STATE OF ILLINOIS)
) SS.
COUNTY OF)
CHAMPAIGN

☒ 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)
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bradford Craig,

Petitioner,

vs.

NO: 08 WC 11812
13IWCC1040

Prairie Material Sales, Inc., d/b/a Prairie Central,

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 and prospective medical care and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 15, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $524.70 per week for a period of 21-3/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act and the sum of $524.70 per week for a period of 11 weeks, that being the period of temporary partial incapacity for work under §8(a) of the Act

and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $190.00 for medical expenses under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize in writing and pay the reasonable and related costs of the arthroscopic lateral meniscectomy recommended by Dr. Gurtler pursuant to the Medical Fee Schedule.

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 Commission notes that Respondent paid $15,834.70 for TTD and TPD benefits and that Respondent is entitled to a credit for any medical expenses paid by the Union's group carrier under §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 this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: MAR 19 2014
MB/maw
o11/20/13
43

Mario Basurto

Michael J. Brennan

David L. Gore

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

CRAIG, BRADFORD
Employee/Petitioner

Case# 08WC011812

13IWCC1040

PRAIRIE MATERIAL SALES INC D/B/A PRAIRIE CENTRAL
Employer/Respondent

On 1/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

3269 SPIROS LAW PC
SANDRA LOEB
2807 N VERMILION ST SUITE 3
DANVILLE, IL 61832

1109 GAROFALO SCHREIBER HART CHTD
MARC CARIO
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CHICAGO, IL 60601

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)

13IWCC1040

Case # 08 WC 11812

Consolidated cases: N/A

Bradford Craig
Employee/Petitioner

v.

Prairie Material Sales, Inc., d/b/a Prairie Central
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Urbana**, on **November 20, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other Admissibility of RX 3

FINDINGS

On the date of accident, **July 6, 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 **$40,927.64**; the average weekly wage was **$787.07**.

On the date of accident, Petitioner was **54** 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 **$15,834.70** for TTD and TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$15,834.70**. Petitioner was temporarily totally disabled from **October 5, 2007** through **March 2, 2008** (a period of **21 3/7** weeks) and temporarily partially disabled from **March 3, 2008** through **May 18, 2008** (a period of **11** weeks).

Respondent is entitled to a credit for any medical expenses paid by the Union's group carrier under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of $190.00, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay the reasonable and related costs of the arthroscopic lateral meniscectomy proposed by Dr. Gurtler.

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

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

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

Nancy Lindsay

Signature of Arbitrator

January 10, 2013

Date

ICArbDec19(b)

JAN 15 2013

13IWCC1040

The Arbitrator finds:

It is undisputed that Petitioner underwent left knee surgery in 2002. At that time Petitioner underwent a meniscectomy with Dr. Gurtler. Petitioner testified that after his treatment was completed he returned to work without any restrictions.

On July 6, 2007, Petitioner was employed by Respondent as a full-time union cement truck driver. On that date, Petitioner testified that he was involved in an undisputed work accident when he twisted his right knee in some "slurry" and fell to the ground on his right side. Petitioner did not seek immediate medical attention.

Petitioner reported the accident and completed an incident report. He was instructed by his employer to go to his regular doctor for care. (PX 3)

On July 10, 2007, Petitioner reported to the Division of Adult Medicine at Carle Physician Group where he described his accident and complaints. Petitioner reported being able to drive without any problem but having difficulty going up and down the ladder to his truck. Petitioner had been using ice on his knee and taking three Aleve twice a day. Petitioner reported morning stiffness but the ability to loosen his knee up with a ten minute ride on his Schwin Air Dyne. Petitioner reported that his knee "clicks" when walking. Physical examination of Petitioner's knee revealed swelling and mild moderate effusion, tenderness over the medial joint line, pain with full extension, limited flexion, and positive McMurray's sign. Petitioner was told to present to Occupational Medicine to determine his ability to work. He was given a knee support and instructed to decrease the Aleve to no more than two tablets every 12 hours. (PX3)

As instructed, Petitioner presented to Dr. Sutter in the Department of Occupational Medicine at Carle on that same date. (PX3) Dr. Sutter's examination revealed tenderness in the medial aspect of Petitioner's right knee and some swelling posteriorly. Dr. Sutter's assessment was right knee strain. Dr. Sutter ordered an x-ray and a MRI. Petitioner was told to avoid kneeling and squatting. (PX 3)

On July 18, 2007, Petitioner underwent an MRI of his right knee. (PX4) Petitioner was subsequently examined by Dr. Robert Gurtler, a board certified orthopedic surgeon at Carle Physician Group, on July 19, 2007. (PX5) Dr. Gurtler reviewed the MRI films and found evidence of medial and lateral meniscus tears and some joint surface damage. (PX 4, PX 5) Dr. Gurtler's physical examination revealed "a moderately big effusion," "a huge 7 cm easily palpable Baker's cyst," medial and lateral joint line tenderness, and a positive McMurray's test. Dr. Gurtler diagnosed a

medial meniscus tear, a lateral meniscus tear, joint surface damage, and "a huge Baker's cyst." Dr. Gurtler recommended a right knee arthroscopy. (PX 5)

Petitioner initially wished to undergo surgery in December or January but due to increased pain complaints and difficulty sleeping, he contacted the doctor about scheduling surgery sooner. Petitioner was seen by Dr. Sutter on September 25, 2007 and surgery was performed on October 5, 2007. Petitioner underwent a right knee arthroscopic partial medial and partial lateral meniscectomy. A lateral femoral condylar chondral fracture was also debrided. (PX5, 6)

Dr. Gurtler testified by evidence deposition that each of his diagnoses with regard to the right knee was confirmed during the course of the October 5, 2007 surgery. (PX1, p. 9) He furthermore testified that a lateral femoral condylar fracture was also identified during surgery. (PX1, p. 9) Dr. Gurtler testified to a reasonable degree of medical certainty that the medial and lateral meniscus tears and the lateral femoral condylar fracture were caused by Mr. Craig's July 6, 2007 workplace accident. (PX1, p. 9)

Petitioner continued to treat with Dr. Gurtler's office post-operatively. During the October 16, 2007 office visit, Dr. Gurtler informed Petitioner that the injury "guarantees him arthritis down the road – I would say 7-10 years, but right now he [was] doing real well." (PX 7) As of November 1, 2007, Dr. Gurtler noted Petitioner was being quite active – riding his bicycle and duck hunting, among other things. (PX 7) Petitioner was still taking Aleve twice daily. Petitioner continued his recovery and, while active, he also consistently reported swelling and pain. (PX 7)Petitioner was prescribed physical therapy. (PX9)

Petitioner began physical therapy on December 17, 2007. During his initial evaluation, Petitioner provided a history and underwent a functional assessment. Petitioner was noted to be experiencing pain, swelling, decreased range of motion and strength. Knee strength could not be assessed due to increased pain complaints. Self-limiting pain and apprehension were noted to be present. (PX 9)

Actual physical therapy began on December 19, 2007. Petitioner was scheduled for two to three visits per week for four to six weeks. During the December 19, 2007 visit Petitioner was noted to be experiencing intermittent pain with stiffness doing his home exercises. Petitioner denied any swelling since his knee had been drained. During the December 26, 2007 visit Petitioner reported no change in the swelling on his right lower extremity; however, he complained of swelling in his left lower extremity and ankle due to his evaluation. Both knees were drained on December 27, 2007 and Petitioner's right knee was injected with cortisone. (PX 9)

Petitioner testified that during his physical therapy appointment on December 19, 2007, his left knee popped while the therapist was testing to see how far she could bend the un-injured knee. Petitioner testified that he was lying on his

back next to a large protractor during this testing as the therapist was trying to compare the range of motion between Petitioner's two knees.

Petitioner returned to Dr. Gurtler's office on December 27, 2007, at which time the incident in physical therapy was reported to Dr. Gurtler's physician's assistant, Danny McFarlin. (PX10) With regard to Petitioner's left knee, Mr. McFarlin's medical record includes the following history:

> He also had an incident with therapy in which they were checking his range of motion and doing a baseline on the opposite knee. He has a history of having surgery on the opposite knee also several years back. During range of motion, he had pain and subsequent swelling and has had continued pain in that knee .... (PX10)

Mr. McFarlin's examination of Petitioner's knees revealed effusion in both knees "with some swelling about the lower leg and left lower extremity." Mr. McFarlin drained fluid from both knees and injected both knees with Depo-Medrol. Petitioner was told to continue with physical therapy and to stay off work. (PX 10)

Petitioner attended physical therapy appointments on December 28, 2007, January 2, 2008, January 4, 2008 and January 7, 2008, before returning to Dr. Gurtler's office on January 9, 2008. (PX9; PX10) The therapist's progress notes during the interim between the orthopedic visits indicate that Petitioner reported improvement in both knees after they had been drained and injected with cortisone. (PX9)

When Petitioner returned to Dr. Gurtler on January 9, 2008, the doctor noted that Petitioner had returned to the clinic on several occasions due to a large effusion which had been drained and corticosteroids injected. While Petitioner's pain was better on the 9th, he still was symptomatic particularly with weight bearing. The swelling in Petitioner's right knee had "subsided for the most part" and that left knee still had "mild effusion." (PX10) Petitioner was told to continue with physical therapy and to return in three weeks. Repeat draining and another injection was also contemplated if the left knee "continues to be swollen." (PX10)

Petitioner returned to Mr. McFarlin on January 31, 2008 and February 22, 2008. (PX10) Medical records from both of those visits reveal that Petitioner presented to those visits with pain in his left knee that had continued since the incident in physical therapy. (PX10) The medical record from February 22, 2008 identifies the left knee pain as being "more noted over the lateral joint line." Mr. McFarlin expressed concern that Petitioner's pain was due to a lateral meniscus tear in his medical record and a MRI of the left knee was ordered. (PX 10)

On March 13, 2008, Petitioner's left knee was examined by Dr. Gurtler for the first time since the December 19, 2007 physical therapy incident. (PX12) The

medical record for that date indicates that Dr. Gurtler took x-rays of Petitioner's left knee and read the MRI of Petitioner's left knee as revealing evidence of a tear of the lateral meniscus and the anterior horn. Dr. Gurtler's record also notes that Petitioner was "tender all over that anterior horn of the lateral meniscus" during his exam. As Dr. Gurtler noted, "...that sort of makes sense." What didn't make sense to the doctor were Petitioner's persistent effusions in both knees. Dr. Gurtler recommended an arthroscopic exam and probable partial lateral meniscectomy on March 13, 2008 "because of this injury that occurred in physical therapy." However, Dr. Gurtler also recommended that Petitioner be seen by a rheumatologist in order to address Petitioner's persistent effusions. (PX 10)

Petitioner presented to Dr. Anastacia Maldinado, a rheumatologist, on March 26, 2008 and April 21, 2008. (PX13) Dr. Maldinado diagnosed Petitioner as having rheumatoid arthritis in multiple joints, including his bilateral knees. Dr. Maldinado treated his condition with prescription medications and joint aspirations to the knees. (PX 14)

Petitioner returned to Dr. Gurtler on April 24, 2008. In his notes he indicated that he reviewed the earlier left knee MRI and believed it showed evidence of rheumatoid arthritis rather than a lateral meniscus tear. He also felt there was a possibility Petitioner could have a lateral meniscus tear but it could not be clearly seen. Petitioner's response to the rheumatoid arthritis treatment would be insightful. (PX14) Dr. Gurtler later testified that the rheumatoid arthritis diagnosis had an impact on the manner in which he interpreted Petitioner's left knee MRI. (PX1, p. 17) He testified that as of April 24, 2008, he could not confirm the lateral meniscus tear on MRI and he recommended that the Petitioner wait and see how he responded to his rheumatoid arthritis treatment before embarking on any surgery. (PX14, PX 1, p. 17)

Petitioner continued to treat with Dr. Maldinado for his rheumatoid arthritis through August 26, 2008 when she referred him back to Dr.Gurtler for "mechanical pain over the left knee." (PX15)

Petitioner returned to Dr. Gurtler on September 17, 2009 with a history of "still being bothered by that left knee." Dr. Gurtler examined Petitioner's left knee and found tenderness on the lateral joint line and a positive McMurray's test. Dr. Gurtler re-read the left knee MRI from one and a half years ago and stated in his medical record that it was questionable for a cyst behind the meniscus, which is consistent with a tear. He ordered a repeat MRI "to look at the lateral meniscus carefully again." (PX16)

Petitioner returned to Dr. Gurtler on October 18, 2009 after undergoing an MRI of his left knee on September 29, 2009. (PX15) Dr. Gurtler reviewed the new MRI and determined that the fluid behind the popliteal hiatus was not a cyst, that the lateral meniscus was not torn, and that arthroscopic surgery would be of no benefit to the Petitioner at that time. Dr. Gurtler noted that Petitioner was

experiencing some degenerative changes. He would not tie "this" back to the blood in the knee and the doctor really didn't know what the blood was attributable to. According to Dr. Gurtler, the inflammatory response in Petitioner's knee, aggravated by the blood and the injury plus the rheumatoid arthritis, was eventually going to destroy his knee. In the interim, surgery would be of no benefit. (PX 18)

On October 13, 2009, Petitioner was involved in a new work accident while driving a cement truck for Respondent. Petitioner testified and the medical records admitted into evidence confirm that neither of Petitioner's knees was directly injured in that accident. When seen at Occupational Medicine on October 15, 2009 Petitioner reported hitting his right flank on the door handle of his truck and injuring his left thigh and right lateral mid leg.(PX19) Petitioner treated for injuries related to his October 13, 2009 workplace accident through November 30, 2009. (PX19)

On November 15, 2010, Petitioner was examined by Respondent's Section 12 examiner, Dr. William Hopkinson. (RX 1 exhibit 2, PX 26) Dr. Hopkinson was of the opinion Petitioner was suffering from rheumatoid arthritis which had been aggravated by a work-related accident. Petitioner had evidence of ongoing bilateral knee pain and effusion. Petitioner's left knee treatment was necessitated by an aggravation of activities in physical therapy; however, he believed the condition had resolved at the time of the examination. Dr. Hopkinson further opined that Petitioner might need knee replacement surgery in the future as a result of the progression of his rheumatoid arthritis which had been aggravated by his work accident. Dr. Hopkinson also believed Petitioner could work with restrictions.

On November 30, 2010, Petitioner returned to Dr. Gurtler (PX21) Petitioner had continued to treat with Dr. Maldinado for his rheumatoid arthritis in the interim. (PX19, PX20) The history portion of Dr. Gurtler's medical record once again makes reference to the trouble Petitioner has had with his left knee since the therapy incident. (PX21)

On June 2, 2011, Petitioner presented to Dr. Maldinado with pain in the lateral aspect of his left knee "since 10 days ago without being precipitated by trauma." Dr. Maldinado ordered an MRI of Petitioner's left knee "looking for mechanical derangement of [the] meniscal ligament." (PX21) That MRI was undertaken on June 25, 2011.

Petitioner returned to Dr. Gurtler on July 19, 2011 complaining of "pain on the lateral side of his left knee that he says goes all the way back . . . to right after the injury that he had in physical therapy." (PX23) Dr. Gurtler testified that he reviewed Petitioner's most recent MRI and that it revealed a lateral meniscus tear in the anterior horn and a perimeniscal cyst that had developed over time. (PX2, p. 8) Dr. Gurtler opined in his evidence deposition that the tear he identified on Petitioner's June 25, 2011 MRI was caused by the incident in physical therapy. He testified:

> It seems to me that he has continued to complain of exactly the same thing all the way back to this incident. We suspicioned a perimeniscal cyst back on the original MRI, the second MRI then we didn't think it was there, but now it does show up that he's got a perimeniscal cyst. I think that you don't get a perimeniscal cyst without a tear and now he has a perimeniscal cyst. I think the tear goes all the way back to that incident in physical therapy because the pain has not changed. (PX2, p. 10)

Dr. Gurtler once again recommended arthroscopic surgery in order to excise the tear, which Dr. Gurtler considered to be the source of Petitioner's left knee pain. (PX22)

On November 18, 2011, Petitioner was re-evaluated by Dr. Hopkinson pursuant to Respondent's request. (PX26, RX 1 exhibit 3) Dr. Hopkinson noted pain on the anterolateral aspect of Petitioner's left knee among his other findings. The doctor opined hat Petitioner had mechanical symptoms of his left knee consistent with a meniscus tear but in the face of his rheumatoid arthritis he did not recommend arthroscopic surgery. He still believed Petitioner might need knee replacement surgery in the future and otherwise stood by his previous recommendations. (PX26)

Dr. Hopkinson's deposition was taken on August 16, 2012. (RX 1)

Dr. Hopkinson is a board certified orthopedic surgeon who specializes in adult joint replacement surgery. (RX1, pp.7-10) Dr. Hopkinson testified that only a small percentage of his practice is comprised of arthroscopic surgery cases. (RX1, p.11) In the course of Dr. Hopkinson's examination, Petitioner did complain of pain on the outside of his left knee, among his other complaints. (PX26) Dr. Hopkinson also noted "some discomfort" on McMurray's test of the left knee. (PX26) At the time of his evidence deposition, Dr. Hopkinson did not remember whether or not he had ever been afforded with an opportunity to review Petitioner's MRI films and there is no documentary evidence in the record of him having done so. (RX1, pp.53-56) Dr. Hopkinson's diagnosis as of November 15, 2010 in relation to the left knee was rheumatoid arthritis, aggravated by the work injury. (PX26) However, he also opined that the orthopedic treatment Petitioner received for his left knee from Dr. Gurtler in 2008 and 2009 was "necessitated by the stretching activities in physical therapy." (RX1, p. 76)

Dr. Hopkinson testified that Petitioner's rheumatoid arthritis was under better medical control than it was at the previous visit and that any aggravation caused by Petitioner's work accident now appeared to be temporary. (RX1, pp. 33) However, Dr. Hopkinson also testified on cross-examination that it was possible that Petitioner also had a lateral meniscus tear in his left knee in addition to the

rheumatoid arthritis he diagnosed. (RX1, p. 57) Dr. Hopkinson testified further that he did not disagree with Dr. Gurtler's diagnosis of Petitioner's left knee condition, only that he disagreed with Dr. Gurtler's plans to do arthroscopic surgery "on someone with rheumatoid arthritis who doesn't have mechanical symptoms." (RX1, p. 57) Dr. Hopkinson also testified that he had no opinion as to the cause of the lateral meniscus tear and that it was possible that the tear was caused by the incident in physical therapy. (RX1, p. 78)

Petitioner returned to Dr. Gurtler on November 8, 2012. (PX32) Dr. Gurtler re-reviewed Petitioner's MRI from 2011 at that time and confirmed that Petitioner has an anterior horn tear of the lateral meniscus and a parameniscal cyst. (PX32) Dr. Gurtler's examination revealed tenderness in the anterolateral and lateral aspect of the left knee joint. Dr. Gurtler's medical record explains that this pain is most likely caused by a tear to the lateral meniscus. Dr. Gurtler's record states, in pertinent part:

> If the meniscus is torn that generally causes pain. The pain is usually along one of the sides of the knee and is usually specific to which ever meniscus is torn. The pain frequently improves with rest and can sometimes nearly go away. However, often with activity the pain will flare up and can even become quite severe at times. . . . (PX32)

Dr. Gurtler's medical record for November 8, 2012 explains furthermore how Petitioner's left knee condition could potentially benefit from an arthroscopic lateral meniscectomy. In particular, Dr. Gurtler's record states:

> The arthroscope is inserted into the knee and the fragmented torn portions of the meniscus or cartilage are removed. This generally relieves the pain . . . (PX32)

Dr. Maldonado testified relative to her treatment of Petitioner. She testified that rheumatoid arthritis is an autoimmune disease that is not caused by trauma. She also described the disease as a destructive joint disease that affects many joints with swelling and can lead to the need for surgical intervention. At the time she testified, Dr. Maldonado was treating Petitioner with high risk medications, including Methotrexate and Prednisone, and occasionally draining fluid from Petitioner's knees. She testified that Petitioner's rheumatoid arthritis was active and severe and had produced constant inflammation in multiple joints including Petitioner's knees, wrists, hands and fingers. Dr. Maldonado testified she did not see anything unusual in Petitioner's rheumatoid condition and that trauma was not a risk factor in this condition. Dr. Maldonado also testified that Petitioner might need surgical intervention for his knees due to the progression of the rheumatoid arthritis. She diagnosed Petitioner's rheumatoid arthritis as severe based on the

persistence of inflammation in multiple joints. Since her testimony, Petitioner has continued to treat for his rheumatoid arthritis and his care now includes a weekly injection of medication in addition to the other oral medications in an effort to control the symptoms of this condition. The parties stipulated at arbitration that Petitioner's rheumatoid arthritis is not work-related.

Petitioner testified that he has had pain on the outside of his left knee since the December 19, 2007 physical therapy visit that waxes and wanes and increases with activity. Petitioner testified that though he is able to perform all of his duties as a cement truck driver, he does experience difficulty with his left knee when he uses the clutch. He testified that he wants to have the surgery proposed by Dr. Gurtler so that he can continue to work and so that he can continue to maintain an exercise program. The medical records admitted into evidence indicate that the surgery has not been performed because of worker's compensation issues.

Petitioner acknowledged that he has returned to work as a union concrete truck driver but believed he had been given restrictions from Dr. Gurtler. Regardless, Petitioner acknowledged that he has been working as a cement/concrete truck driver. Petitioner has not worked for Respondent since 2010 but has worked for other employers in that same capacity.

The Arbitrator concludes:

1. Petitioner's current condition of ill-being in his knees is causally related to the undisputed accident of July 6, 2007. This is based upon a chain of events and the credible testimony of Petitioner and Dr. Gurtler. The Arbitrator further concludes that the opinions of Dr. Gurtler are more persuasive than those of Dr. Hopkinson. Dr. Hopkinson opined that Petitioner's current condition is a result of Petitioner's rheumatoid arthritis as opposed to any work accident or injury. However, Dr. Hopkinson also testified that he did not disagree with Dr. Gurtler's diagnosis and that it was possible that Petitioner sustained a tear to his lateral meniscus as a result of an incident in physical therapy. Petitioner would not have been undergoing physical therapy but for the July 6, 2007 workplace accident and the two events constitute a compensable accident under the reasoning relied upon by the Commission in Pennington v. Qualex, Inc., 08 IWCC 1485 and by the Appellate Court in and in Fermi National Accelerator Lab v. Industrial Comm'n, 224 Ill. App. 3d 899 (1992). While Petitioner was not engaged in a therapeutic exercise when his left knee popped, he had been directed by the therapist to lie down and position his knee in order to compare ranges of motion between the two knees as part of Petitioner's therapy. This was necessitated by Petitioner's work-related accident.

2. Petitioner asserted that a bill in the amount of $190.00 from Carle Clinic for a left knee x-ray was unpaid at the time of trial. (PX28) Respondent disputed

liability for the same based on causal connection. Based on the Arbitrator's conclusion on causal connection, the Arbitrator further concludes Respondent is liable for payment of the bill contained in Petitioner's Exhibit Number 28 and Respondent shall pay same directly to the medical provider pursuant to Sections 8(a) and 8.2 of the Act.

3. Petitioner is entitled to prospective medical care as recommended by Dr. Gurtler. Dr. Gurtler opined that left knee surgery is reasonable and necessary in order to treat Petitioner's lateral meniscus tear. Dr. Hopkinson disagreed based on his understanding of Petitioner's symptoms. The Arbitrator finds that Dr. Hopkinson's understanding of Petitioner's condition appears to be limited by the fact that he did not personally review Petitioner's MRI films and by the fact that he only examined Petitioner on two occasions. Dr. Hopkinson also appears to have disregarded the mechanical knee pain documented by Petitioner's treating physicians. Dr. Gurtler's opinions are more persuasive than those of Dr. Hopkinson and Respondent is ordered to authorize and pay for the reasonable cost of the surgical procedure prescribed by Dr. Gurtler.

4. Respondent's Exhibit 3 is not admitted into evidence. Respondent sought to admit into evidence a document entitled, "Rheumatoid Arthritis." Petitioner objected on the basis of hearsay. In response, Respondent responded that the document was self-authenticating.

   Under the Illinois Rules of Evidence, hearsay, which is defined as an out-of-court statement offered to prove the truth of the matter asserted, is not admissible unless it falls within a recognized exception to the rule. Illinois Rules of Evidence 801 & 802.

   Even though there are numerous hearsay exceptions under the Illinois Rules of Evidence, none of them apply to the instant case. Based upon Respondent's contention that the document is a self-authenticating public document, the closest exception for the document itself would be the public record exception. Illinois Rules of Evidence 803(8).

   Given that no person was present to testify as to the foundation of the document, in order to satisfy this exception the Respondent must first lay specific foundation as to the self-authenticating nature of the document. This can be accomplished by establishing the document is an official publication, such as a book, pamphlet or other publications purporting to be issued by public authority. Illinois Rules of Evidence 902.

   The Arbitrator finds that after reviewing the document, Respondent has failed to establish self-authenticity under 902. The Arbitrator notes that the document was purportedly found on PubMed, a website which, according to it's own homepage, "... comprises more than 22 million citations for

biomedical literature from MEDLINE, life science journals, and online books. Citations may include links to full-text content from PubMed Central and publisher web sites." *See* www.ncbi.nlm.nih.gov/pubmed. The document Respondent attempts to admit into evidence is entitled "Rheumatoid Arthritis," found at http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001467, but is actually linked back to it's original source, the A.D.A.M. Encyclopedia at http://www.nlm.nih.gov/medlineplus/ency/article/000431.htm.

A.D.A.M. is a business unit of Ebix, a publicly traded company. A.D.A.M. publishes an encyclopedia, which houses articles about diseases, tests, symptoms, injuries, and surgeries. http://www.nlm.nih.gov/medlineplus/encyclopedia.html. The document does not satisfy the requirements of self-authenticity under 902.

Even if Respondent was able to establish that the document was self-authenticating, Respondent must also establish that the document meets the other requirements of the public records exception. Under 803(8), the Respondent must establish that the record or report documents:

i) the activities of the office or agency; or
ii) matters observed pursuant to duty imposed by law as to which matters there was a duty to report.

Illinois Rules of Evidence 803(8). The Respondent has failed to establish that the document satisfies either requirement of the public record exception.

As a further basis for finding the document inadmissible, the Arbitrator notes that the document references four different outside sources. The document proffered by Respondent amounts to hearsay within hearsay. Illinois Rules of Evidence 805.

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