

05 WC27417
14IWCC0561
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Phil Carello
Petitioner,

vs.

NO: 05WC 27417
14IWCC 0561

Northfield Township High School District, #225
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 Decision of the Commission dated July 14, 2014, having been filed by Petitioner 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 Decision and Opinion on Review dated July 14, 2014, 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 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: SEP - 4 2014
MJB/bm
052



Michael J. Brennan

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" 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

Phil Carello,

Petitioner,

vs.

NO: 05 WC 27417
14 IWCC 0561

Northfield Township High School District, #225,

Respondent.

CORRECTED 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 permanent disability under Section 8(d)1 and/or Section 8(d)2, and being advised of the facts and law, clarifies 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.

On August 20, 2014, Respondent filed a Motion to Amend the Record. On August 21, 2014, Petitioner filed a Response to Respondent's Motion to Amend the Record. Hearing on the motion was held before Commissioner Michael Brennan on August 27, 2014.

At hearing, Respondent's counsel made an oral motion to amend Respondent's Motion to Amend the Record to Motion to Correct Clerical Error under 19(f). Petitioner's counsel then made an oral motion to amend his response to Respondent's motion to Petitioner's Response to Respondent's Motion to Correct Clerical Error under 19(f). There being no objections to the requested amendments, Commissioner Brennan granted the motions to amend Respondent's motion and Petitioner's response.

At the hearing, the parties agreed to the following:

- Petitioner was temporarily partially disabled from May 25, 2005 through January 31, 2007, and was off work at intermittent periods during his treatment.
- Respondent paid Petitioner \$17,014.05 in temporary partial disability benefits and for the intermittent periods of lost time.
- The amount paid in temporary partial disability benefits and lost time satisfied the Petitioner's periods of lost time and temporary partial disability.
- That the \$17,014.05 paid by Respondent to Petitioner should have been noted at the arbitration hearing and included as part of the Arbitrator's Decision as a credit for Respondent for benefits paid.

Based on the above, the Commission finds that the \$17,014.05 was for Petitioner's periods of temporary partial disability and lost time and cannot be used as a credit against the permanent partial disability award. The Decision of the Arbitrator is otherwise affirmed and adopted.

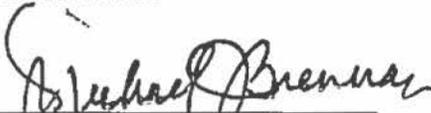
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on September 4, 2013, is hereby clarified as stated above, and otherwise affirmed and adopted.

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

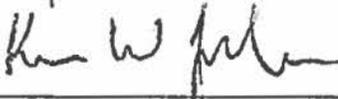
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

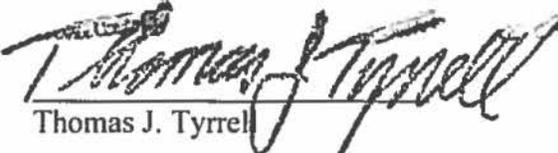
DATED: SEP - 4 2014
O-07/08/14
MJB/ell
052



Michael J. Brennan



Kevin W. Lamborn



Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0561

PHIL, CARELLO

Employee/Petitioner

Case# 05WC027417

NORTHFIELD TOWNSHIP DISTRICT #225

Employer/Respondent

On 9/4/2013, 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 0.05% 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:

0878 COLLISON & O'CONNOR LTD
E K COLLISON II
19 S LASALLE ST SUITE 1400
CHICAGO, IL 60603

1120 BRADY CONNOLLY & MASUDA PC
MATTHEW P SHERIFF ESQ
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<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
ARBITRATION DECISION
NATURE AND EXTENT ONLY

14IWCC0561

Case # 05 WC 27417

Consolidated cases: None

PHIL CARELLO

Employee/Petitioner

v.

NORTHFIELD TOWNSHIP DISTRICT #225

Employer/Respondent

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 **Dave Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **August 1, 2013, and August 28, 2013**. By stipulation, the parties agree:

On the date of accident, **March 10, 2005**, 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 **\$39,848.24**, and the average weekly wage was **\$766.31**.

At the time of injury, Petitioner was **53** years of age, *single* with **zero** dependent children.

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

Respondent shall be given a credit of **\$N/A** for TTD, **\$N/A** for TPD, **\$N/A** for maintenance, and **\$N/A** for other benefits, for a total credit of **\$N/A**.

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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 \$459.79/week for a period of 200 weeks as provided in Section 8(d)2 of the Act because the injuries sustained caused the **partial disability of said Petitioner to the extent of 40% thereof.**

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 G. Rame
Signature of Arbitrator

September 4, 2013
Date

SEP 4 - 2013

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ILLINOIS WORKERS' COMPENSATION COMMISSION

Phil Carello
Employee/Petitioner

Case # 05 WC 27417

v.

Consolidated cases: None

Northfield Township District 225
Employer/Respondent

RIDER

I. Statement of Facts

On March 10, 2005 the petitioner, 53 years of age at the time, was working for the respondent as the assistant boy's gymnastics coach and the assistant girl's gymnastics coach. Petitioner testified that he had a significant past history in gymnastics, including high school, as well as junior college and at the NCAA level. Petitioner also testified that he had attended numerous clinics and workshops regarding gymnastics. The petitioner testified that practices would occur usually 5-6 days per week in season, and that the students would be engaged in 2-3 separate events per day which would include teaching and spotting which the petitioner testified is a very "hands on" activity.

The petitioner testified that on the date of loss, he was spotting a gymnast on the floor exercise when the student performed two back flips and on the second back flip he had not rotation which required the petitioner to reach in with his left arm to attempt to support the student which resulted in his upper left arm being kicked by the heel of the student. The petitioner testified that he is right hand dominant and usually writes

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with his right hand. The petitioner testified that immediately upon the incident he felt great pain in the biceps region of his left arm, and noticed that his biceps had appeared to him to have "rolled up" near his shoulder.

In the initial Emergency Room visit, the petitioner presented to Dr. FitzSimons at Illinois Bone & Joint complaining of pain in the left arm and giving a history as noted above. It was the doctor's impression that he believed the petitioner had suffered a rupture of the biceps tendon, though he requested an MRI to confirm this diagnosis.

On March 16, 2005 the petitioner presented to Highland Park Hospital for an MRI of the left arm which confirmed a complete tear of the distal biceps tendon. (P.X. 1).

On March 24, 2005, the petitioner was seen by Dr. Craig Phillips at Illinois Bone & Joint, upon referral from Dr. FitzSimons. The doctor reviewed the MRI and also examined the petitioner and recommended surgical repair. (P.X. 2).

On March 30, 2005 the petitioner presented to Evanston Northwestern Hospital for surgery under the direction of Dr. Phillips. The pre and post-operative diagnosis was left biceps tendon tear, and the procedure performed was a tendon tenotomy, tendon repair using bone tunnel technique. (P.X. 2).

The petitioner returned to Dr. Phillips for follow-up following the surgery, and on April 19, 2005 the petitioner noted that he had been "doing very well" and had begun once a week therapy. On examination, the petitioner had complete flexion of the elbow and lacked only about 15° of extension. (P.X. 2).

The petitioner continued with the therapy and returned to Dr. Phillips on May 12, 2005 indicating he was doing well, and relatively pain free,

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though was having some problem with supination. Because of this complaint, the doctor requested an x-ray which showed significant heterotopic ossification. Petitioner was advised to continue therapy and advised that he would likely need excision of that bone growth in the future. (P.X. 2).

The petitioner completed his therapy and returned to Dr. Phillips on June 23, 2005 exhibiting full flexion and extension as well as full strength in the elbow, though the forearm supination was still limited. X-rays taken on that date continued to show the excess bone formation and the petitioner was advised to return in 2 months for a repeat x-ray to decide whether surgery would be appropriate. (P.X. 2).

The petitioner returned to Dr. Phillips on August 23, 2005 now 4½ months post biceps tendon repair, indicating full range of motion other than the slight limitation of the forearm supination. The x-rays taken on that date noted a small decrease in the bone formation and Dr. Phillips recommended petitioner continue taking Indocin to see if the bone formation could be reduced without surgery. (P.X. 2).

The petitioner returned to Dr. Phillips on October 25, 2005 now 7 months post surgery continuing to complain of supination problems. The doctor again recommended medication to attempt to deal with this, and the petitioner agreed. (P.X. 2).

The petitioner returned to Dr. Phillips on December 15, 2005 continuing to complain of the limited supination of the forearm, and both the petitioner and physician decided to undergo surgical removal of the bone formation. (P.X. 2).

On January 13, 2006 the petitioner presented to Evanston Northwestern Hospital for the surgical procedure under the direction of Dr.

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Phillips. The pre and post-operative diagnosis was heterotopic ossification with rotation contracture of the left elbow, and the procedure performed on that date was radial nerve neurolysis, radical excision of the heterotopic bone and capsule at the left elbow joint. (P.X. 2).

The petitioner returned to Dr. Phillips on several occasions in early and spring of 2006 at which time the petitioner felt he was experiencing "significant improvement", and on examination the petitioner had full elbow flexion and extension and forearm rotation was significantly improved.

On October 31, 2006 the petitioner presented to Dr. Paul Papierski for an independent medical examination at the request of the respondent. Following a review of the medical treatment records and examination of the petitioner, Dr. Papierski was of the opinion that the petitioner's treatment had come to an end by that point, and that due to the fact that the range of motion of the left elbow was markedly improved from a pre-operative state and that the strength testing was generally normal on examination, that the petitioner should not have any restriction at that time. The doctor also felt that maximum medical improvement would likely not be until January of 2007, as usually it takes approximately 1 year post the surgery which was performed in January of 2006. (R.X. 1).

On February 1, 2007 the petitioner returned to Dr. Phillips for examination now approximately one year post surgery, and it showed full flexion and extension as well as full pronation and 85° of supination with no pain. Strength also was 5/5. (P.X. 2).

On August 27, 2007 the petitioner underwent a functional capacity evaluation which indicated some minor inconsistencies, though the ultimate recommendation was for the petitioner to be allowed to return to coaching

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gymnastics except for those activities involved with spotting, essentially breaking the fall, lifting or carrying of athletes. (P.X. 4).

On July 2, 2008 a report was authored by Dr. Papierski after he had the opportunity to review the medical records from his previous IME to that date, and he indicated that he did not feel there was any need for any additional treatment of the petitioner's left arm/elbow. Dr. Papierski understood what the FCE said, though indicated that it would be reasonable for the petitioner to attempt to return to any type of coaching activity, as noted the petitioner was comfortable in performing spotting and coaching activities and it would be reasonable to possibly return with more experienced athletes or with some sort of assistance. (R.X. 1).

The petitioner also underwent an independent medical examination with Dr. Vender at the request of the petitioner's attorney, and it was Dr. Vender's opinion that due to the fact that he had some limitation in his left forearm supination, as well as the restrictions of the FCE, that the petitioner could not return to coach gymnastics if spotting was involved as part of the job description. (R. X. 1).

The petitioner called an additional witness in this case, Mr. Stephen Gale, who also works as a gymnastics coach, and has been involved in gymnastics since 1963. It was Mr. Gale's opinion that you could not be a coach in gymnastics if you were not able to spot the athletes, as spotting is "critical" to performance of those duties.

The petitioner testified that on May 25, 2005, approximately 2 months following the incident, he presented a resignation letter to Mr. Stephen Rockrohr, the Athletic Director with District 225. This letter advised that petitioner was resigning as girl's gymnastics coach and as assistant boy's

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gymnastics coach due to the injuries sustained during that year's gymnastics season.

Mr. Rockrohr testified via deposition that from the date of the incident to the present date, the petitioner has never given him anything in writing regarding his medical restrictions and requested accommodation regarding any sort of head or assistant coaching position. (R.X. 2). Mr. Rockrohr also testified to how the coaching positions are filled, namely they are listed on the website, and he receives applicants. At that time he interviews the applicants and hires the appropriate individual. Mr. Rockrohr testified that at no time from the date of accident to the present date has the petitioner applied for any coaching positions, either assistant or head, in any sport. (R.X. 2).

The petitioner testified that he has also been a teacher with the respondent for the past 14 years in special education, a position which he still holds today. In addition to a teaching job, the petitioner testified that he also works as a gymnastics official for meets, and has been certified in that capacity for the past 18 years.

II. Conclusions of Law

With respect to the issue of the nature and extent of Petitioner's permanent disability, the Arbitrator notes that Petitioner has sought an award of a wage differential under section 8(d-1) of the Act. Petitioner claims that he is unable to return to gymnastics coaching, a loss of income of approximately \$15,000.00 per year. However, the facts demonstrate that Petitioner did not make any effort to replace this lost income with any other activity, either coaching another sport or applying to perform some other additional teaching activity, such as driver's education. Accordingly,

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the Arbitrator finds that Petitioner failed to prove he is entitled to a wage differential under section 8(d-1) of the Act.

However, the Arbitrator does note that the significant impairment of Petitioner certainly effects him more than a loss of use of the arm. Therefore, after considering the entire record, the Arbitrator finds that Petitioner is permanently disabled to the extent of 40% under section 8(d)2 of the Act.