

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Terrence Doyle,
Petitioner,

vs.

NO: 10 WC 17413
14 IWCC 0501

State of Illinois DJJ IYC Joliet,
Respondent.

CORRECTED 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 nature and extent 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 4, 2013 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 in the amount of \$122,565.12 in temporary total disability benefits paid to or on behalf of the Petitioner on account of said accidental injury.

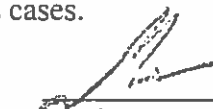
No bond or summons for State of Illinois cases.


DATED: **AUG 04 2014**


MB/jm

O: 6/5/14

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Mario Basurto


David L. Gore


Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
AMENDED

DOYLE, TERENCE

Employee/Petitioner

Case# 10WC017413

14IWCC0501

STATE OF IL DJJ IYC JUSTICE

Employer/Respondent

On 10/4/2013, 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 0.04% 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:

0924 BLOCK KLUKAS & MANZELLA PC
MICHAEL D BLOCK
19 W JEFFERSON ST SUITE 100
JOLIET, IL 60432

1368 ASSISTANT ATTORNEY GENERAL
DAVID PAEK ESQ
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

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

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

BERTIFIED as a true and correct copy
PURSUANT to 220 ILCS 305/14

OCT 4 2013



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0501

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
AMENDED ARBITRATION DECISION

TERRENCE DOYLE
Employee/Petitioner

Case # 10 WC 17413

v.

Consolidated cases: _____

STATE OF IL DJJ IYC JOLIET
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 **GEORGE ANDROS**, Arbitrator of the Commission, in the city of **NEW LENOX, IL**, on **JULY 12, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. 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 _____

14IWCC0501

FINDINGS

On **04/24/10**, 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 **\$87,135.88**; the average weekly wage was **\$1,675.69**.

On the date of accident, Petitioner was **50** 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 **\$122,565.12** for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of **\$122,565.12**.

Respondent is entitled to a credit of **\$365.00** under Section 8(j) of the Act.

ORDER

Maintenance

Respondent shall pay Petitioner maintenance benefits of **\$1,117.13/week** for **1 3/7** weeks, commencing **10/6/2012 through 10/15/2012**, as provided in Section 8(a) of the Act.

Temporary Partial Disability

Respondent shall pay Petitioner temporary partial disability benefits of **\$1,117.13/week** for **127 6/7** weeks, commencing **4/25/2010 through 10/5/2012**, as provided in Section 8(a) of the Act.

Medical benefits

Respondent shall pay reasonable and necessary medical services of **\$54,786.88**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of **\$365.00** for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Permanent Partial Disability: Wage differential

Respondent shall pay Petitioner permanent partial disability benefits, commencing **10/16/2012**, of **\$697.23/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.

14IWCC0501

THIS AWARD SUPERCEDES ANY AWARD THAT HAS BEEN ISSUED BY THE WORKERS COMPENSATION COMMISSION.

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

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

#01 George J. Andros
Signature of Arbitrator

9/26/13
Date
as Amended Award

OCT 4 - 2013

STATEMENT OF FACTS 10 WC 17413

In Support of the Arbitrator's Decision regarding "L" (Nature and Extent), the Arbitrator makes the following findings and conclusions:

This matter involves an 8(d)(1) wage differential claim where accident and causal connection have been stipulated (Arb. Ex. 1).

Petitioner, a 50 year old shift supervisor at IYC Joliet, responded to an inmate altercation and injured his right knee on April 24, 2010. He was treated by Dr. Bradley Dworsky at Hinsdale Orthopedics (Pet's. Exs. 3 -4a) from May 3, 2010 through April 4, 2013. He had surgery of the right knee October 12, 2010, consisting of a parapatellar retinacular release, and a chondroplasty of the medial and lateral facets of the patella, including the patellar trochlear groove and plicectomy of the medial plica of the right knee at Provena St. Joseph Medical Center (Pet's. Ex. 2). Following surgery, Petitioner underwent physical therapy at Newsome Physical Therapy Center (Pet's. Ex. 7) and injections by Dr. Dworsky. Dr. Dworsky's records show limited improvement through October 5, 2012. At that time, Dr. Dworsky noted that Petitioner would be considered at maximum medical improvement at a level less than his ability to return to work. Moreover, he would need continued Synvisc injections in the future given his history of chondromalacia, to return on an as needed basis (Pet's. Ex. 4, p. 50). The physical therapy records from Newsome (Pet's. Ex. 7), show limited improvement throughout extensive physical therapy, with the note of September 27, 2012 suggesting a return for strengthening, and the note of October 16, 2012, showing that therapy was stopped because of lack of approval for more physical therapy from the claims administrator. (Pet's. Ex. 7, p. 131). The last physical therapy narrative note, which was for treatment from November 2nd through November 29, 2011, more than a year after his surgery, showed that Petitioner continued to have problems with knee pain, difficulty with weight bearing activities involving knee flexion such as descending stairs or trying to squat, and walking. He noted that physical therapy only provided temporary relief, and his ability to progress with function and strengthening remained limited by anterolateral knee pain, and that his current limitations would not allow him to return to performing normal duties as a correctional officer (Pet's. Ex. 7, p. 42).

Petitioner's most recent medical treatment was when he received a Synvisc injection April 4, 2013. At that time Dr. Dworsky limited him to no inmate contact, no stairs, and no running (Pet's. Ex. 4a). Petitioner was also examined at Respondent's request pursuant to Section 12 by a Dr. Nikhil Verma of Midwest Orthopedics at Rush, who found the current diagnosis to be aggravation of pre-existing patella chondromalacia related to the injury of April 24, 2010, that injections would be required, and that as of that time Petitioner would not be capable of performing full duties. Dr. Verma did a supplemental report, (Resp. Ex. 1) where he recommended a functional capacity evaluation, but that based on the complaints at the time of the Section 12 exam, he opined that the restrictions of no stairs or running and no inmate contact appeared appropriate (Resp. Ex. 1 p. 2).

Petitioner testified that his job involved extensive standing, walking, and involvement in inmate altercations. All the medical evidence is to the effect that Petitioner can no longer perform those duties. He prematurely took his pension at a financial loss due to the injury.

Based upon the totality of the evidence, the Arbitrator finds Petitioner in the case at bar partially incapacitated from pursuing his usual and customary line of employment within the meaning of Section 8(d)1.

14IWCC0501

Accordingly, the Arbitrator finds as a matter of law the Petitioner is entitled to 2/3rds of the difference between the average amount which he would have been 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 of what he is earning or is able to earn in some suitable employment or business after the accident.

Regarding the former, the parties stipulated that Petitioner would currently earn \$7,652.00 per month or \$1,765.85 per week in his usual and customary occupation (Arb.'s Ex. 1). This is further supported by Exhibit 10, where wages for a shift supervisor are within the same range. With regard to what Petitioner is currently earning, the Petitioner testified that he began looking for work in approximately May of 2012, interviewing for jobs in the \$15.00 an hour range for 40 hours.

The Petitioner sought gainful employment in diligent fashion. He sought employment with the local State's Attorney interviewing for a job which to his knowledge was \$15.00 to \$20.00 an hour for 40 hours a week. He applied for full-time work. Instead he was offered a job for 8 hours a day, 3 days a week, or 24 hours a week total, but at a higher wage scale of \$30.00 per hour.

The benefit of this situation to the employer was that benefits would not have to be paid, and those part-time positions were the only types being offered currently for the position, which was as an investigator. The testimony is supported by Petitioner's Exhibit 11 that he had started with the county on October 16, 2012, earning \$30.00/hr. for 24 hours a week. He had already been there 9 months at the time of hearing, and there were only 2 additional days where he worked, one being an emergency and the other being to train someone else. Accordingly, the Arbitrator finds as material fact that Petitioner is currently earning \$720.00/week.

Susan Entenberg, a Certified Vocational Counselor gave evidence both by report (Pet's. Ex. 8) and deposition (Pet's. Ex. 9). This is the only vocational evidence in the case. She opined that Petitioner had an earning capacity of \$15.00 to \$17.00/hour, in the areas of investigator, security, and armored car driver. She noted that direct placement was the first choice, although Petitioner was capable of further training (Pet's. Ex. 8, p. 4). Ms. Entenberg noted it more common that you see a lot of part-time jobs being offered, especially less than 30 hours a week, because then they are not paying for health insurance. They are saving in that respect, so they can pay more as part-time employment (Pet's. Ex. 9, p. 13).

When asked whether, having secured this job, it would not make sense for Petitioner to look for further work, and whether this would be an optimum job, Ms. Entenberg opined that this was a good job for him. It's right exactly the type of job she was recommending. It is within his level of expertise and skill, it's within his restrictions, and he is earning overall an appropriate wage (*Id.* pp. 14 - 15).

If the \$720.00/a week he was making was spread over 40 hours, it would come out to \$18.00/hour, which is very close to and slightly higher than the range Ms. Entenberg had recommended for job seeking, which was \$15.00 to \$17.00/hr. (*Id.* p. 10). Ms. Entenberg reaffirmed that she would base his earning capacity on the wage he is earning for the amount of hours that he is working a week, which comes out to \$17.00 to \$18.00/hour on a full-time basis, as even though the pay is \$30.00/hour, they limit him to 24 hours a week (*Id.* @ 34).

Petitioner also testified to the jobs he looked for prior to accepting a job with the State's Attorney's office, and they were all in approximately the \$15.00/hour range. The Arbitrator notes that the State has never had to pay a vocational counselor to assist Mr. Doyle in placement, and that the

14IWCC0501

maintenance awarded in this case is limited to 10 days, evidencing that Petitioner conducted a diligent and successful job search.

The actual amount that Petitioner is earning, which is one of the two alternatives, and the preferred alternative in Section 8(d)1, is \$720.00/week. The other alternative, Petitioner's earning capacity based on the average of some suitable employment, is generally only used if current earnings are non-existent or inappropriate, and in this case all the evidence is that the job Petitioner sought on his own and accepted is both appropriate and optimum. Based on Petitioner's job search and the testimony of Ms. Entenberg, he could be expected to make, if able to secure a full-time job, \$15.00 to \$18.00/hour, and he already is earning the equivalent of that, although the job is only part-time.

This is not a case where Petitioner voluntarily took a part time job although full time was available. By Petitioner's testimony full time was not being offered to any investigator, and the Arbitrator finds Petitioner's testimony credible and the job to be suitable. This is simply a mutually beneficial situation where the employee works less hours and the employer pays higher because it does not have to pay benefits such as medical insurance. Where appropriate, the Commission has used a part-time job to calculate wage differential benefits. See *Rausch v. John Keno & Co.*, 09 IWCC 1013 and cases cited therein, also as to elements of proof.

Thus, the Arbitrator finds as material fact and as a matter of law Petitioner's earning capacity, the average he is able to earn in some suitable employment, the second alternative, also to be \$720.00/week.

Accordingly, Petitioner is awarded from the Respondent at bar as a matter of law pursuant to Section 8(d)1 the sum of \$697.23/week, representing 2/3rd of the difference between the stipulated amount of \$1,765.85/week less \$720.00/week, commencing October 16, 2012, which award shall be for the duration of the disability.

In Support of the Arbitrator's Decision regarding "K" (TTD and Maintenance), the Arbitrator makes the following findings and conclusions:

The parties stipulated and agreed that TTD was paid from April 25, 2010 through May 31, 2012 in the appropriate amount of \$122,565.12 for 109 5/7ths weeks. An additional amount of TTD was claimed and agreed to from June 1, 2012, when Petitioner took a retirement pension, through October 5, 2012, when Petitioner was declared by Dr. Dworsky to be MMI, consistent with the *Interstate Scaffolding* case for an additional 18 1/7th weeks, or a total of 127 6/7ths weeks.

During this period Petitioner remained under active treatment, had extensive physical therapy, and as of the MMI date of October 5, 2012, he was still receiving shots. Limited improvement was noted up until that time.

Regarding maintenance, Petitioner actually secured employment which began October 16, 2012, so that the claimed period is only 10 days from October 6, 2012 through October 15, 2012, being 1 3/7 weeks.

Petitioner testified that he had been looking for work, and while his job search was limited it was of extremely short duration and successful. Petitioner is to be commended for securing excellent employment within a very short period of time, and the Arbitrator finds the period of maintenance to be most reasonable.

In conclusion, the Arbitrator awards as a matter of law temporary total disability of 127 6/7 weeks and maintenance of 1 3/7 weeks, with Respondent to have credit for the 109 5/7 weeks it paid.

14IWCC0501

In Support of the Arbitrator's Decision regarding "J" (Medical Expenses), the parties stipulated that the bills would be admitted into evidence and that Respondent could pay them directly to providers pursuant to the fee schedule or agreement.

The only unpaid bills appear to be for the emergency room physician at the time of the accident, for the pathologist at the time of knee surgery for Hinsdale Orthopedics who was the only treaters for the knee condition, including surgery, and for Newsome Physical Therapy, which was extensive.

Thus total bills are awarded as a matter of law the sum of \$54,786.88 (See Arbitrator's Exhibit 2), after deducting \$19,476.00 which Workers' Compensation paid towards the Newsome Physical Therapy bill.

Petitioner's group insurance paid \$365.00 towards the Associated Pathologist bill for surgery, the total bill being \$392.00, and Respondent shall have an 8(j) credit for that and hold Petitioner harmless with respect thereto. The Arbitrator notes that Respondent's Section 12 physician, Dr. Verma had states opposition or disagreement as to the reasonableness and necessity of the treatment Petitioner received. The Arbitrator finds as a matter of fact and law the treatment is reasonable and necessary.