his supervisor. Petitioner told the doctor that he had difficulties when he returned to light duty work as he continued to have right shoulder pain as well as bilateral hand numbness, right more than left. She noted that when Petitioner was returned to light duty work sometime in March 2013, restrictions were not followed. He had been off work since September 2013.

At the exam with Dr. Palacci, Petitioner complained of daily right shoulder pain, bilateral hand numbness and tingling right worse than left. He reported radiating pain up to the elbow due to weakness and bilateral wrist splint use. Past medical history was positive for type II diabetes, controlled. Exam showed obesity, normal range of motion in the bilateral wrists, negative Tinel's bilaterally, positive Phalen's bilaterally

[3] The Papierski report, job analysis and video are not in evidence.

and no thenar atrophy. In relevant part, the doctor's impression was that around December 2010, Petitioner reported bilateral hand numbness while performing his job duties, treated only with wrist splints. Bilateral hand symptoms limited his ability to grab and hold items for prolonged periods of time. She noted decreased grip strength and noted the positive Phalen's, which she felt was more sensitive test. She concluded that Petitioner's repetitive work duties requiring horizontal and overhead reaching multiple times a day during an 8 hour period along with bilateral hand flexion, extension and frequent grasping, more likely than not, directly contributed to his diagnosis of bilateral carpal tunnel syndrome.

On 4/6/15, Dr. John Fernandez performed a records review at the request of Respondent. Rx1. According to the report, the doctor reviewed medical records from Dr. Mercier, Dr. Schafer, Dr. Bermudez and an MRI report from 2011.[4] The doctor also reviewed a job description/job analysis performed by Genex Services.[5] The description showed a job pace of an average of 75 pieces per hour or 900 pounds and a temperature setting between 45 and 49 degrees. It also described use of a knife set, deboning and the doctor concluded the activities appeared to "be frequent and moderate with regards to force." The report documents medical records dating back to 2010 regarding a shoulder injury at work and treatment thereafter. Dr. Fernandez noted the records mentioned hand numbness that had resolved at some point. No specific date is given. The doctor noted that in those records no carpal diagnosis is given or mentioned. The doctor apparently then reviewed later medical records dating back to 2011 that made mention of numbness but also negated the presence of same. The doctor also reviewed the medical records of Drs. Tonino, Bednar and Palacci.

Dr. Fernandez reviewed a cover letter forwarded to him, which he noted mentioned treatment with a Dr. Vargas and "predisposing factors" of obesity and diabetes. The doctor noted Petitioner had not worked since July 2011. The doctor noted that, by his records review, there was no diagnosis of carpal tunnel syndrome until after Petitioner stopped working for Respondent following his shoulder surgery. In addition, Dr. Fernandez noted that there was no mention of symptoms or complaints consistent with carpal tunnel syndrome in Dr. Mercier's medical record leading up to the shoulder surgery. The doctor concluded that he could not causally related Petitioner's bilateral carpal tunnel syndrome to neither his work activities nor his shoulder surgery. The doctor noted that carpal tunnel syndrome is a "multifactorial" disorder, with a more common incidence in individuals with higher body mass indexes and diabetes. Regarding work factors, the doctor acknowledged that "work activities including those of a butcher can be a causative factor and/or aggravating an underlying condition such as carpal tunnel syndrome." The doctor found no significant evidence in support of a diagnosis of carpal tunnel syndrome until after shoulder surgery in this case as Petitioner was diagnosed only after leaving work. Dr. Fernandez also stated that even if Petitioner had a prior diagnosis of carpal tunnel syndrome, it had resolved prior to his shoulder surgery as shown in his review of the treatment records of Dr. Bermudez and Dr. Schafer.

On cross examination, Petitioner stated that he worked light duty December 2010 through June 2011. He did not work from July 2011 through June 2012 because of his shoulder injury. However, Respondent submitted payroll records showing Petitioner was paid wages and that taxes were withheld rather than temporary total disability for this same time period. Rx2. Petitioner denied he ever told Dr. Palacci his hand symptoms began in December of 2010 or that he began feeling hand symptoms after his right shoulder surgery. He acknowledged he settled his shoulder injuries in May 2014. Petitioner testified he did not want any hand surgery.

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[4] Not all medical records are not in evidence.
[5] The job description/analysis is not in evidence.

CONCLUSIONS OF LAW

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

An employee seeking benefits for gradual injury due to repetitive trauma must meet the same standard of proof as a petitioner alleging a single, definable accident. The petitioner must prove a precise, identifiable date when the accidental injury manifested itself. The date of an accidental injury in a repetitive trauma compensation case is the date on which the injury "manifests itself," meaning the "date on which both the fact of the injury and that 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. Indus. Comm'n*, 115 Ill. 2d 524, 531, 505 N.E.2d 1026, 1029 (1987). Factors that may be considered in fixing the date of manifestation or date of accident in repetitive trauma claims include 1) the date in which the employee can no longer perform his job; 2) the onset of pain necessitating medical attention and the inability to perform one's job being facts which may be introduced to establish the injury; 3) the date the condition is discovered or the date in which claimant becomes aware of his physical condition (i.e. through diagnosis or medical consultation). *Oscar Mayer & Co. v. Indus. Comm'n*, 176 Ill. App. 3d 607, 531 N.E.2d 174 (4th Dist. 1988). See also, *Nunn v. Indus. Comm'n*, 510 N.E.2d 502; A.C. & S v. Indus. Comm'n, 304 Ill. App. 3d 875,710 N.E.2d 837 (1999). Also included is the date of actual breakdown or collapse. *Int'l Harvester Co. v. Indus. Comm'n*, 305 N.E.2d 529, 533 (1973) *rev'd on other grounds.*

The controlling question before this court then is whether Petitioner suffered an accidental injury in the course of his employment within these principles and within the meaning of the Act. It is Petitioner's position that performance of his job as a butcher using a knife and deboning meat injured his hands and wrists over a period of time starting in 2005 that ultimately manifested itself on 5/10/12 and that either caused, aggravated or otherwise contributed to his bilateral carpal tunnel syndrome.

The medical evidence shows that Petitioner first noticed right hand pain and symptoms dating back to 2005. There was a diagnosis of tenosynovitis on the right and *possible early carpal tunnel syndrome.* (Emphasis added). During this time, Petitioner saw Dr. Heller for a right hand or wrist cortisone injection. Dr. Heller's medical record is not in evidence so the Arbitrator is unable to determine, what information or diagnosis was relayed to Petitioner regarding his condition. Thus, the Arbitrator cannot conclude the preponderance of the evidence shows Petitioner's manifestation date, for accident purposes, is anytime during his treatment in 2005. Even if the Arbitrator assumed Petitioner first became aware of his right hand/wrist pains and possible early carpal tunnel, "an employee who discovers the onset of symptoms and their relationship to the employment, but continues to work faithfully for a number of years without significant medical complications or lost working time, may well be prejudiced if the actual breakdown of the physical structure occurs beyond the period of limitation set by statute." *Oscar Mayer & Co.*, 176 Ill. App. 3d at 611. Similarly, requiring notice of only a potential disability is a useless act since it is not until the employee actually becomes disabled that the employer is adversely affected in the absence of notice of the accident. *Id.*

Petitioner's unrebutted testimony was that he continued to work in his usual capacity as a butcher after his treatment in 2005 up until an unrelated right shoulder injury not a part of this claim. Although medical records submitted into evidence were incomplete and other records made reference to records not available for review, the evidence suggests that Petitioner treated one Union Clinic from approximately 2005 through 2012. Dr. Fernandez's report noted that Petitioner, from 2010 through 2011, began treating for an unrelated right

shoulder injury with Drs. Bermudez, Schafer and Mercier. These notes apparently make mention of hand numbness in April 2011. In July 2011, Petitioner stopped working for Respondent. Rx1. Evidently, in December 2010, Petitioner undergoes right shoulder surgery and in January 2012, paresthesias of the left hand is noted by Dr. Schafer. Rx1. In February 2012, an EMG/NCV is performed at the referral of Dr. Odisho, showing evidence of mild bilateral carpal tunnel syndrome. Dr. Odisho's medical records were not submitted into evidence. Although both upper extremities are tested, the chief complaint noted that Petitioner experienced right hand and 5th digit numbness, tingling, pain and weakness after right shoulder surgery. In March and May 2012, Petitioner treats with Dr. Tonino, who appeared to have provided supplemental opinions for Petitioner's unrelated right shoulder treatment. Dr. Tonino noted in May 2012 that Petitioner complained of bilateral hand numbness and referred Petitioner to Dr. Bednar. Although not in the Tonino medical record, Petitioner testified that he was told in May 2012 by Dr. Tonino he had carpal tunnel syndrome. Px2. Dr. Bednar's 6/3/14 record and Petitioner's testimony confirm that on that date, he was diagnosed with carpal tunnel syndrome.

Dr. Fernandez's concludes that Petitioner was aware of his hand pains and symptoms even before any formal diagnosis and that medical records suggest these had resolved before Petitioner's unrelated shoulder injury and therefore his carpal tunnel syndrome is unrelated to his work activities. This analysis would require the court to find that Petitioner's discovery of the onset of his symptoms must necessarily be fixed as the date of accident. This, too, runs counter to the rationale and policy considerations outlined in *Oscar Mayer, supra.*

The doctor also noted that even if Petitioner had carpal tunnel syndrome, Dr. Schafer noted that "it" had resolved well before Petitioner's unrelated right shoulder surgery. Rx1:3. As an initial matter, the Arbitrator notes that Dr. Schafer's medical note was not introduced in evidence and only reference to it is made in Dr. Fernandez's report. Dr. Fernandez's conclusion that Petitioner's carpal tunnel had resolved based on Dr. Schafer's note is directly incongruous with Dr. Fernandez's earlier conclusion that "there was never any specific diagnosis of carpal tunnel syndrome or subsequent evaluation and/or treatment rendered for carpal tunnel syndrome including any diagnostic studies." Indeed, it would be most difficult to envision a condition that has resolved itself for which no one has any knowledge of its existence in the first place. In addition, Dr. Fernandez's conclusion that any carpal tunnel had resolved before shoulder surgery is also counter to the doctor's finding that records showed Petitioner complained of left hand paresthesias and that post-surgery records showed an eventual diagnosis of carpal tunnel syndrome.

Based on a preponderance of the medical evidence, along with Petitioner's credible unrebutted testimony, the Arbitrator finds that Petitioner sustained an accidental injury arising out of and in the course of his employment on 5/10/12. This is the date in which Petitioner testified that he was first diagnosed with carpal tunnel syndrome and thus this is the date the injury would have become plainly apparent to reasonable person. The Arbitrator notes that this date falls outside the time in which Petitioner would have been working for Respondent, as he appears to have been off of work for the unrelated right shoulder treatment. Respondent introduced evidence suggesting Petitioner in fact worked and was paid wages during the period in which Dr. Fernandez says Petitioner did not work. *Cf.* Rx1, Rx2. However, the evidence suggests Petitioner was off of work based on Petitioner's testimony and additional evidence introduced by Respondent. Rx3. To the extent Respondent asserts Petitioner's date of accident must fall within his period of actual employment, manifestation date for the purposes of repetitive trauma can be fixed at a time after the employment relationship. The Illinois Supreme Court, in rejecting the argument that a date outside of employment cannot be "in the course of" that employment, noted 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. *A.C. & S v. Indus. Comm'n*, 304 Ill. App. 3d 875, 710 N.E.2d 837 (1999); 2 L. Larson, Larson's

Workers' Compensation Law § 29.22, at 5-531 (1998). Here, the facts establish that Petitioner's work activities as a butcher for an extended period of time occurred within the time frame of his employment.

ISSUE (E) Was timely notice of the accident given to Respondent?

Having fixed the manifestation date as 5/10/12, the Arbitrator must next determine whether Petitioner provided timely notice of his accident to Respondent with the period required by law. Petitioner's unrebutted testimony is that he gave Dr. Tonino's medical note to both his foreman and Cindy from human resources. He also testified he told his supervisor about his hand in 2012 and notified Jose Casas in 2012.

There is no evidence that Respondent was unduly prejudiced by any defect in notice. At the time the parties settled the unrelated bilateral shoulder claims, Respondent specifically acknowledged the existence of bilateral carpal tunnel syndrome but denied compensability and payment of same in that settlement. Rx3. In the Arbitrator's view, this is further evidence that Respondent had some notice of Petitioner's claims regarding bilateral carpal tunnel syndrome.

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

Having found in favor of Petitioner on the issues of accident and notice, the Arbitrator concludes Petitioner's current condition of ill-being with respect to his bilateral carpal tunnel syndrome is related to his work accident. Petitioner's work required him to de-bone cuts of meat where he would hold a knife in his right hand and hold a hook with his left hand. He said he would debone or cut 60-100 pounds of meat per hour and was expected to cut between 75 and 100 pieces per hour. He performed this task 8 hours per day, 5 days per week. He testified he worked in cold temperatures and wore gloves that were often wet. Petitioner's testimony is corroborated by a job analysis conducted by Genex and reviewed by Dr. Fernandez. It described a job pace of an average of 75 pieces per hour or 900 pounds and a temperature setting between 45 and 49 degrees. It also described use of a knife set and the task of deboning.

Dr. Fernandez concluded that the activities appeared to "be frequent and moderate with regards to force." The doctor also acknowledged that 'work activities including those of a butcher can be a causative factor and/or aggravating an underlying condition such a carpal tunnel syndrome." Dr. Palacci opined a similar conclusion. The Arbitrator relies on these opinions in finding causal connection.

Dr. Fernandez's opinion suggested that Petitioner's obesity and diabetes may be contributing factors in the development of carpal tunnel syndrome. The Arbitrator is not persuaded by this suggestion as employment need not be the sole or primary cause, so long employment is a causative factor of the claimant's condition. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665 (2003). Further, there is insufficient evidence that Petitioner's obesity and/or diabetes have in fact caused or contributed to bilateral carpal tunnel syndrome. Petitioner was not diagnosed with diabetes until 2011, after Dr. Fernandez suggests carpal tunnel syndrome symptoms began. Dr. Palacci stated Petitioner's diabetes was controlled. Without any further explanation as to these conclusions, the Arbitrator declines to adopt same.

Finally, even assuming Petitioner's bilateral carpal tunnel syndrome was pre-existing, Petitioner continued to work in his usual capacity as a butcher up until July 2011 and therefore he could recover if his employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Indus. Comm'n*, 92 Ill. 2d 30, 36, 440 N.E.2d 861 (1982). Having found Petitioner's work activities sufficiently repetitive, the Arbitrator could reasonably conclude that Petitioner's continued employment further aggravated and/or accelerated his

carpal tunnel syndrome. This conclusion would also be supported by Dr. Fernandez's opinion that work as a butcher could aggravate carpal tunnel syndrome. Based on the foregoing, the Arbitrator concludes that Petitioner's current condition of ill-being with respect to bilateral carpal tunnel syndrome is causally related to his accident.

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

Petitioner testified that he did not wish to pursue any surgery regarding his bilateral carpal tunnel syndrome. Therefore, Petitioner's claims on the nature and extent of his injuries are ripe for consideration.

The Arbitrator finds Petitioner to have sustained **7%** loss of use of his **RIGHT hand**. Respondent shall pay Petitioner **$287.20** for a further period of **14.35 weeks** as provided in Section 8(e) of the Act.

The Arbitrator finds Petitioner to have sustained **7%** loss of use of his **LEFT hand**. Respondent shall pay Petitioner **$287.20** for a further period of **14.35 weeks** as provided in Section 8(e) of the Act.

_____ ___10-26-2015_____

ARBITRATOR SIGNATURE DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KRUS, KATRINA Case# **12WC006397**

Employee/Petitioner

PEORIA PUBLIC SCHOOL DISTRICT

Employer/Respondent

On 10/9/2015, 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 0.06% 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:

1824 STRONG LAW OFFICES
MICHAEL K BRANDOW
3100 N KNOXVILLE AVE
PEORIA, IL 61603

5354 STEPHEN P KELLY
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)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Katrina Krus
Employee/Petitioner

Case # **12** WC **6397**

v.

Peoria Public School District
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 14, 2015**. 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. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other

FINDINGS

On **Fabruary 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 $**19,240.00**; the average weekly wage was $**370.00**.

On the date of accident, Petitioner was **35** 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.

ORDER

The Petitioner failed to prove that an accident occurred which arose out of and in the course of her employment with the Respondent on February 23, 2011. The Petitioner's claim for compensation is, therefore, denied.

No benefits are awarded herein.

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 6, 2015
Date

OCT 9 2015

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, the Arbitrator finds and concludes as follows:

The Petitioner testified that on February 23, 2011 she injured her left arm while she was performing the regular duties of her employment with the Respondent as a cafeteria manager. The Petitioner testified that she was on the loading dock, tossing a bag of garbage into a dumpster, when she slipped on some ice and fell, striking her left arm. The Petitioner testified that she reported the accident to the Principal, filled out an accident report, and was told to go to IWIRC.

The Petitioner testified that following the incident of February 23, 2011, she continued to perform her regular job duties without any pain and she did not miss any time from work. The Petitioner continued to perform her regular job duties until March 22, 2011when she had an undisputed work injury to her low back. That injury of March 22, 2011 is the subject of claim number 12 WC 393 which is addressed by a separate Arbitration Decision.

There are no medical records which demonstrate that the Petitioner received any treatment at IWIRC on February 23, 2011, or any other date, until she was seen there on March 23, 2011 following her accident of March 22, 2011. There is nothing in the records of IWIRC on or after March 23, 2011 which indicates that an injury occurred on February 23, 2011 or that the Petitioner had any complaints resulting from any incident on February 23, 2011.

At hearing, the Petitioner provided no testimony as to any current condition, disability, or problem with her left arm. The Arbitrator notes that, in addition to the Petitioner's testimony being unsupported by any medical records, the Petitioner's testimony on cross examination demonstrated that the Petitioner's memory was so poor that her testimony cannot be considered to be reliable.

Based upon the foregoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner failed to prove that an accident occurred which arose out of and in the course of her employment with the Respondent on February 23, 2011.

As the Arbitrator has found that the Petitioner failed to prove a compensable accident occurred, determination of the remaining disputed issues is moot.

The Petitioner's claim for compensation is denied and no benefits are awarded herein.

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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EDDIE ANDREWS,

Petitioner,

vs. NO: 07 WC 51356

CERRO COPPER,

15IWCC0776

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, causal connection, notice, manifestation date, 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 modifies the Decision of the Arbitrator and finds Petitioner is entitled to temporary total disability (TTD) benefits from May 13, 2014 through June 2, 2014, and July 3, 2014 through July 21, 2014, representing 5-3/7 weeks. All else is affirmed and adopted.

This matter was consolidated at trial with case 13 WC 24044 and two separate Decisions have been issued. The Commission has reversed the Decision of the Arbitrator in case 13 WC 24044 finding Petitioner failed to prove a repetitive trauma injury arising out of and in the course of his employment with Agency for Community Transit.

The Petitioner underwent right carpal and cubital tunnel release on May 13, 2014 and left carpal and cubital tunnel release on July 3, 2014. The Commission adopts the Arbitrator's Decision finding Petitioner's bilateral carpal tunnel syndrome arose out of and in the course of

his employment with Respondent, Cerro Copper. Consequently, the Commission finds that Respondent, Cerro Copper, is liable for TTD benefits from May 13, 2014 through June 2, 2014, and July 3, 2014 through July 21, 2014, representing the period during which Mr. Andrews was temporarily and totally disabled from work.

The Commission notes that Respondent, Cerro Copper, is liable for the TTD benefits only and not the surgery bills as Dr. Mall exceeded Petitioner's choice of two physicians. In that respect, the Arbitrator's award of medical expenses is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2015 is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $472.14 per week for a period of 5-3/7 weeks, May 13, 2014 through June 2, 2014, and July 3, 2014 through July 21, 2014, 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 $424.93 per week for a period of 30.75 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 8.5 percent loss of use of the right hand and 6.5 percent loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $3,562.40 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 $19,300.00. 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: OCT 2 2 2015

MJB/tdm
O: 8-24-15
052

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ANDREWS, EDDIE
Employee/Petitioner

Case# **07WC051356**

13WC024044

CERRO COPPER
Employer/Respondent

15IWCC0776

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:

1239 KOLKER LAW OFFICES
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BELLEVILLE, IL 62223

0507 RUSIN & MACIOROWSKI LTD
TED POWERS
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

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

Eddie Andrews
Employee/Petitioner

v.

Cerro Copper
Employer/Respondent

Case # **07** WC **51356**

Consolidated cases: **13 WC 24044**

15IWCC0776

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 **Lee**, Arbitrator of the Commission, in the city of **Belleville, Illinois**, on **September 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. [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. [ ] 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. [x] Is Respondent due any credit?
O. [x] Other **Two Choices of Physicians, 8(j) Credit**

FINDINGS

On **1/07/08**, 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 $**18,573.58**; the average weekly wage was $**884.45**.

On the date of accident, Petitioner was **41** 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 $**0.00** 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 the reasonable and necessary medical services contained in Petitioner's Exhibit 15 of Dr. Eckert/Chambers Medical, Dr. Glogovac, Midwest Occupational, Dr. Hillard Scott, Christian Hospital, and St. Louis Neurological Institute, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $424.93/week for 30.75 weeks, because the injuries sustained caused the 8.5% loss of the Right Hand and 6.5% loss of the Left Hand, 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

12/12/14
Date

JAN 5 - 2015

State of Illinois)
)SS
County of St. Clair)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

EDDIE ANDREWS
Employee/Petitioner

v.

Case# 07-WC-51356
13-WC-24044

CERRO COPPER
Employer/Respondent

15IWCC0176

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner testified that since 2009 he has worked for Agency for Community Transit driving a bus, and he testified that the steering wheel for these buses actually comes up from the floor and is flat in front of the driver. The steering wheel is at least twice the size of a regular car steering wheel. Petitioner initially worked approximately 30 hours per week during the first year and a half to two years at ACT, but after that has worked approximately 25 hours per week.

Prior to working for ACT, Petitioner worked from Cerro Copper from 1991 through 2007. He typically worked 50 to 70 hours a week doing various jobs that involved the use of many hand tools including hacksaws, jackhammers, hammers, grinders, nail guns, cleaning tools, and reamers which involved constantly working your wrist. This involved a lot of twisting, turning, tugging, and pulling.

What Petitioner did mainly depended on what job he was assigned to. Petitioner was mainly a laborer, but he had a lot of different jobs. In addition to using hand tools, he also capped and packed copper to put on skids, and worked on machines that required a lot of hand motion. Petitioner was also required to put copper in a vice, oil them, and then plug them to put into a machine to make them a different size. Petitioner also worked on a redraw job that entailed lifting railroad ties, sliding them across a floor, cutting wood with saws, and using a nail gun to set up a trailer to copper could be transported.

The last job Petitioner did before he stopped working for Cerro Copper as the ANM machine. This required a lot of twisting with the wrist, a lot of turning, a lot of pulling and plugging, a lot of hammering, and a lot of lifting heavy weights. This is the job he did in the last two to three years working for Cerro Copper. During the last year he was employed at Cerro, he was laid off sporadically, and was ultimately laid off permanently in August of 2007. Petitioner noticed that while working for Cerro Copper, his hands and wrists would ache. He first noticed this aching in the last couple of years of employment with Cerro, although he did not know what it was.

After Petitioner was laid off, he want to school for heating and cooling. This was a 14 month course, four days a week, four hours a day. This schooling consisted mainly of writing, a lot of videos, and in-class work. It also involved approximately two hours of hands-on work. This involved watching the instructor do a certain task, watch the other class members do the task, and then Petitioner would do the task. Petitioner testified that

only 15-20 minutes of his school day involved him personally doing hands-on work. He testified that during this time he was in school his upper extremities did not hurt as much.

After he was laid off from Cerro Copper, Petitioner went to his family doctor, Dr. Eckert to get a check-up because his insurance was expiring, and that is when he had a test for carpal tunnel using a Neurometrix. This was done in August of 2007. (PX 1) The test results were abnormal, and the findings were of unclear significance.

Petitioner was later referred to Dr. Glogovac by his family doctor, and Petitioner was also sent to Midwest Occupational Medicine by Cerro Copper. (PX 2, PX 3) Dr. Glogovac stated that Petitioner had what appeared to be an aberrant form of carpal tunnel, and Dr. Glogovac recommended that Petitioner wear night splints. (PX 2) After seeing Dr. Glogovac, Petitioner was sent to Midwest Occupational Medicine. (PX 3) The doctor at Midwest Occupational saw Petitioner on a couple of occasions, and the doctor noted that it was still unclear exactly what condition Petitioner was suffering from. It was also noted that Petitioner was not even sure what was causing his hand and wrist problems or whether it was related to his work at Cerro. (PX 3)

Prior to being seen by Dr. Glogovac and Midwest Occupational, Petitioner was sent to Dr. VanRyn. Dr. VanRyn issued a report dated January 7, 2008. In that report, Dr. VanRyn outlined Petitioner's job duties, specifically the ANM machine Petitioner referred to at trial. (PX 15) Dr. VanRyn noted that Petitioner's symptoms were the worst in the last couple years of working at Cerro Copper, which Petitioner also testified to at trial. Further, Dr. VanRyn indicated in his note that Petitioner said his pain got better after he stopped working at Cerro. (PX 15) Again, Petitioner testified in accordance with this a trial. Ultimately, Dr. VanRyn diagnosed Petitioner with a scapholunate instability, and opined that Petitioner's condition was related to his work at Cerro Copper. (PX 15)

Petitioner was also sent to Dr. Rotman for an IME requested by Respondent, Cerro Copper. Dr. Rotman opined that Petitioner did not have scapholunate instability, he did not have carpal tunnel, and Dr. Rotman stated Petitioner did not need any further medical treatment. Dr. Rotman also testified through deposition. Of note, Dr. Rotman indicated he never saw the nerve conduction that was done at Christian Hospital.

Just before Petitioner started working for the Agency for Community Transit, Petitioner presented to his new family doctor, Dr. Hillard Scott, with continued complaints of problems with his wrists. (PX 4) Dr. Hillard Scott referred Petitioner for a nerve conduction study, which was done at Christian Hospital on August 3, 2009. (PX 5) This test showed bilateral median and ulnar neuropathies at the wrist. Petitioner started working for ACT shortly after this test was performed. Petitioner testified that his condition became worse after he started driving a bus. His pain returned and he also began having pain going up his arms. Over time it got worse and worse.

Petitioner testified that he did not have any problems with his elbows until he started working for ACT, and that after he started working for ACT he would have to shake out his hands to try and get some relief while he was driving. This was something he never had to do while working at Cerro Copper. After Petitioner had been working for ACT for some time, he presented to Dr. Beatty. Dr. Beatty opined that Petitioner had carpal tunnel syndrome, and recommended a repeat nerve conduction study. He testified through a deposition that the cause of Petitioner's carpal tunnel was Petitioner's work at Cerro Copper. He also testified that he was not aware of any other risk factors the Petitioner had that would cause carpal tunnel.

On June 3, 2013, Petitioner presented to Dr. Mall with continued complaints of problems with his hands and wrists. Dr. Mall noted the Petitioner's history of work at Cerro Copper, and also noted that Petitioner was having problems with his hands going numb while driving. Dr. Mall diagnosed Petitioner with carpal tunnel syndrome, and possible cubital tunnel syndrome, and Dr. Mall recommended a new nerve conduction study.

The nerve conduction study was done on June 14, 2013, and it showed moderate to severe bilateral sensory motor nerve neuropathies across the carpal tunnels. It also showed moderate ulnar neuropathy across the right elbow and mild ulnar neuropathy across the left elbow. Following his review of the nerve conduction study, Dr. Mall diagnosed Petitioner with bilateral carpal and cubital tunnel, and Dr. Mall recommended surgery. Dr. Mall later testified through deposition that the work Petitioner did at Cerro Copper was a factor in Petitioner's current condition, and Dr. Mall also testified that the Petitioner's work at ACT at least aggravated Petitioner's condition, which led to the need for the surgery being recommended by Dr. Mall.

Respondent, ACT, obtained a records review report from Dr. Crandall dated December 3, 2013, and Dr. Crandall opined that Petitioner did have carpal and cubital tunnel, however, Dr. Crandall stated the conditions and need for surgery were related to Petitioner's work with Cerro Copper, and not related to Petitioner's work with ACT. Dr. Crandall stated that driving a bus was not hand intensive.

Petitioner underwent surgery on his right upper extremity on May 13, 2014, and his left upper extremity on July 3, 2014. Following the first surgery, Dr. Mall referred Petitioner to ProRehab for right upper extremity therapy. The Petitioner testified that he was off work a couple of weeks after each surgery, and that after the surgeries he feels much better. He testified that he doesn't have to shake out his hands while driving anymore.

On cross-examination, Petitioner agreed that he was periodically laid off in 2007 before being laid off permanently. Petitioner reiterated that the pain in his hands started in the last two or three years working for Cerro Copper, and when he first went to see the doctor he was not having any pain in his elbows. Petitioner also stated that when he saw Dr. Hillard Scott in 2009, he had not worked for Cerro for over two years.

Regarding the trade school Petitioner went to, he stated it was for a period of 14 months, and he did use hand tools. Petitioner further testified that no doctor before Dr. Mall recommended surgery. After Petitioner started working for ACT is when his hands got worse again, and he started having problems in his elbows. The shaking of the hands out while driving a bus was different than before, too.

On redirect, Petitioner stated that other than the few periods in 2006 and 2007, he was never laid off from Cerro. Petitioner further testified that the last couple of years at Cerro where his pain got worse was when he was working on the ANM machine. He also clarified that the only time he used hand tools in trade school was during the lab part, which was a very small part of his day.

On further cross-examination, Petitioner again stated he did not have any pain in his elbows while working at Cerro. Petitioner still works for ACT, and the amount of hours he works varies depending on bids. Petitioner could not recall the first conversation he had with Dr. Mall, and whether Petitioner thought the bus driving was causing problems in his elbows.

Petitioner testified that outside his work he watches TV, goes out to dinner, and doesn't do any sports or bowling. Petitioner also has a resale shop where he occasionally rings people out, but he has his sons do the heavy work. Most of the time Petitioner is driving a bus, so the shop is run by his sons, and he sometimes mows the lawn and shovels snow.

On redirect, Petitioner again testified that his elbow problems started when he was working for ACT. He also testified that his hands didn't hurt as much after he stopped working for Cerro and before he started working for ACT. Petitioner stated that the resale shop is mostly run by his wife and kids. Petitioner again confirmed that surgery was not recommended prior to him seeing Dr. Mall.

Respondent, Cerro Copper, called Joseph Grana, the manufacturing support manager, as a witness at trial. He testified that he first received the Application for Adjustment of Claim in this in early to mid November.

Respondent, ACT called Rhonda Webel as a witness at trial. She is the Human Resources Manager for ACT. She confirmed she received Petitioner's Application for Adjustment of Claim on July 18th.

CONCLUSIONS OF LAW

1. The Arbitrator finds Petitioner suffered repetitive trauma injuries to his bilateral hands arising out of and in the course of his employment with Cerro Copper, with a manifestation date of January 7, 2008. Petitioner testified in detail regarding his job duties while working for Cerro Copper, and he gave a consistent description of these duties to all the doctors he saw, and these duties are noted in Petitioner's medical records. These job duties included using various hand tools, lifting and working with copper, and operating machines. Petitioner performed these various job duties over a span of 15 years from 1991 through 2007, consistently working over 40 hours a week. While there was some disagreement among the various doctors in this case regarding the correct diagnosis of Petitioner's condition, the Arbitrator notes that Dr. VanRyn, Dr. Beatty, Dr. Mall, and Dr. Crandall all opined that Petitioner's job duties at Cerro Copper caused Petitioner's symptoms. The Arbitrator finds these opinions more reliable than those of Dr. Rotman, Respondent's IME doctor.

Regarding the manifestation date, as noted above, there was initially disagreement regarding the diagnosis of Petitioner's condition. A neurometrix test was initially done on Petitioner's upper extremities, and it was read as abnormal indicating possible carpal tunnel, however, the first doctor to see Petitioner after this test, Dr. VanRyn, diagnosed Petitioner with scapholunate instability. Dr. Glogovac later diagnosed Petitioner with an "aberrant" form of carpal tunnel, however the doctor at Midwest Occupational later indicated Petitioner's diagnosis was "unclear."

Dr. Rotman, Respondent's IME doctor, later opined that Petitioner did not have either carpal tunnel or scapholunate instability, and that Petitioner did not suffer from a work-related condition. Petitioner was not definitively diagnosed with carpal tunnel syndrome until he saw Dr. Beatty in 2010, after he had undergone a nerve conduction study at Christian Hospital in 2009. Further, the first doctor to opine that Petitioner had work-related carpal tunnel was Dr. Beatty in his deposition taken April 5, 2011.

In repetitive trauma cases, the injury date is the date when the injury manifests itself, which is "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." *Durand v. Industrial Commission*, 308 Ill. Dec. 715, 723 (2007). "Setting this so-called manifestation date is a fact determination..." *Durand*, at 722.

In this case, the first indication that Petitioner's condition was related to his employment was when Petitioner saw Dr. VanRyn on January 7, 2008. Prior to this, Petitioner had only seen his family physician for hand complaints, and the neurometrix test was performed, however, Dr. Mall and Dr. Crandall both testified this test is not very reliable. Further, the Petitioner testified that when Petitioner saw Dr. VanRyn, the doctor's diagnosis was scapholunate instability, and not carpal tunnel, and the first doctor to say that Petitioner had work-related carpal tunnel was Dr. Beatty in his deposition.

While Petitioner's diagnosis of work-related carpal tunnel was not made until 2010, it would have been plainly apparent to a reasonable person, i.e. the Petitioner, that he had a work related condition after seeing Dr. VanRyn. Therefore, at the very earliest, Petitioner's manifestation date is January 7, 2008.

2. Given a manifestation date of January 7, 2008, the Arbitrator finds notice was proper in this case. Petitioner's Application for Adjustment of Claim was filed with the Commission on November 15, 2007, prior to Petitioner's manifestation date. Petitioner therefore gave Respondent notice of an injury within 45 days of an injury pursuant to Section 6(c) of the Act.

3. For the reasons enumerated above, the Arbitrator finds a causal connection between Petitioner's accident of January 7, 2008 and his condition of ill-being, namely to the extent Petitioner suffered un-operated bilateral carpal tunnel syndrome.

4. Based on Respondent's Exhibit 15, which is a copy of Petitioner's wage statement, the Arbitrator finds that Petitioner had $12,747.73 in earnings, which corresponds to an average weekly wage of $708.21.

5. For the reasons enumerated above, the Arbitrator finds Respondent liable for the medical treatment and accompanying medical bills contained in Petitioner's Exhibit 15 of Dr. Eckert/Chambers Medical, Dr. Glogovac, Midwest Occupational, Dr. Hillard Scott, Christian Hospital, and St. Louis Neurological Institute. This treatment and the corresponding bills were both reasonable and necessary. Respondent is not liable for any other medical bills, as Petitioner exceeded his two choices of doctors.

6. For reasons further explained in the companion case of 13-WC-24044, the Arbitrator finds Petitioner is not entitled to any TTD benefits for this injury, as Petitioner suffered disability only to the extent of un-operated carpal tunnel syndrome and scapholunate instability.

7. The Arbitrator finds that Petitioner suffered the loss of 8.5% of the Right Hand and 6.5% loss of the Left Hand, as provided in Section 8(e) of the Act.

8. No evidence was presented regarding a credit due to Respondent for any benefits paid, therefore Respondent is not entitled to any credit.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
FATAL

SANGURIMA, JORGE DECEASED Case# **10WC006169**
Employee/Petitioner

SHOOTER EXPRESS LTD
Employer/Respondent

On 10/9/2015, 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 0.06% 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:

2208 CAPRON & AVGERINOS PC
STEPHEN SMALLING
55 W MONROE ST SUITE 900
CHICAGO, IL 60603

2337 IMAN & FITZGIBBONS
KEVIN DEUSCHLE
33 N DEARBORN ST SUITE 1825
CHICAGO, IL 60602

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)
- [ ] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
FATAL

Jorge Sangurima, deceased
Employee/Petitioner
v.
Shooter Express, Ltd.
Employer/Respondent

Case # **10** WC **06169**

Consolidated cases: **D/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 **Molly C. Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **9/29/15**. 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 Decedent's employment by Respondent?

D. [ ] What was the date of the accident?

E. [ ] Was timely notice of the accident given to Respondent?

F. [ ] Is Decedent's current condition of ill-being causally related to the injury?

G. [ ] What were Decedent's earnings?

H. [ ] What was Decedent's age at the time of the accident?

I. [ ] What was Decedent's marital status at the time of the accident?

J. [ ] Who was dependent on Decedent at the time of death?

K. [ ] Were the medical services that were provided to Decedent reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

L. [ ] What compensation for permanent disability, if any, is due?

M. [ ] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [x] Other **Death benefit prove-up hearing**

FINDINGS

On the date of accident, **1/29/10**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Decedent's death, on January 31, 2010, ***is*** causally related to the accident.

In the year preceding the injury, Decedent earned $**46,350.20**; the average weekly wage was $**891.35**.

On the date of accident, Decedent was **39** years of age, ***single*** with **3** dependent children.

Respondent ***has*** paid all reasonable and necessary 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 $ under Section 8(j) of the Act.

The Arbitrator finds that Decedent died on **1/31/10**, leaving **3** survivor(s), as provided in Section 7(a) of the Act, namely three minor **children: Eric Eduardo Sangurima, Natalie Janet Sangurima and Dena Monica Sangurima.**

ORDER

In case 10 WC 06169, Respondent shall continue the payment of death benefits of $594.23/week (divided equally in three shares, as shown below) to the estates of the minor children of the decedent, as established in the Circuit Court of Cook County probate proceedings (2010 P 2446-8)/ Esthela Chumbi, legal guardian, on behalf of the minor children of the decedent as follows because the injury caused Jorge Sangurima's death as provided in Section 7 of the Act:

- $198.08 to Eric Eduardo Sangurima, minor child of the decedent (born 5/30/98);
- $198.08 to Natalie Janet Sangurima, minor child of the decedent (born 12/22/02)
- $198.08 to Dena Monica Sangurima, minor child of the decedent (born 9/17/04)

Respondent shall continue paying such benefits until the youngest child reaches 18 years of age; however, if such child is enrolled and attending class as a full-time student in an accredited educational institution, payments shall continue until such child reaches 25 years of age. If any child is physically or mentally incapacitated, payments shall continue for the duration of the incapacity.

Respondent shall make payments for not less than 6 years to any eligible child under 18 years at the time of death of Jorge Sangurima.

Respondent is granted credit for all payments made up to the date of arbitration, including but not limited to credit for the death benefits already paid, payment of the statutory burial expenses and payment of the medical bills incurred as a result of the events of January 29, 2010.

Commencing on the second July 15 after the entry of this award, the aforementioned minor children may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

In case 10 WC 06169, Esthela Chumbi shall pay $100 to Capron and Avgerinos for legal services provided.

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.

Molly C. Masa
Signature of Arbitrator

10/8/15
Date

OCT 9 2015

SANGURIMA v. SHOOTER EXPRESS – 10 WC 06169

ARBITRATOR'S FINDINGS OF FACT

The parties agree that on January 29, 2010, Jorge Sangurima suffered injuries arising out of and in the course of his employment with Shooter Express. They further agree that Jorge Sangurima died due to said injuries two days later, on January 31, 2010. The only issue remaining for adjudication by the Arbitrator is dependency and distribution of death benefits allowed under the Illinois Workers' Compensation Act.

After considering the Certificate of Death along with the birth certificates and the credible testimony of Esthela Chumbi, the duly appointed guardian in the Circuit Court of Cook County probate proceedings (2010 P 2446-8), the Arbitrator finds the following facts:

At the time of his death on January 31, 2010, Jorge Sangurima was unmarried. During his lifetime he fathered three children with Esthela Cumanda Chumbi:

- **Eric Eduardo Sangurima born May 30, 1998 in Chicago, Illinois (PX 2);**
- **Natalie Janet Sangurima born December 22, 2002 in Chicago, Illinois** (PX 3);
- **Dena Monica Sangurima, born September 17, 2004 in Chicago Illinois (PX 4)**

Esthela Chumbi testified she was never married to Jorge Sangurima, that Mr. Sangurima was not married at the time of his death and that she knows of no other children or other dependents that he had at the time of his death. She testified that none of the above children had physical and mental disabilities at the time of hearing. All three children reside with her and are currently attending school. None has yet reached college age but the oldest, Eric Eduardo Sangurima, is a senior in high school who is looking at various colleges.

The parties have agreed that there is no claim for unpaid medical benefits, TTD benefits or statutory burial expenses.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with correction	☐ 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

Jeffrey Harris,

Petitioner,

vs. NO: 10 WC 22505

15IWCC0779

Cerro Flow,

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, temporary total disability, permanent partial disability, 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 corrects the Decision of the Arbitrator as to the amount of the average weekly wage in the Findings section of the Decision. The average weekly wage is incorrectly annotated as $720.00. However, the parties stipulated that Petitioner's average weekly wage was $664.28. The Arbitrator correctly utilized the $664.28 figure to calculate the rate of temporary total disability. Therefore, the Commission finds that Petitioner's average weekly wage is $664.28.

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 the average weekly wage of Petitioner is $664.28.

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 $32,000.00. 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: OCT 2 2 2015

TJT/ gaf
O: 8/24/15
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HARRIS, JEFFREY
Employee/Petitioner

Case# **10WC022505**

CERRO FLOW
Employer/Respondent

15IWCC0779

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:

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

0507 RUSIN & MACIOROWSKI LTD
THEODORE J POWERS
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

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

- [ ] 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

Jeffrey Harris
Employee/Petitioner

v.

Cerro Flow
Employer/Respondent

Case # **10** WC **22505**

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 **Belleville**, on **September 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. [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 **5-26-10**, 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 $**37,440.00**; the average weekly wage was $**720.00**.

On the date of accident, Petitioner was **50** years of age, ***married*** 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 $ for TTD, $ for TPD, $ for maintenance, and $**short-term disability** for other benefits, for a total credit of $**any paid**.

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

ORDER:

Petitioner's accident arose out of and in the course of his employment with Respondent. The Arbitrator finds that Petitioner has bilateral Carpal Tunnel Syndrome, which arose out of and in the course of his employment with Respondent.

Petitioner's condition of ill-being, bilateral Carpal Tunnel Syndrome, is causally connected to his employment with Respondent. The Arbitrator bases this opinion on the testimony of Petitioner and Dr. Beatty. The Arbitrator finds the testimony of Dr. Beatty to be more credible than that of Dr. Strecker.

Respondent shall pay reasonable and necessary medical services pursuant to the medical fee schedule (Section 8(a) and 8.2 of the Act) as follows: Anderson Hospital - $56.11; Belleville Memorial Hospital - $639.49; Dr. Anwar Khan - $22.10; Southern Illinois Plastic & Hand Surgery (Dr. Beatty) - $1,807.67; Edwardsville Surgery Center - $ 253.49; Dr. Gregory Randle - $67.50; Apex Physical Therapy - $212.70.

The Arbitrator finds Petitioner's symptoms of bilateral carpal tunnel syndrome were relieved by the surgeries performed by Dr. Beatty. This is based on the medical records and the testimony of Petitioner. These facts not only confirm the diagnosis, they show the treatment was reasonable and necessary to treat Petitioner's work related condition.

Respondent shall receive an 8(j) credit for any amounts actually paid by Respondent's group insurance.

Respondent shall pay Petitioner temporary total disability benefits of $442.85/week for 9 and 6/7 weeks, commencing 9/5/2012 through 11/12/2012, as provided in Section 8(b) of the Act. Respondent shall receive a credit for amounts paid by Respondent's short-term disability policy.

Respondent shall pay Petitioner permanent partial disability benefits of $398.57/week for 61.5 weeks because the injury sustained caused the 15% loss of the right hand and 15% of the left hands, 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.

Carl Lee
Signature of Arbitrator

12/12/14
Date

JAN 5 - 2015

The Arbitrator hereby finds the following facts:

Petitioner, Jeffrey Harris Sr., is a 54-year-old fork-lift driver/crane operator for Respondent, Cerro Flow Copper. Petitioner claims repetitive trauma injury to his bilateral hands, resulting in bilateral carpal tunnel syndrome. On the date of claimed accident, May 26, 2010, Petitioner had been employed with Respondent for 32 years.

Petitioner first reported issues with this right hand, arm and shoulder to his primary care doctor, Dr. Nidal Shawahin, M.D. on May 5, 2010. Px1 at 2. The main complaints were tingling in the 3rd, 4th, and 5th fingers, pain in the right elbow and shoulder. Id. On physical examination Petitioner had a positive Phalen's test on the right. Px1 at 3. Dr. Shawahin suspected possible carpal tunnel syndrome and recommended an EMG/NCS of the right upper extremity. Id.

Petitioner underwent an EMG/NCS on May 19, 2010. The study was only done on Petitioner's right arm. Px4 at 1. Dr. A. Khan interpretation was moderately advanced right carpal tunnel syndrome. Id.

On May 26, 2010, Petitioner had a follow up with Dr. Shawahin. The doctor noted a positive EMG/NCS for carpal tunnel syndrome recommended surgery. Px1 at 6.

Petitioner sought a surgical consultation with Dr. Michael Beatty on July 29, 2010. Px9 at 6. At that time Petitioner's main complaints were numbness and tingling involving the long, ring, and little fingers of the right hand. Petitioner also told Dr. Beatty he had symptoms in his left hand. Id. The physical examination revealed positive Tinel's of the palm side of both wrists and positive Phalen's bilaterally. Px9 at 7. Dr. Beatty diagnosed Petitioner with bilateral carpal tunnel syndrome. Px9 at 12. To help further evaluate the left hand, Dr. Beatty ordered an EMG/NCS of the left upper extremity. Px9 at 13-14.

On November 11, 2010, Petitioner underwent an EMG/NCS of his left upper extremity. Dr. Syed Ali performed the test and found the results to be consistent with left carpal tunnel syndrome. Px5 at 1.

Following the left sided EMG/NCS, Dr. Beatty recommended bilateral carpal tunnel releases. Px9 at 15. Dr. Beatty testified he diagnosed Petitioner with bilateral carpal tunnel syndrome after having preformed a physical examination of Petitioner, after reviewing two EMG/NCS's, after taking a history of illness, and after reviewing Dr. Shawahin's medical chart. Px9 at 15.

Petitioner filled out a job description for Dr. Beatty which is contained at Petitioner's Exhibit #2, Pages 1 and 2. His primary duties were crane operator and fork-lift driver. These tasks involved the physical manipulation of numerous levers. Additionally, Petitioner was required to band material together, write, and push/pull/lift copper tubing. He worked between 8 and 10 hours a shift. Px2 at 1. Petitioner noted he could drive the fork-lift at work up to 5 hours a shift. Px2 at 2.

Dr. Beatty testified he reviewed Petitioner's job duties and discussed those activities with him. Px9 at 23-24. Additionally, Dr. Beatty stated he was familiar with the physical requirements to operate over-head crane, folk-lifts, and banding machines. Px9 at 24-25. After taking all relevant medical information into consideration and after discussing Petitioner's job duties with him, Dr. Beatty testified, within a reasonable degree of medical certainty, that Petitioner's job duties were the causative basis for the development of his compressive nerve disorders or worsening of preexisting nerve issue. Px9 at 26-27.

On September 5, 2012, Petitioner underwent a right carpal tunnel release by Dr. Beatty. Upon visual inspection, Dr. Beatty noted the median nerve to be compressed with a blush site evident. Px6 at 1.

On October 3, 2012, Petitioner underwent a left carpal tunnel release by Dr. Beatty. Upon visual inspection the median nerve was noted to be enveloped in thick dense fiber areolar tissue. Px7 at 1. Dr. Beatty stated: "Compression evident, blush site evident, and also tight volar retinacular antebrachial fascial band at the wrist was evident and released." Id.

Post-operatively, Dr. Beatty ordered Petitioner to attend hand physical therapy. Px2 at 22. As a result of the two hand surgeries, Petitioner was held off of work completely from September 5, 2012 through November 12, 2012. Petitioner returned to work on November 13, 2012. Px2 at 23. Petitioner was placed at maximum medical improvement on December 4, 2012. Px2 at 24.

Regarding his work duties, Petitioner testified his bid job was fork-lift driver. He worked between 8 and 10 hour shifts, with an hour lunch and two-15 minute breaks. To operate a fork-lift, Petitioner would steer with his left hand and manipulate the levers with his right hand. He operated two different types of fork-lifts. The "regular" model has three levers and the "scrap dumper" has five levers. Petitioner mainly used the regular model, but he drove the scrap dumper when required. Regardless of which machine he was driving, the levers were either pushed forward or pulled backwards with the right hand to operate the forks. Petitioner testified all of the fork-lifts vibrate. While driving the fork-lift Petitioner would sometimes use both hands to steer, but most often he would steer with this left hand and rest his right hand on the levers. The whole time his body and hands were subject to vibration from the fork-lift. Petitioner was actually assigned to the scrap dumper when he first noticed tingling and numbness in his hands and first reported these issues to Respondent.

The job description tendered as Respondent's #4 was reviewed by Petitioner. He testified that it did not accurately reflect the amount of work actually done by a Lane One Operator.

Petitioner also regularly operated overhead cranes. One type of overhead crane utilized a remote control box, which he wore on a harness, with three levers operated by the right hand, while the left hand would hook material. The three switches have to be held down to operate the crane. Petitioner was required to use a hacksaw and remove any defective copper from the coils as he used the crane. He would use the hacksaw with his right hand and use the left hand to brace the copper coils.

Petitioner also operated an overhead crane in the shipping department. This crane's operating box hangs from overhead and has to be held and operated with both hands. While working on the overhead crane in the shipping department, Petitioner would have to band tubing. Depending on the length of the copper tubing Petitioner would either has to place two or three bands on each bundle and then load the bundle into a truck. The banding is done by hand with a manual crank bander.

Petitioner testified prior to surgery he had complaints of tingling and numbness in his both hands. These symptoms occurred at work and woke him up at night. Petitioner testified he received complete relief of his bilateral hand tingling and numbness following the carpal tunnel releases. At the time of trial, Petitioner continued to be symptom free.

The original hearing date was June 27, 2014. The trial was continued after Petitioner rested in anticipation of Respondent calling Mr. Ray Thorensen, who Petitioner testified was his direct supervisor at the time he reported his injury. The trial resumed on September 29, 2014. Paul Combs testified for Respondent. At the time Petitioner reported his injury he was working for Respondent in Cedar City, Utah.

Conclusions of Law:

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

Petitioner's accident arose out of and in the course of his employment with Respondent. The Arbitrator finds that Petitioner has bilateral Carpal Tunnel Syndrome, which arose out of and in the course of his employment with Respondent.

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

Petitioner's condition of ill-being, bilateral Carpal Tunnel Syndrome, is causally connected to his employment with Respondent. The Arbitrator bases this opinion on the testimony of Petitioner and Dr. Beatty. The Arbitrator finds the testimony of Dr. Beatty to be more credible than that of Dr. Strecker.

Issue J: Were the medical services that were provided to Petitioner reasonable and necessary?

Respondent shall pay reasonable and necessary medical services pursuant to the medical fee schedule (Section 8(a) and 8.2 of the Act) as follows: Anderson Hospital - $56.11; Belleville Memorial Hospital - $639.49; Dr. Anwar Khan - $22.10; Southern Illinois Plastic & Hand Surgery (Dr. Beatty) - $1,807.67; Edwardsville Surgery Center - $ 253.49; Dr. Gregory Randle - $67.50; Apex Physical Therapy - $212.70.

The Arbitrator finds Petitioner's symptoms of bilateral carpal tunnel syndrome were relieved by the surgeries performed by Dr. Beatty. This is based on the medical records and the testimony of Petitioner. These facts not only confirm the diagnosis, they show the treatment was reasonable and necessary to treat Petitioner's work related condition.

Respondent shall receive an 8(j) credit for any amounts actually paid by Respondent's group insurance.

Issue K: Is Petitioner entitled to TTD benefits?

Respondent shall pay Petitioner temporary total disability benefits of $442.85/week for 9 and 6/7 weeks, commencing 9/5/2012 through 11/12/2012, as provided in Section 8(b) of the Act. Respondent shall receive a credit for amounts paid by Respondent's short-term disability policy.

Issue L: Nature and Extent of injury?

Respondent shall pay Petitioner permanent partial disability benefits of $398.57/week for 61.5 weeks because the injury sustained caused the 15% loss of the right hand and 15% of the left hands, as provided in Section 8(e) of the Act.

Date: Earl Lee 12/12/14

Honorable Edward Lee