

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Enrique Herrera,

Petitioner,

vs.

NO: 13 WC 07709
14 IWCC 504

LaGasse Subsidiary of United
Stationers, Inc.,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

Pursuant to Section 19(f) of the Act, the Commission finds that a clerical error exists in its Decision and Opinion on Review dated June 26, 2014, in the above captioned.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated June 26, 2014, is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

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:
TJT:yl
51

JUL 01 2014


Thomas J. Tyrrell

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<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="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Enrique Herrera,

Petitioner,

vs.

NO: 13 WC 07709
14 IWCC 504

LaGasse Subsidiary of United
Stationers, Inc.,

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, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 16, 2013, is hereby affirmed and adopted.

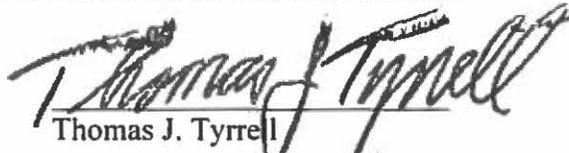
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

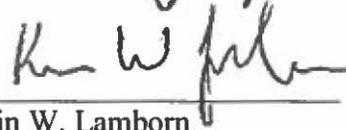
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$4,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

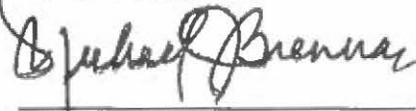
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o 6/24/14
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Thomas J. Tyrrell



Kevin W. Lamborn



Michael J. Brennan

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

HERRERA, ENRIQUE

Employee/Petitioner

Case# 13WC007709

LAGASSE SUBSIDIARY OF UNITED
STATIONERS INC

Employer/Respondent

14IWCC0504

On 7/16/2013, 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 0.07% 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:

2902 PETER G LEKAS
221 N LASALLE ST
SUITE 1700
CHICAGO, IL 60601

1109 GAROFALO SCHREIBER HART ET AL
DEREK STORM
55 W WACKER DR 10TH FL
CHICAGO, IL 60601

STATE OF ILLINOIS)
)SS.
COUNTY OF Dupage)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

ENRIQUE HERRERA

Employee/Petitioner

Case # 13 WC 7709

v.

Consolidated cases: _____

LAGASSE, SUBSIDIARY OF UNITED STATIONERS, 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 **KURT CARLSON**, Arbitrator of the Commission, in the city of **CHICAGO**, on **5-15-13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

14IWCC0504

FINDINGS

On the date of accident, **1-31-13**, 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 **\$24,960.00**; the average weekly wage was **\$480.00**. On the date of accident, Petitioner was **23** years of age, *single* with **2** dependent children. Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services. Respondent shall be given a credit of **\$-0-** for TTD, **\$-0-** for TPD, **\$-0-** for maintenance, and **\$-0-** for other benefits, for a total credit of **\$-0-**. Respondent is entitled to a credit of **\$-0-** under Section 8(j) of the Act.

ORDER

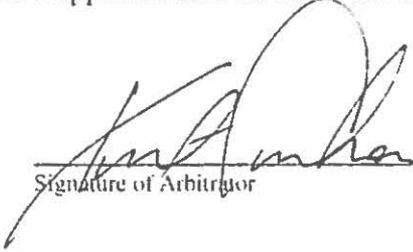
Respondent shall pay petitioner temporary total disability benefits of **\$320.00** per week for **13 3/7** weeks, commencing February 11, 2013 through May 15, 2013, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **\$0** for temporary total disability benefits that have been paid.

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

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

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



Signature of Arbitrator

07-15-13
Date

IC/ArbDec19(b)

JUL 16 2013

STATEMENT OF FACTS

14TWCC0504

On January 31, 2013, the Petitioner was employed as a forklift operator at LaGasse in Carol Stream, Illinois. The Petitioner testified that he has worked for the Respondent for 1 year and a couple of months. Petitioner testified that his main job was to make space for the receiving team.

The Petitioner testified that he injured his low back on January 31, 2013 while lifting a box of bleach in aisle 32. Petitioner testified that the box of bleach contained 4 containers and weighed approximately 80 pounds. Petitioner testified that he was moving the box of bleach from one skid to another skid and felt tingling in his low back on the left side. Petitioner testified that the accident occurred at about 8:30 a.m. Petitioner further testified that he was working the first shift on January 31, 2013 and that neither co-worker's or his supervisor witnessed his accident.

The petitioner testified that he did not tell his employer that he had injured himself on January 31, 2013. Petitioner testified that he continued working for about 10 days and felt numbness on the left side of his left leg. He further testified that he was taking 20 milligrams of ibuprofen during this time frame.

The petitioner testified that he told his supervisor, Ben Murray, that he had injured his low back lifting a box of bleach on February 11, 2013. Petitioner testified that an incident report was completed and he was instructed to seek medical treatment at Concentra Medical Center.

The Petitioner testified that he was examined by Dr. Adam Macek, a chiropractor, on February 11, 2013. Petitioner told Dr. Macek that he injured his low back lifting a box of liquids weighing 70 pounds about 10 days ago. The history further notes that petitioners' symptoms have progressively worsened over time. {PX #3} Petitioner testified that Dr. Macek examined him, ordered X-rays of his low back and recommended a course of treatment. Dr. Macek also recommended that the petitioner stay off of work. {PX #3}

The Petitioner was examined at Concentra Medical Center on February 12, 2013 at the request of his employer. Medication was prescribed and petitioner was diagnosed with a lumbar strain. Petitioner was further released to return to work without restrictions. The History noted at Concentra Medical Center was that the petitioner was picking up a heavy box weighing between 60-80 pounds when he noticed low back pain. {PX #2}

The Petitioner underwent chiropractic treatment with Dr. Adam Macek in Romeoville, Illinois from February 11, 2013 through April 30, 2013. Petitioner testified that he underwent treatment 3 to 4 times per week which consisted of massages and decompression. Petitioner testified that his low back symptoms did not improve despite the sessions with the Chiropractor.

Petitioner underwent a MRI of his low back on February 22, 2013 at the request of Dr. Macek. The MRI showed a 5.5 mm central herniation at L5-S1 effacing the ventral aspect of the thecal sac. {PX #4}

The Petitioner testified that he was examined by Dr. Anas Alzoobi on May 9, 2013 at the request of Dr. Macek. Dr. Alzoobi diagnosed petitioner with a L5-S1 herniated nucleus pulposus, spinal stenosis with radicular symptoms of the left lower extremity. Dr. Alzoobi recommended an epidural injection and prescribed Norco and meloxicam. Dr. Alzoobi further instructed the petitioner to remain off of work. {PX #5} Petitioner testified that he was scheduled for an epidural injection on May 17, 2013.

The Petitioner testified that he was examined by Dr. David Robertson on April 23, 2013 at the request of his employer.

The Petitioner testified that February 10, 2013, was the last day that he worked for Respondent. Petitioner testified that Dr. Macek took him off of work on February 11, 2013. Petitioner further testified that neither Dr. Macek or Dr. Alzoobi have released him to return to work since they began treating him.

Petitioner testified that currently his pain level is at a 10 on a scale of zero to ten. He testified that he cannot sleep at night and that his left leg tingles after 10 minutes of driving a car. The pain is on the back of his left leg and radiates to his knee.

The Petitioner testified that he never injured his low back prior to January 31, 2013. Petitioner further testified that he never had any medical treatment for low back pain prior to January 31, 2013. Petitioner has not reinjured his low back since his January 31, 2013 accident.

The Petitioner testified that currently he is taking Ibuprofen and that he would in a few days obtain Norco and Meloxicam as prescribed by Dr. Alzoobi.

The Petitioner testified during cross-examination that he never actually weighed the box of bleach that he lifted on January 31, 2013. He further testified that he used a RF scanner to scan the product that he was moving or stocking. Petitioner admitted on cross examination that he did not scan the box of bleach that he lifted on January 31, 2013.

The Petitioner acknowledged on cross-examination that the Respondent's safety rules require that all work injuries be reported immediately and failure to do so could result in a disciplinary action or termination. Petitioner admitted that he did not notify his supervisor or seek medical treatment for his low back injury immediately.

The Petitioner acknowledged on cross-examination that he had a conversation with both Mr. Murray and Mr. Vargas on February 11, 2013. Petitioner denied telling Mr. Murray or Mr. Vargas that

his back pain resulted from playing baseball or working out. Petitioner testified that he completed a document called an Associate's Report of Incident on February 12, 2013. {PX #1}

The Petitioner testified on cross-examination that he has not worked since February 12, 2013 and that he has a Facebook page listed under Henry Herrera. Petitioner acknowledged posting pictures of himself on Facebook since January 31, 2013.

The Petitioner testified that he has not played baseball since 2009 and did not work out in a gym in 2012.

The Petitioner testified on Redirect examination that his low back pain worsened after his injury on January 31, 2013 and that prompted him to report the accident 12 days later. Petitioner further testified that he did not scan the box of bleach he lifted on January 31, 2013 because it was a single box and each skid has 35 boxes. He further testified that it was not a different product being moved to a different location which would require scanning.

Benjamin Murray testified at Arbitration on behalf of the Respondent. Mr. Murray is the Inbound department manager for Respondent and manages the day-to-day operation of the receiving department. He testified that he is the petitioner's supervisor. Work-related injuries are reported to Mr. Murray.

Mr. Murray testified that employees are expected to lift up to 70 pounds. He further testified that a box of bleach weighs less than 80 pounds.

Mr. Murray testified that there is no record of petitioner scanning a box of bleach on January 31, 2013. He further testified that 95 percent of the work petitioner does is scanned.

Mr. Murray testified that petitioner performed his normal duties from January 31, 2013 through February 11, 2013.

Mr. Murray testified that he had a conversation with the petitioner on February 11, 2013 at 9:30 a.m. Petitioner told Mr. Murray that he had a doctor's appointment he needed to attend in the afternoon. Mr. Murray testified that he told petitioner that they would have to talk to Eric Vargas, the operations manager. Mr. Murray testified that he had a second conversation with the Petitioner along with Eric Vargas on February 11, 2013. The conversation took place in Mr. Vargas' office in Carol Stream, Illinois. Mr. Murray testified that petitioner told Mr. Vargas that he needed to see a doctor later in the afternoon because he was experiencing some back pain and that it could be a result of some outside activities that he participated in.

Mr. Murray testified that petitioner reported a work related injury to him on February 12, 2013. Documentation was filled out and petitioner was sent to Concentra medical center. Mr. Murray

testified that petitioner told him that he injured his low back moving a case of bleach. Petitioner further told Mr. Murray that he thought the back pain would go away initially.

Mr. Murray testified that a box of bleach placed on a skid of 35 boxes would not have to be scanned by a RF Scanner. He further testified that 5 percent of an associate's work is not scanned.

Mr. Murray testified that he filled out a form with 14 questions containing the same information as on the Associates report of Injury on February 12, 2013. He further testified that Skids can be scanned and sit in one location for weeks before being moved to another location. He testified that the skid in question could have been scanned two to three weeks prior to January 31, 2013. Further, the skid could have been scanned by another employee other than the petitioner.

Mr. Murray testified that he had in his possession records of scanned items from January 25, 2013 through February 8, 2013. Mr. Murray did not have in his possession records of scanned items prior to January 25, 2013.

Mr. Murray testified that part of petitioner's job is to clear space in the warehouse. He further testified that moving a single stray box onto a skid is part of petitioner's job duties.

Mr. Murray testified that he has no specific recollection of petitioner stating that he injured his back playing baseball or weightlifting while in Eric's office on February 11, 2013. Mr. Murray further testified that nobody pursued any additional line of questioning about those outside activities.

Eric Vargas testified at Arbitration on behalf of the Respondent. Mr. Vargas was the operation manager for Respondent from September of 2009 through February 2013. Mr. Vargas testified that the petitioner never notified him about a work injury from January 31, 2013 through February 11, 2013.

Mr. Vargas testified that he had a conversation with the petitioner and Mr. Murray on February 11, 2013 at 10:00 a.m. in his office. They discussed petitioner's doctor's visit later in the afternoon for back pain. Mr. Vargas testified that the petitioner did not report a work injury and didn't know what caused his back pain.

Mr. Vargas testified that he received notice of petitioner's work injury on February 12, 2013 and filled out a 14-point questionnaire and Associates Report of Incident and sent petitioner to Concentra Medical Center.

Mr. Vargas testified that the 14-point questionnaire filled out was consistent with what the petitioner told him about how he hurt his back on January 31, 2013. Mr. Vargas acknowledged receiving medical records from Dr. Macek on February 11, 2013 taking petitioner off of work. Mr. Vargas testified that the medical records he received did not say petitioner was injured from playing baseball or weightlifting.

Mr. Vargas testified that the petitioner told him on February 12, 2013 that he injured his back at work on January 31, 2013 lifting a box of bleach.

Mr. Vargas testified that the petitioner told him on February 11, 2013 that he could have injured his back from outside activities. Mr. Vargas testified that Mr. Murray had left his office prior to petitioner saying this.

Respondent Exhibit #8 indicates that Mr. Murray was present in Mr. Vargas' office when petitioner said he could have hurt his back from playing baseball or weightlifting. Respondent Exhibit #8 was prepared by Erick Vargas and is inconsistent with his testimony regarding the 10:00 a.m. conversation in his office on February 11, 2013.

The Petitioner testified on Rebuttal and denied ever telling Mr. Murray or Mr. Vargas that he injured his back playing based ball or weight lighting. He testified that they never asked him how he hurt his back in Eric Vargas' office on February 11, 2013. He testified that he told Mr. Murray that he injured his back in aisle 32 lifting a box of bleach. This conversation took place by dock No. 3 where all the leads and managers sit at approximately 9:30 a.m.

The Petitioner testified on Rebuttal that the box he picked up on January 31, 2013 was loose material. He further testified that he did not scan the box because the skid had previously been scanned.

Petitioner testified that he never played baseball after 2007. He testified that he played baseball at Moraine Valley Community College in 2007. He further testified that he is not presently a member of a health club. Petitioner testified that he did not work out in 2012.

CONCLUSIONS

14IWCC0504

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 Arbitrator finds that the petitioner sustained accidental injuries arising out of and in the course of his employment with Respondent on January 31, 2013.

The Petitioner testified that he injured his low back on January 31, 2013 lifting a box of bleach. He testified that he was clearing space by placing a single box of bleach onto a skid of 34 boxes of bleach. Petitioner's testimony was credible and supported by the histories contained in the incident reports and medical records. An Associates Report of Incident was filled out and executed by the Petitioner on February 12, 2013. The history in the report says petitioner was picking up a box of bleach from one skid to place it on another skid and felt pain when lifting the case. {PX#1} Petitioner was treated at Concentra Medical Center on February 12, 2013. Dr. Taylor noted that petitioner was lifting a box weighing between 60-80 pounds on January 31, 2013 and developed pain across his low back. {PX #2} The Petitioner was initially treated by Dr. Adam Macek on February 11, 2013. Dr. Macek noted that petitioner experienced low back pain 10 days ago after lifting a box of liquids weighing 70 pounds at work. {PX #3} The Petitioner was examined by Dr. Alzoobi on May 9, 2013. Dr. Alzoobi noted that the petitioner was status post workman's injury where he hurt himself lifting a couple of cases of water. {PX #5} Although not identical, the histories in the accident reports and medical records are fairly consistent with the petitioner's testimony and corroborate his testimony and credibility.

Both Benjamin Murray and Eric Vargas testified at Arbitration on behalf of the Respondent. Mr. Murray, Mr. Vargas and the petitioner has a conversation in Mr. Vargas' office on February 11, 2013 at 10:00 a.m. Mr. Murray testified that he has no specific recollection of petitioner stating that he injured his back playing baseball or weightlifting. Mr. Murray further testified that nobody pursued any additional line of questioning about those outside activities. Mr. Vargas testified that petitioner stated that he could have injured his back playing baseball or weightlifting. He further testified that Mr. Murray had left his office prior to petitioner making this statement. Mr. Vargas' testimony was inconsistent with the memo he prepared on February 11, 2013. The memo states that petitioner informed Ben Murray and myself that he had a doctor's visit scheduled for 10 a.m. today to have his back checked out. Petitioner stated that he was suffering from severe back pain and didn't know what the issue was but he thought it might have something to do with his workout or his baseball activities. {RX #8} Mr. Vargas testimony conflicts with his own memo and the testimony of Benjamin Murray. There is also no corroborating evidence showing petitioner injured his back weightlifting or playing baseball.

The Arbitrator finds the petitioner's testimony more credible than that of Benjamin Murray and Erick Vargas. The Arbitrator further finds petitioner's testimony corroborated by the Incident Reports and medical records submitted into evidence.

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 the Petitioner's current condition of ill-being in his low back to be causally related to the injury of January 31, 2013. The Arbitrator finds that the petitioner's testimony was credible and supported by the medical records and reports submitted into evidence. Petitioner was examined by Dr. Nina Taylor at Concentra on February 12, 2013. Dr. Taylor diagnosed petitioner with a lumbar strain and noted petitioner was a 24 year old male complaining about his back which was injured on January 31, 2013. {PX #2} Dr. Anas Alzoobi examined the petitioner on May 9, 2013 and noted that petitioner is status post workman's injury where he hurt himself lifting a heavy object. {PX #5}

The petitioner testified that he never injured his lower back prior to January 31, 2013 or received medical treatment to his lower back prior to January 31, 2013. Petitioner further testified that he has not reinjured his back since January 31, 2013. Respondent did not offer any medical evidence to the contrary.

In support of the Arbitrator's Decision relating to (K) What temporary benefits are in dispute; the Arbitrator finds and concludes as follows:

Respondent shall pay petitioner temporary total disability benefits of \$320.00 per week for 13 3/7 weeks, commencing February 11, 2013 through May 15, 2013, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of \$0 for temporary total disability benefits that have been paid.

The Petitioner testified that he has been off of work since February 11, 2013. Petitioner further testified that neither Dr. Macek or Dr. Alzoobi have released him to return to work as a forklift operator. Petitioner's testimony was credible and supported by the medical records submitted into evidence. Petitioner was examined by Dr. Macek on February 11, 2013. Notes from Dr. Macek's office indicate that petitioner was taken off of work. {PX #3} Petitioner was examined by Dr. Alzoobi on May 9, 2013. Dr. Alzoobi diagnosed petitioner with a L5-S1 herniated disc. Dr. Alzoobi prescribed Norco and meloxicam and instructed the petitioner to remain off of work. {PX #5} Dr. Alzoobi further recommended an epidural steroid injection. {PX #5} The Arbitrator credits the opinions of Dr. Macek and Dr. Alzoobi.

The Arbitrator notes that petitioner's MRI of the lumbar spine shows a 5.5 mm central herniation effacing and distorting the ventral aspect of the thecal sac. The MRI results support the petitioner's entitlement to temporary total disability benefits. {PX #4}