

11 WC 8754
14 IWCC 0581

STATE OF ILLINOIS) BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF COOK)

Torrie Harper,
Petitioner,

vs.

NO. 11 WC 8754
14 IWCC 0581

Village of University Park,
Respondent,

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Order of the Commission dated July 17, 2014, having been filed by Respondent. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order dated July 17, 2014 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein. The parties should return their original Orders to Commissioner Mario Basurto.

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

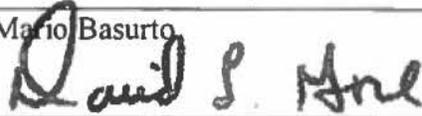
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a notice of Intent to file for Review in the Circuit Court.

DATED: OCT 31 2014

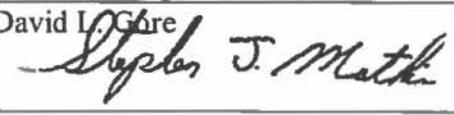
MB/jm
43



Mario Basurto



David L. Gore



Stephen Mathis

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Torrie Harper,
Petitioner,

vs.

NO: 11 WC 8754
14 IWCC 0581

Village of University Park,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Respondent appeals the decision of Arbitrator Falcioni finding that Petitioner sustained an accidental injury on October 18, 2013 (sic- should be 2010). As a result Petitioner was temporarily totally disabled from March 25, 2011 through September 7, 2011 and October 11, 2011 through November 30, 2011 for 33 weeks (sic-should be 31 weeks) under Section 8(b) of the Illinois Workers' Compensation Act, is entitled to \$40,090.94 in medical expenses under Section 8(a) of the Act and permanently lost 20% of the use of his left leg under Section 8(e) of the Act. The issues on Review are whether Petitioner sustained an accidental injury arising out of and in the course of his employment on October 18, 2010 whether a causal relationship exists between Petitioner's current condition of ill-being and the alleged October 18, 2010 work accident, and if so, the extent of temporary total disability and the nature and extent of Petitioner's permanency. The Commission, after considering the entire record, finds Petitioner sustained an accidental injury arising out of and in the course of his employment on October 18, 2010. The Commission further finds Petitioner's condition of ill-being was causally connected to the October 18, 2010 work accident up to and including October 29, 2010 but was not causally connected thereafter, for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSION OF LAW

The Commission finds:

1. Petitioner testified he was the assistant manager of an animal park. His duties consisted of giving tours, letting the animals out, cleaning up after the animals, and dealing with their food. On October 18, 2010 his boss told him to lock all of the animals on the outside gate/to lift all of the doors up so the kids could get a glimpse of the animals. As he opened the bull's door, the bull looked like it was coming straight through the gate and coming toward the families on the tour. Petitioner said he stepped down onto the soil with his arms outstretched and he twisted/popped his left knee. The next morning he called Ms. Kelly Childress, the director, about the accident. He went to University of Chicago's emergency room.
2. The October 20, 2010 University of Chicago emergency records shows Petitioner reported he was experiencing left knee pain. He further reported that he awoke with the pain around 3 a.m. and there was no trauma. He reported that he has a history of dislocating his knee in past but it popped back in place. Petitioner's left knee x-ray showed trace knee joint effusion. Petitioner was diagnosed with a knee sprain. It was further noted that there was no trauma and no evidence of dislocation. Petitioner was instructed to follow up with his doctor in the next two days.
3. On October 22, 2010 Petitioner saw Dr. Yallavarthi and told him he twisted his left knee while he was sleeping on a couch two days ago at his girlfriend's place in the city. He heard something pop and went to the emergency room. He denied any direct trauma or fall. Dr. Yallavarthi opined that Petitioner possibly had a sprained left knee. He gave him a prescription for a knee brace and crutches and instructed him to follow up in one week.
4. On October 29, 2010 Petitioner followed up with Dr. Yallavarthi. At that time Petitioner reported that his pain had completely resolved and he is anxious to return to work. On physical examination, Dr. Yallavarthi noted that there was no apparent distress. There was no swelling redness or increased warmth in the left knee. Petitioner's range of motion for the left knee was normal. There was no instability. His drawer sign was negative. Dr. Yallavarthi diagnosed Petitioner as having a left knee strain that was resolving. He instructed Petitioner to continue to use the knee brace. He released him back to work on November 1, 2010 and told him if he has any further problems to contact their office.
5. On November 2, 2010 a Form 45 report of accident report was completed. In the history section it states Petitioner was giving a tour to a group of kids, try to get the ox back in the fence and away from the tour group when he twist and sprain his left knee. He further stated that his bone popped-out and he dislocated his knee. An undated/unsigned Supervisor's report indicates that the date of the accident was October 20, 2010. It further states that he had no idea what happened. He received a telephone call on Wednesday, October 20, 2010 from Petitioner that his leg was in pain and he would not be coming to

work. He suggested that Petitioner go to the doctor. Then Petitioner stated he hurt it on Monday at work in the barn trying to put the bull up. The bull got out of fence and was coming near a tour group.

6. On February 21, 2011 Petitioner returned to see Dr. Yalavarthi. Petitioner stated he lifts a lot of weights at work and had pain in left knee that started a couple of weeks ago. He had a similar episode in October of 2010 and it resolved with conservative management. He states he has not fallen or twisted his knee recently but his regular work is making his knee hurt and it is difficult to go up and down stairs. He states his leg is giving out when he is stepping down. A left knee MRI was ordered and Petitioner was instructed to wear a brace, was prescribed medication and was instructed to use ice/heat on his left knee.
7. The February 22, 2011 left knee MRI was found to be negative.
8. On March 3, 2011 Petitioner saw Dr. Payne. Petitioner provided a history that while working on his job an ox was coming to get in the gate. The patient tried to push the ox back and he injured his left knee. Dr. Payne diagnosed Petitioner with a left knee medial meniscus tear.
9. An addendum MRI report was issued. It stated that, upon request of Dr. Payne, the MRI images were re-reviewed by Dr. Mishra on March 4, 2011 and there was there was no evidence of a medial meniscal tear. The findings were discussed with Dr. Payne on March 4, 2011.
10. On March 18, 2011 Petitioner followed up with Dr. Yallavarthi. Dr. Yallavarthi noted that Petitioner has been experiencing pain off and on since he twisted his left knee in October of 2010. Petitioner reported he is a laborer and he carries lots of heavy loads and feels like his knee is giving out. Dr. Yallavarthi diagnosed Petitioner as having left knee internal derangement.
11. On March 25, 2011 Dr. Payne performed surgery on Petitioner's left knee consisting of a left knee arthroscopy with partial medial meniscectomy and limited chondroplasty. The post operative diagnosis was a left knee medial meniscal tear as well as chondromalacia.
12. Petitioner underwent post operative physical therapy at ATI. On April 16, 2011 Petitioner told the therapist that he was conducting a Hearst Fort Tour when an ox came out of a stall. The people were freaked out and when he tried to plant knee he twisted it into the ground.
13. On April 29, 2011 Petitioner underwent an evaluation by Dr. Garelick. At that time Petitioner reported that he had sustained an injury on October 18, 2010 when he was

taking some adults and their children around for a tour. He stepped off a platform onto the floor of the ox's pen and twisted his left knee. On October 29, 2010 he told Dr. Yallavarthi that his pain was completely resolved. His examination at that time demonstrated no swelling, redness or increased warmth, normal range of motion and no instability. He was given a note to return to work on November 1, 2010 and was discharged from care. Petitioner alleges his knee continued to bother him from time to time but he was eager to get back to work in order to provide for his family. Due to persistent pain he followed up with Dr. Yallavarthi on February 21, 2011 at which time he said he had left knee pain that had started a couple of weeks ago. However, there was no intervening injury. He was sent for an MRI which was completed on February 24, 2011 and it was read as normal. Petitioner was then seen by Dr. Payne who read the MRI and interpreted it as demonstrating a medial meniscus tear. Dr. Payne spoke with Dr. Mishra, the radiologist, who felt that there was no meniscus tear. Petitioner underwent a left knee arthroscopy surgery on March 25, 2011. Dr. Garelick noted that unfortunately he had no operative report or MRI to review and as such his report is somewhat incomplete. He opined that Petitioner had reached maximum medical improvement on October 29, 2010 when he was released from care by Dr. Yallavarthi. Dr. Garelick stated that given the fact that Petitioner was completely asymptomatic as of October 29, 2010 he believed that it was more probably true than not that the injury that necessitated surgery occurred subsequent to October 29, 2010 office visit with Dr. Yallavarthi. He further opined that it is more probably true than not that because Petitioner was completely asymptomatic and returned to full duty work on October 29, 2010 his current complaints are due to some sort of subsequent intervening condition. Lastly he stated that given that there was no reported work injury and subsequent injury, the need for surgery should be considered as non work-related.

14. During a July 26, 2011 follow up appointment with Dr. Payne, Petitioner reported that his knee gave way and he fell down on Saturday while he was climbing the stairs.
15. In an August 10, 2011 IME Addendum Report, Dr. Garelick stated that since his initial evaluation he had been supplied with Petitioner's surgery report, MRI and additional medical records. Specifically, he was supplied with the October 20, 2010 emergency room records, the February 22, 2011 MRI report and the March 25, 2011 surgery records. At the time of the initially evaluation he needed to rely on Petitioner's testimony. Since then he has reviewed the MRI and found it shows no evidence of a medial or lateral meniscus tear. He commented that while the Petitioner described a work injury to his left knee on October 18, 2010, his history was not borne out by the medical records. Specifically, during the University of Chicago emergency room visit on October 20, 2010 Petitioner provided a medical history that he awoke from a sleep while staying at his girlfriend's house and he had left knee pain. More specifically, Petitioner did not describe any work-related injury. Further he told Dr. Yalavarthi on October 22, 2010 that he

twisted his left knee while sleeping on his girlfriend's couch in the city. He did not describe any type of injury occurring at the petting zoo. Therefore, his conclusion is that there is no objective evidence to support Petitioner's claim of a work related injury.

16. On August 23, 2011 Dr. Payne noted that Petitioner is going to return to work on September 23, 2011. On September 13, 2011 Dr. Payne noted that Petitioner is going to return to work on September 20, 2011 with modified duties of no lifting , pushing or pulling over 50 pounds.
17. On October 11, 2011 Petitioner reported to Dr. Payne that he is experiencing tightness and pain from left knee to his hamstrings since being back at work seven days ago. He reported that he is experiencing popping and clicking. If he sits too long, he gets cramping in his hamstring. On examination, Dr. Payne noted that Petitioner is tender to touch in the thigh. His pain is relieved with hypodrocodone liquid. He noted that Petitioner had not attended work conditioning since September 18, 2011. At that time, Dr. Payne ordered another MRI to rule out an adductor/ hamstring tear. He also prescribed physical therapy and medication.
18. On October 1, 2011 Dr. Payne noted that the Petitioner is complaining of left knee pain. The Petitioner reported that two days ago he slipped on the porch and fell and injured his left knee while at work. Dr. Payne noted that Petitioner re-injured his left knee. He ordered physical therapy and told Petitioner to return in two to three weeks for a recheck. He placed Petitioner on light duty. He indicated that Petitioner could return to work with restrictions of no lifting pushing or pulling over 50 pounds.
19. On November 29, 2011 Petitioner again saw Dr. Payne who noted that Petitioner is reporting he is without any complaints and he says his left knee feels much better. Dr. Payne noted that Petitioner is doing well and he released him to return to regular duties at work.
20. Petitioner said his supervisor was not present on October 18, 2010 and he was the acting supervisor. Petitioner said he went to the emergency room at University of Chicago on October 20, 2010 which was the same day he called Ms. Childress and said it was the bull that caused the accident. He agreed that at the emergency room he said he had knee pain upon awakening. He did not tell the emergency room doctor that he was injured when he woke up. Rather, he told him that he was in pain when he woke up. He thinks on October 22, 2010 Dr. Yalavarthi misconstrued the events as to how the accident happened. He denied telling Dr. Yalavarthi that he twisted his left knee while he was sleeping two days ago at his girlfriend's house in the city. Rather, he told Dr. Yalavarthi that he suffered an injury at work. He thinks that on April 29, 2011 Dr. Garelick misconstrued the work accident. He does not recall telling him that he stepped off a

platform onto the floor of an ox pen. He denied that on October 29, 2010 he told Dr. Yalavarthi that his knee pain completely resolved and that he wanted to go back to work. He subsequently testified that he wanted to go back to work on October 29, 2010 because they were behind on their bills and they were not getting any money coming in. He told the doctor that his pain resolved because he needed the money. He testified that after he returned to work and through March of 2011 he was not pain free. He guesses that the statement that he made to Dr. Yalavarthi that his knee pain had completely resolved was untrue. Petitioner said he was terminated by Respondent on April 11, 2013.

21. Petitioner entered PX1, a Blue Cross Blue Shield statement indicating that \$3,949.62 was bill for the October 20, 2010 medical services provided to the Petitioner by the University of Chicago.

Based on the above the Commission finds Petitioner sustained an accidental injury arising out of and in the course of his employment on October 18, 2010. The Commission further finds Petitioner's condition of ill-being was causally connected to the October 18, 2010 work accident up to and including October 29, 2010 but was not causally connected thereafter.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$3,949.62 for medical expenses under §8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner failed to prove a causal relationship exists between the accident of October 18, 2010 and Petitioner's condition of ill-being after October 29, 2010 and as such Petitioner is not warranted any compensation thereafter related to the above captioned claim.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner failed to prove he sustained any permanent disability as a result of the October 18, 2010 work accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit in the amount of \$15,201.47 under §8(j) of the Act' provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

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

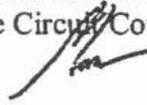
The party commencing the proceedings for review in the Circuit Court shall file with the Commission a notice of Intent to file for Review in the Circuit Court.

DATED: **OCT 31 2014**

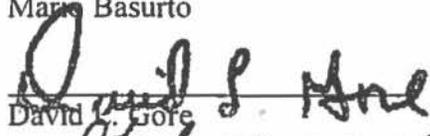
MB/jm

6/5/14

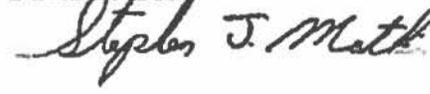
43



Mario Basurto



David S. Gore



Stephen Mathis