

11WC44064
14IWCC0620

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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 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 checked="" type="checkbox"/> Modify <input type="text" value="up"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Juliet Iloanusi,
Petitioner,

vs.

NO. 11 WC 44064
14IWCC0620

Jackson Park Hospital,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the parties herein and due notice given, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, penalties, prospective medical care and benefit rates, and being advised of the facts and law, modifies 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation, medical benefits 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).

Both parties seek review of the decision. Petitioner claims error on the denial of prospective medical and penalties and fees. Respondent claims error on the rulings concerning causal connection, medical expenses and the temporary total disability range.

The Petitioner is a registered nurse working on the psychiatric unit at Respondent, Jackson Park Hospital. On July 21, 2011 the Petitioner claims injury occurred when she and other staff were attempting to restrain a schizophrenic, mentally ill patient who was threatening another patient. They were attempting to medicate the patient by injection when the patient kicked the Petitioner in the chest and threw her backwards to the floor causing injury to her lower back and right arm and hand.

Prior to the accident Petitioner had no pain or symptoms to her right hand, arm or low back. She went to the Emergency Department following the injury with sharp pain in her low back and aching in her right hand. The pain in her right hand was in her palm, thumb and extending up to her wrist.

She was referred by the corporate health clinic at Jackson Park to Dr. Artelio Watson. Dr. Watson ordered an EMG of her right hand and performed an epidural injection in the Petitioner's lower back. In November, 2011 Dr. Rhode gave her an injection into the carpal tunnel of her right hand and treated her lower back before referring Petitioner to Dr. Rinella in March, 2012.

Dr. Rinella ordered an MRI on her lower back and referred her to Dr. Abusharif for pain management. Dr. Abusharif treated her lower back with injections and ordered physical therapy. Petitioner receives injections every 3 months and they supply relief for about 2 months.

At trial Petitioner testified that she had pain in her right calf and that as of two weeks prior to hearing it has been radiating upwards through the thigh and into the right buttock. The pain is worse when she stands. If she tries to bend down she has a sharp pain in her lower back. At hearing the Petitioner denied another accident since the work injury that caused the pain to now radiate up from her calf. She saw Dr. Rinella and he recommended another MRI for the lower back. Dr. Rinella also recommended X-rays to be done while Petitioner bending forward and backward to determine if movement destabilizes the lower back. Petitioner has pain if she stands more than one or two hours. The pain will then radiate from her back to her right leg. She takes Hydrocodone and Tramadol every 6 hours. Petitioner has never been offered light duty by Jackson Park Hospital.

It is not disputed that the carpal tunnel injury sustained by the Petitioner was the direct result of the July 21, 2011 work accident. It is undisputed that having failed conservative treatment that the carpal tunnel release surgery performed on May 19, 2012 was reasonable and necessary to treat Petitioner's symptoms. It is not disputed that post-operative physical therapy was entirely reasonable and necessary to rehabilitate Petitioner's hand. It is undisputed that the symptoms of de Quervain's syndrome declared themselves during the time that the Petitioner was in therapy following her carpal tunnel surgery. It was noted by Petitioner's treating

physician Dr. Rhode that the de Quervain syndrome was a complication of the necessary physical therapy following the carpal tunnel release.

Dr. Richard Lim M.D., Respondent's Section 12 Examiner performed a medical evaluation on September 28, 2012 (RX3) at which time he diagnosed De Quervain's tenosynovitis. In his report he states: "This does not appear to be a direct result of her injury however (it) may have developed as a result of the therapy being done for her carpal tunnel syndrome." In a preceding paragraph in his report Dr. Lim prefaces his opinions as being "Based upon a reasonable degree of Orthopedic certainty..."

Petitioner underwent surgery for carpal tunnel syndrome and complained of increasing pain with physical therapy. Dr. Rhode diagnosed Petitioner with De Quervain's tenosynovitis. Dr. Rhode did additional surgery to relieve the De Quervain's syndrome on May 14, 2013. The Petitioner's pain has improved but remains in the thumb of her right hand. She is right hand dominant. She has had injections in her right thumb subsequent to the surgery.

The case law does not require that Petitioner show a direct relationship between a new injury that occurs in the course of treatment for a work related injury. In *International Harvester Co. v. Industrial Commission* 46 Ill.2d 49 the Supreme Court cited to *Republic Steel Corp. v. Industrial Commission* 26 Ill.2d 32,45 holding:

"To come within the statute the employee must prove that some act or phase of the employment was a causative factor in the ensuing injury. He need not prove it was the sole causative factor nor even that it was the principal causative factor but only that it was a causative factor in the resulting injury."

But for, the directly related carpal tunnel injury and the surgery and the therapy related thereto the de Quervain syndrome would probably not have developed.

The Lim report of February 15, 2013 makes the following statement:

"At this point, the patient should be able to return back to her work as a nurse. She would benefit from being placed into a right wrist splint with thumb extension. She may have difficulties restraining patients if necessary but certainly she should be able to return to work with limited use of her upper extremity."

The Commission finds that the recommendations of Dr. Lim concerning the use of a right wrist splint with thumb extension is not reasonable. Nurses perform multiple functions daily related to patient care that would be impossible wearing a splint on the dominant arm e.g. giving an injection, starting an IV line and restraining an agitated patient to name only a few.

Petitioner is complaining that what is bringing her to trial is her inability to work due to her right hand and her low back. Petitioner wants to return to full-duty at Respondent hospital when she gets better.

The Arbitrator denied prospective medical treatment having found that no prospective medical was prescribed. The August 9, 2013 note by Dr. Anthony Rinella, Illinois Spine & Scoliosis Center, however, recommends Petitioner receive an upright X-Ray of the Lumbar Spine, AP and Lateral views to determine whether there is instability with movement. The decision of the Arbitrator is hereby modified to order payment for this evaluation. In addition, as Petitioner points out in her brief, Dr. Rhode ordered a course of physical therapy on July 31, 2013. The decision of the Arbitrator is hereby modified to authorize the radiology studies and the physical therapy recommended by Drs. Rinella and Rhode and to pay for same.

The Commission hereby denies the Petitioner's claim for penalties and attorney's fees pursuant to Sections 16, 19 (k) and 19 (l) of the Act there being no showing that the conduct of the Respondent was unreasonable and vexatious.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$757.21 per week for a period of 109 6/7th weeks, commencing July 22, 2011 through August 28, 2013, that being the period of temporary total incapacity for work under §8(b), 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, medical benefits or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay for medical services incurred from July 21, 2011 to August 28, 2013, as provided in Sections 8(a) and 8.2 of the Act. Respondent is to pay any unpaid balances with regard to said medical expenses directly to Petitioner. Respondent shall pay any unpaid, related medical expenses according to the fee schedule or the negotiated rate and shall provide documentation with regard to said fee schedule or negotiated rate calculations to Petitioner. Respondent is to reimburse Petitioner directly for and out-of-pocket medical payments.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay to Petitioner the costs to perform an upright x-ray of the lumbar spine, AP and lateral views to determine whether there is instability with movement as recommended by Dr. Anthony Rinella on August 9, 2013. Respondent shall also authorize and pay for the cost of the physical therapy recommended by Dr. Rhode for Petitioner's right hand.

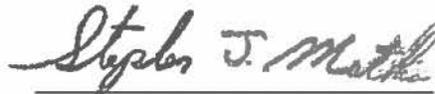
IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written 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 \$75,000.00. 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.

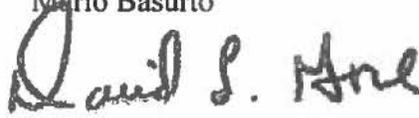
DATED: SEP 12 2014
SJM/msb
o-6/05/2014
44



Stephen J. Mathis



Mario Basurto



David L. Gore

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

ILOANUSI, JULIET

Employee/Petitioner

Case# 11WC044064

JACKSON PARK HOSPITAL

Employer/Respondent

MIWCC0620

On 11/15/2013, 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 0.09% 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:

0293 KATZ FRIEDMAN EAGLE ET AL
CHRISTOPHER MOSE
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

4027 ODELSON & STERK
MATTHEW J DALEY
3318 W 95TH ST
EVERGREEN PARK, IL 60805

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

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|-------------------------------------|---------------------------------------|
| <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
19(b)

Juliet Iloanusi
Employee/Petitioner

Case #11 WC 44064

v.
Jackson Park Hospital
Employer/Respondent

14IWCC0620

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 **Milton Black**, Arbitrator of the Commission, in the city of **Chicago**, on **August 28, 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. 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: **prospective medical treatment**

FINDINGS

On the date of accident, **July 21, 2011**, 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 **\$40,889.29**; the average weekly wage was **\$1135.80**.

On the date of accident, Petitioner was **40** years of age, *single* with **3** dependent children.

Respondent *has partially* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$53,870.06** for TTD, **\$0** for TPD, **\$0** for maintenance, **\$0** for other benefits, and **\$4,770.36** for advanced permanent partial disability benefits for a total credit of **\$58,640.42**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has partially* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$53,870.06** for TTD, **\$0** for TPD, **\$0** for maintenance, **\$0** for other benefits, and **\$4,770.36** for advanced permanent partial disability benefits for a total credit of **\$58,640.42**.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$757.21/week** for **109 6/7th** weeks, commencing **July 22, 2011** through **August 28, 2013**, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from **July 22, 2011** through **August 28, 2013**, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall be given a credit of **\$53,870.06** for temporary total disability benefits that have been paid and **\$4,770.36** for advanced permanent partial disability benefits that have been paid.

Respondent shall pay for medical services incurred from **July 21, 2011** to **August 28, 2013** only, as provided in Section 8(a) of the Act. Respondent is to pay any unpaid balances with regard to said medical expenses directly to Petitioner. Respondent shall pay any unpaid, related medical expenses according to the fee schedule or the negotiated rate and shall provide documentation with regard to said fee schedule or negotiated rate calculations to Petitioner. Respondent is to reimburse Petitioner directly for any out-of-pocket medical payments.

Petitioner's claim for penalties and attorneys fees is denied, because Respondent's disputes are reasonable.

Petitioner's claim for prospective medical treatment is denied, because no medical treatment has been prescribed.

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.

Milton Black

Signature of Arbitrator

November 14, 2013

Date

NOV 15 2013

ICArbDec19(b)

FACTS

Petitioner is a registered nurse. At the time of her injury she was working in the mental health unit of Respondent hospital. Her duties included making hourly rounds, administering medications, and ensuring patients' safety. Rounds would take about 30 minutes. The time between rounds were used to complete paperwork. Three times per shift she would take medication in a cart to the patients. Petitioner testified that the cart felt like it weighed about 20 pounds and was difficult to push, even with both hands

Petitioner testified that she worked 12 hour shifts three days per week. Petitioner testified that overtime was offered five days a week and that she could say yes or no to the offer of overtime. Petitioner testified that if someone did not come in after her shift to replace her, then she was required to stay beyond her shift, which would occur three times per week. Petitioner testified that there were state inspections twice a year, requiring her to work an extra and mandatory 12 hour shift.

Petitioner testified that she was injured on July 21, 2011 when an agitated paranoid schizophrenic patient was threatening to kill another patient. A coworker put the agitated patient on the floor to restrain her. Petitioner was holding onto both legs of the patient. Another nurse was attempting to inject a sedative. The agitated patient flipped a leg and kicked Petitioner in the chest. Petitioner then fell backwards landing on her back and her

outstretched right hand. Petitioner testified that she experienced immediate low back pain and right hand pain. Petitioner testified that she had no prior low back pain or right hand pain.

Petitioner went to the hospital emergency room and received treatment at Health Benefits Pain Management. Medical treatment included two lumbar epidural steroid injections, a lumbar spine MRI, and EMG testing. The EMG revealed right hand carpal tunnel syndrome. Petitioner's symptoms persisted.

Petitioner then sought treatment with Dr. Blair Rhode of Orland Park Orthopedics. She received a wrist injection and was ordered off of duty. Dr. Rhode diagnosed right hand carpal tunnel syndrome and provided a cortisone injection into the right carpal tunnel. Dr. Rhode referred Petitioner to Dr. Anthony Rinella for her low back pain.

Dr. Rhode performed an endoscopic right carpal tunnel release. Thereafter, Petitioner began postsurgical physical therapy. Dr. Rhode noted that Petitioner had a small nodule over the lateral aspect of her wrist, which Petitioner stated was subsequent to therapy. Dr. Rhode recommended conservative treatment, however Petitioner's symptoms persisted. Dr. Rhode ultimately diagnosed de Quervain's syndrome and provided an injection. Thereafter, Dr. Rhode recommended a surgical de Quervain's release. Dr. Rhode noted that the symptoms were secondary to an injury while at work.

Dr. Rinella examined Petitioner. He noted that a prior lumbar spine MRI of October 11, 2011 was of very poor quality. Dr. Rinella ordered a new lumbar spine MRI, a lumbar spine CT, and a cervical spine MRI. The lumbar spine MRI was unremarkable. The CT scan showed prominent sclerosis involving the iliac portion into a lesser degree the inferior sacral portion of the spine. The cervical spine MRI showed disc protrusions at C3 - C4 and C4 - C5 resulting in mild central stenosis as well as hypointense structure posterior to C4 which likely represented focal thickening and/or ossification of the posterior longitudinal ligament resulting in additional mild central stenosis posterior to the C4 central body. Dr. Rinella referred Petitioner to Dr. Faris Abusharif for low back pain management.

Dr. Abushariff examined Petitioner. He ordered physical therapy and administered epidural low back injections. The injections alleviated the pain, but the symptoms returned. After initiating physical therapy, Petitioner developed the painful bump on the back of her wrist and was diagnosed with the de Quervain's syndrome. Dr. Abushariff recommended a back brace. Petitioner was eventually discharged from physical therapy.

Dr. Richard Lim examined Petitioner on three occasions at Respondent's request. In his first report, Dr. Lim opined that Dr. Lim opined Petitioner sustained a work-related lumbar strain and right-sided carpal tunnel. In his second report, Dr. Lim opined that Petitioner was overreacting to pain symptoms, that the lumbar strain should have been resolved, and that the de Quervains syndrome was not a direct result of her injury but may

have developed as a result of carpal tunnel syndrome therapy. In his third report, Dr. Lim opined that Petitioner's de Quervains syndrome was not a direct result of her injury and that she should be able to return to work with limited use of the right upper extremity.

Petitioner testified that she continues to have symptoms related to her de Quervain's and low back injuries. Petitioner testified that she is unable to work due to her pain. Petitioner testified that she is capable of standing for 1 to 2 hours without pain. Petitioner testified that there is severe aching and pain in the webbing between her right thumb and right forefinger. She has never returned to work. She claims continuing temporary total disability benefits. Respondent claims that liability for temporary total disability benefits should be paid through March 2, 2013 and not thereafter.

Michelle Pope testified for Respondent. She testified that she is Respondent's recruitment manager and that she is responsible for the hiring of staff except physicians. She testified that overtime is not mandatory, that employees must get pre-approval to work overtime, that employees are not penalized for refusing overtime, and that nurses are not required to work overtime for state inspections.

CAUSATION

The parties are in agreement that Petitioner's low back injury and right carpal tunnel syndrome injury are related to the incident of July 21, 2011.

What is in dispute is whether or not Petitioner's de Quervains tenosynovitis are related to the incident of July 21, 2011. The Arbitrator finds that it is. This finding is based upon Petitioner's testimony, the corroborating medical records, the sequence of events following the original injuries, and the consistent medical opinions. The Arbitrator notes that Dr. Lim opined that Petitioner's injury but may have developed as a result of carpal tunnel syndrome therapy and that Petitioner should be able to return to work with limited use of the right upper extremity.

Respondent further disputes Petitioner's claim that her low back injury prevents her returning to work. The Arbitrator finds that this dispute is well taken. Petitioner testified that she is capable of standing for 1 to 2 hours without pain. The Arbitrator notes that Dr. Lim opined that Petitioner was overreacting to pain symptoms.

EARNINGS

Petitioner testified that overtime was offered five days a week and that she could say yes or no to the offer of overtime. Petitioner testified that if someone did not come in after her shift to replace her, then she was

required to stay beyond her shift, which would occur three times per week. Petitioner testified that there were state inspections twice a year, requiring her to work an extra and mandatory 12 hour shift.

Michelle Pope testified that that overtime is not mandatory, that employees must get pre-approval to work overtime, that employees are not penalized for refusing overtime, and that nurses are not required to work overtime for state inspections.

Michelle Pope was extremely credible. She essentially contradicted Petitioner's testimony on the issue of earnings. Petitioner's testimony regarding overtime was not credible.

Therefore, Petitioner's claimed average weekly wage is denied, and Respondent's claimed average weekly wage is granted.

MEDICAL

Petitioner claims numerous unpaid medical bills (AX1). Petitioner does not allege what amount, if any, has been paid. Petitioner has submitted reams of medical bills (PX8). Petitioner's proposed findings allege that the total medical claim is \$110,354.30. Respondent claims that it is not liable for certain bills incurred subsequent to February 27, 2013 because, Respondent claims, those bills are not related, not reasonable, and not necessary (AX1). Respondent has submitted a computerized printout of certain medical and other payments (RX6).

The Arbitrator finds that the medical bills incurred thus far are reasonable, necessary, and related. The Arbitrator bases this finding on the treating medical records and upon the medical opinions of the treating physicians. Therefore, the claimed medical bills are awarded.

TEMPORARY TOTAL DISABILITY

Petitioner's physicians have kept her off of work. Dr. Lim has opined that Petitioner should be able to return to work with limited use of the right upper extremity. Petitioner has not been offered work with limited use of the right upper extremity. Therefore she is entitled to the claimed temporary total disability benefits.

PENALTIES AND ATTORNEYS FEES

Respondent has relied on the reasonable opinions of Dr. Lim. Furthermore, Respondent has relied on the credible testimony of Michelle Pope.

Therefore, Petitioner's claims for penalties and attorneys fees are denied.

PROSPECTIVE MEDICAL TREATMENT

14IWCC0620

Petitioner claims to be entitled to additional unspecified medical treatment for her right hand and her low back. However, Petitioner does not allege that there is a prescription for any specific prospective treatment.

Therefore, Petitioner's claim for unspecified prospective medical treatment is denied.