

11 WC 47766

16IWCC147

Page 1

STATE OF ILLINOIS

)

BEFORE THE ILLINOIS WORKERS' COMPENSATION

) SS

COMMISSION

COUNTY OF COOK

)

John Carpenter,
Petitioner,

vs.

NOS. 11 WC 47766

16 IWCC 147

Joliet High School District #204,
Respondent.

ORDER OF RECALL UNDER SECTION 19(F)

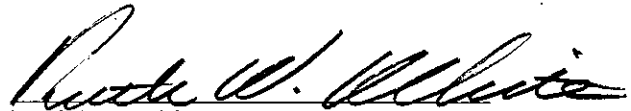
A Petition to Recall Decision pursuant to Section 19(f) of the Illinois Workers' Compensation Act to correct an error in the Decision and Opinion on Review of the Commission dated March 2, 2016, having been filed by Petitioner herein, and the Commission having considered said Petition, the Commission is of the opinion that the Petition should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated March 2, 2016, is hereby recalled pursuant to Section 19(f).

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

DATED: **MAR 23 2016**

RWW/rm
46


Ruth W. White

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

<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: Up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN CARPENTER,

Petitioner,

vs.

NO: 11 WC 47766
16 IWCC 0147

JOLIET HIGH SCHOOL DISTRICT #204,

Respondent.

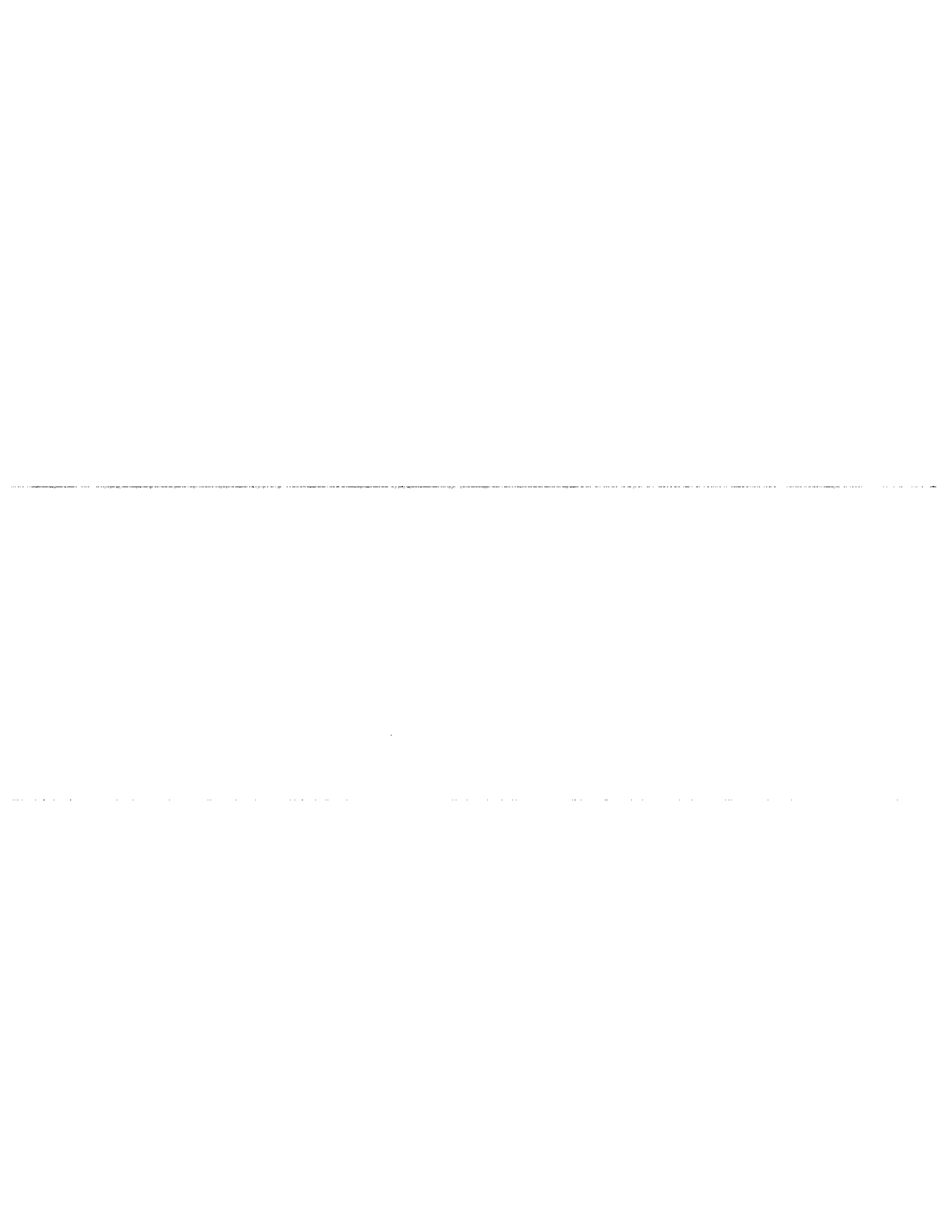
CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent partial disability 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.

Findings of Fact and Conclusions of Law

1. Petitioner testified on November 10, 2011, he was maintenance custodian for Respondent and had been for five months. He graduated high school in 1982, was in the Army from 1982 to 1985, and was discharged honorably as a private first class. He was custodian at another school prior to working for Respondent.
2. Petitioner had previous work-related injuries to his back in 2003 and 2004. He was treated for those injuries by Dr. Espinosa who performed a laminectomy at L4-5. He was released from care around 2007 but Dr. Espinosa did not impose any work restrictions. He did not receive any additional treatment from 2007 to the instant accident and was able to perform his duties for Respondent which involved physical labor. He had no problems with his back during that period.

3. On November 10, 2011, a fight broke out outside their break room. Petitioner went to assist his supervisor who was struggling to separate the combatants. "Two girls jumped on the pile" and pushed him into a locker. The metal handle went into his back and he twisted. He began to experience a lot of pain. After an MRI, Petitioner was referred to Dr. Espinosa, who performed fusion surgery on March 15, 2012.
4. Eventually, Dr. Espinosa imposed permanent restrictions of no lifting more than 20 lbs, no bending, no stooping, no climbing ladders, and no sitting/standing for more than an hour. Respondent was not able to accommodate his restrictions and he was terminated on January 7, 2013.
5. Respondent provided vocational rehabilitative services. The counselor, Ms. Hoevel, recommended Petitioner take computer classes and look for office jobs, customer service jobs, janitorial jobs, and supervisory jobs. Petitioner testified he never worked in customer service or had a supervisory job.
6. Petitioner began a job search on February 19, 2013, which was still ongoing. He contacted about 1,200 prospective employers and got one interview. The Commission notes that Petitioner's job search log spans February 18, 2013 through July 8, 2015 and includes 243 pages apparently with 1,215 entries.
7. Petitioner testified he received no job offers. He met with Ms. Hoevel weekly, he contacted all prospective employer leads she provided, he attended job fairs, he took computer classes, and he underwent vocational testing administered by Coventry. Petitioner also met with Mr. Blumenthal, at the request of his lawyer.
8. On December 20, 2012, Respondent's vocational rehabilitation agency, Coventry, prepared its initial report. Petitioner reported he believed he could and wanted to return to work, but he was not sure what he could do. Based on his educational and work experience, Ms. Hoevel believed Petitioner exhibited the transferable skills of "cleaning, janitorial, and portering services."
9. The Counselor identified job titles of assembler, ticketing clerk, and building maintenance supervisor. She thought Petitioner was employable and his probability of obtaining employment was good and would improve with computer training.
10. In a labor market survey prepared contemporaneously with the initial report, five jobs involving customer service, assembling, and security were identified which were believed to be suitable for Petitioner. The salary range was between \$11.03 and \$16.43 an hour.
11. On July 13, 2015, Ms Hoevel issued a "closing letter." In it she indicated Petitioner had been compliant with vocational rehabilitation since the beginning in March 2012. She still thought he was employable in jobs averaging about \$12.00 an hour. His job search was hindered by his age, the length of time he was off work, reduced wage from his previous job, and his restrictions. All of her reports in the interim indicated that Petitioner had been fully compliant with all of her vocational counseling requests.



12. On April 1, 2014, Mr. Blumenthal issued his vocational rehabilitation report. In it he noted Dr. Espinosa's permanent restrictions. He interpreted vocational testing administered by Coventry as showing that Petitioner had low average reasoning ability, high school level reading ability, grade school level spelling and arithmetic ability, below average fine dexterity ability with a much below average assembly dexterity, above average mechanical aptitude, average word knowledge, and he "scored well below average across the remaining aptitudes tested. Of specific interest were the low manual speed and dexterity" and "low perceptual speed and accuracy which are related to clerical aptitude."
13. Mr. Blumenthal also indicated that Petitioner reported 3-4/10 pain on a day to day basis which could increase to 4-5/10 with prolonged standing/walking. He reported the job search process with Coventry since December of 2012 was stressful to him because he could not perform many of the jobs he was asked to apply for. Petitioner indicated he had no face-to-face interviews and had not been offered a job in the about 15 months of the job search. He was directed not to accept any job which paid less than \$10 an hour, but was recently told it was now acceptable to seek part-time work.
14. Mr. Blumenthal pointed out that Petitioner was never a supervisor and had no experience maintaining physical structure of buildings, let alone supervising others performing that type of work. He operated trucks in the Army. Petitioner reported earning \$17.09 an hour at the time of his work accident and worked 20-25 hours of overtime a week. Prior to working as a custodian he worked as a forklift/machine operator and as an apprentice mechanic, but was told he did not have the mechanical aptitude for that job.
15. Mr. Blumenthal indicated the Coventry labor market survey included jobs of assembler, telemarketer, customer service dispatcher, and security guard. He also noted that Petitioner had no experience in sales, telemarketing, customer service, or performing repetitive physical assembly. In addition, the vocational testing indicated he did not have the manual dexterity for assembly, aptitude for clerical work, and he did have related previous work experience.
16. Mr. Blumenthal thought the Coventry's conclusions as to Petitioner's employment potential were not reasonable. In particular he noted that the job of security guard involved prolonged standing/walking which was not compliant with his permanent restrictions.
17. Mr. Blumenthal concluded that Petitioner could work as an usher, lobby attendant, ticket taker, or in certain security positions such as manning a guard station at a gated community which would be within his restrictions. He estimated Petitioner could earn between \$8.74 and \$11.03 an hour. According to the most recent union contract Petitioner's base salary would be \$18.62 an hour with a \$.50 cent premium for working second shift for a total salary of \$19.12.



The Arbitrator awarded Petitioner a weekly wage differential award of \$232.31. In arriving at this wage differential, the Arbitrator considered the opinions of both Mr. Blumenthal and Ms. Hoevel, and noted that Mr. Blumenthal opined Petitioner could earn \$11.03, (which was actually his top potential salary), and Ms. Hoevel opined he could obtain a job with an average salary of \$12.00 an hour. The Arbitrator placed greater weight on the opinion of Ms. Hoevel because of her extensive contact with Petitioner.

The Commission finds that Petitioner was commendable in his compliance with vocational rehabilitation efforts and his private job search. Respondent's vocational counselor noted his complete compliance throughout the process. The failure of even getting a single offer for more than three years despite his and Ms. Hoevel's best efforts would tend to mitigate the persuasiveness of her opinion regarding his employability, the jobs he could perform, and his earning potential.

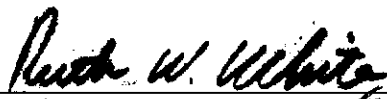
Therefore, the Commission finds the opinions of Mr. Blumenthal more persuasive than those of Ms. Hoevel regarding Petitioner's earning potential. Mr. Blumenthal opined that Petitioner could earn potentially between \$8.74 and \$11.03 an hour, which translates into a wage differential of between \$258.18 a week and \$319.25 a week with a median wage differential of \$288.71. The Commission finds awarding the median wage differential posited by Mr. Blumenthal to be appropriate in this case and modifies the Decision of the Arbitrator according.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$288.71 per week commencing July 16, 2015, as proved in §8(d)(1) of the Act because the injuries sustained caused Petitioner's inability to pursue his usual and customary line of employment resulting in a wage loss.

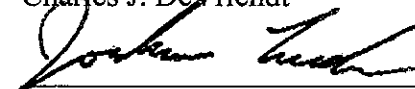
The party commencing the proceeding for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

DATED: MAR 23 2016

RWW/dw
O-1/20/16
46


Ruth W. White


Charles J. DeVriendt


Joshua D. Luskin

James W. McKelvey

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF ARBITRATOR DECISION

16IWCC0147

CARPENTER, JOHN

Employee/Petitioner

Case# 11WC047766

JOLIET TOWNSHIP HIGH SCHOOL DISTRICT

#204

Employer/Respondent

On 7/28/2015, 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 0.14% 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:

1987 RUBIN LAW GROUP LTD
CATHERINE KRENZ DOAN
20 S CLARK ST SUITE 1810
CHICAGO, IL 60603

1454 THOMAS & ASSOCIATES
STEVEN COSTELLO
500 W MADISON ST SUITE 2900
CHICAGO, IL 60661

STATE OF ILLINOIS)

)SS.

COUNTY OF WILL)

16 IWCC0147

- 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
NATURE AND EXTENT ONLY**

John Carpenter

Employee/Petitioner

Case # 11 WC 47766

v.

Consolidated cases: _____

Joliet Township High School District #204

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 **Gerald Granada**, Arbitrator of the Commission, in the city of **New Lenox**, on **7/16/15**. By stipulation, the parties agree:

On the date of accident, **11/10/11**, 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 **\$43,080.18**, and the average weekly wage was **\$828.47**.

At the time of injury, Petitioner was **48** years of age, *married* with **1** dependent children.

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

Respondent shall be given a credit of **\$98,548.67** for TTD, \$ _____ for TPD, \$ _____ for maintenance, and \$ _____ for other benefits, for a total credit of **\$98,548.67**.

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 \$232.31/week commencing 7/16/15, as provided in Section 8(d)(1) of the Act, because the injuries sustained caused **Petitioner's inability to pursue his usual and customary line of employment resulting in a wage loss.**

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.



Signature of Arbitrator

7/24/15

Date

JUL 28 2015

16IWCC0147

FINDINGS OF FACT

On November 10, 2011, Petitioner was working as a maintenance custodian for Respondent. Petitioner sustained an injury to his back when he broke up a fight between two students. Petitioner was pushed up against a locker and the metal part of the lock went into his back. Petitioner twisted as he pulled away from the locker.

As a result of the work-related accident, Petitioner sought medical treatment at Edwards Medical Group on November 15, 2011. (PX 1). At the recommendation of the physician, Petitioner underwent an MRI study of the back on January 21, 2011. (PX 2). The MRI study revealed a laminectomy at L4, right paracentral disc protrusion of the L4-L5 impinging on the traversing nerve root and postero-lateral disc protrusion at the L5-S1 level causing ipsilateral foraminal narrowing. (PX 2). Petitioner was referred to Dr. Espinosa for further treatment. (PX 1). Dr. Espinosa performed surgery, including a fusion at L4-L5 on March 3, 2012. (PX 4). Petitioner remained under the post-operative care of Dr. Espinosa, which included follow up visits, physical therapy, MRI studies and CT scans. (PX 3). On July 13, 2012, Dr. Espinosa documented that the CT scan revealed significant degenerative disc disease at the L5-S1 level with collapse of disc space likely due to the fusion. (PX 3). He discussed a L5-S1 fusion with Petitioner. (PX 3). Dr. Espinosa released Petitioner to return to work with the permanent restrictions of sedentary to light duty work with no lifting over 20 pounds, no bending at waist level, no stooping and avoid prolonged sitting or standing over one hour. (PX 3). Petitioner was last examined by Dr. Espinosa on August 21, 2013. (PX 3). Petitioner testified that he has not scheduled a follow up appointment with Dr. Espinosa; however, if his back pain increases, he will schedule an appointment.

Respondent was not able to accommodate Petitioner's permanent restrictions and terminated Petitioner's employment on January 7, 2013 due to its inability to accommodate the restrictions. (PX 8). Respondent provided vocational rehabilitation to Petitioner. (RX 3). Petitioner participated in vocational rehabilitation, which included a job search and computer classes, with Samantha Hoevel, from December 18, 2012 through the date of the hearing. (RX 8). Under the direction of Ms. Hoevel, Petitioner contacted over 1200 employers and did not obtain employment. (PX 6). Ms. Hoevel set forth that Petitioner was compliant in vocational rehabilitation services. (RX 8). Ms. Hoevel opined that Petitioner could earn \$12 per hour in suitable employment. (RX 6).

At the request of his attorney, Petitioner was evaluated by Steven Blumenthal on April 1, 2014. (PX 7). Mr. Blumenthal set forth that based on the vocational testing performed by Respondent's vocational rehabilitation counselor, work restrictions, work experience and aptitude, Respondent's counselor was not targeting appropriate employers. (PX 7). Further, the unsuccessful job search supports his opinion. (PX 7). Mr. Blumenthal opined that Petitioner could earn between \$8.74 and \$11.03 per hour in suitable employment. (PX 7). As of the time of the hearing, Petitioner had not obtained employment within his restrictions.

At the arbitration hearing, the parties initially indicated the issues in dispute to be causation and nature and extent. Following the hearing, the parties agreed that the sole issue in dispute is the nature and extent of the Petitioner's injuries.

CONCLUSIONS OF LAW REGARDING NATURE AND EXTENT

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the

occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. Applying this standard to this claim, the Arbitrator notes the findings with regard to each factor below.

(i) Level of Impairment. The Arbitrator finds that neither Petitioner nor Respondent submitted a report setting forth an AMA impairment rating. Accordingly, the Arbitrator will not consider that factor as it relates to the nature and extent of the injury.

(ii) Occupation. The Arbitrator places great weight on this factor in assessing Petitioner's disability. Petitioner's pre-injury occupation was that of a maintenance custodian for Respondent. Petitioner testified that his job for Respondent is physically demanding. Petitioner cleans the school, removes furniture and stripes and waxes the floor. The job requires him to lift up to 200 pounds with the help of a partner. Petitioner was also required to bend, stoop, climb ladders and stand and walk for six hours a day. Petitioner's testimony regarding his job duties is corroborated by the job description admitted into evidence. (RX 5). The Arbitrator finds that as a result of the work-related accident of November 10, 2011, Petitioner has permanent work restrictions of sedentary to light duty level work only with no lifting over 20 pounds, no bending at waist level, no stooping and to avoid prolonged sitting or standing over one hour. (PX 3). Based on Petitioner's unrebutted testimony and the job description (RX 5), the Arbitrator finds that Petitioner is unable to perform his pre-injury employment as a maintenance custodian. Further, Respondent was not able to provide Petitioner with work within the restrictions set forth by Dr. Espinosa. In fact, Respondent terminated Petitioner's employment on January 7, 2013 due to the fact that Respondent could not accommodate Petitioner's restrictions. (PX 8).

(iii) Age. At the time of the accident, Petitioner was 48. At the time of the hearing, Petitioner was 52 years old. Respondent's vocational rehabilitation counselor, Samantha Hoevel, documented in her reports that Petitioner's "advanced age" was a barrier to employability. (RX 6). The Arbitrator places great weight on this factor and finds that Petitioner's age would restrict his ability to obtain suitable employment.

(iv) Future Earning Capacity. The Arbitrator places significant weight on this factor and finds that as a result of his work-related accident of November 10, 2011, Petitioner sustained an impairment of future earning capacity. Both parties introduced vocational evidence. Petitioner submitted the opinions of Steven Blumenthal and Respondent submitted the opinions of Samantha Hoevel. Although the vocational counselors disagree as to how much Petitioner would be able to earn in suitable employment, both counselors agree that Petitioner would sustain a diminishment in his future earning capacity as a result of the accident. As it relates to Petitioner's future earning capacity, the Arbitrator first considered the opinions of Mr. Blumenthal, Petitioner's vocational expert. (PX 7). Mr. Blumenthal opined that based on Petitioner's age, education, training, work history and transferable skills, Petitioner would be able to earn up to \$11.03 per hour in suitable employment. (PX 7). In rendering his opinion, Mr. Blumenthal relied on the aptitude testing performed by Coventry, Respondent's vocation experts, an accurate understanding of Petitioner's job as a maintenance custodian and an accurate understanding of Petitioner's work restrictions. (PX 7). Mr. Blumenthal also relied on Petitioner's unsuccessful and lengthy job search in support of his opinions. (PX 7). Mr. Blumenthal only met with Petitioner one time.

The Arbitrator also considered the opinions of Samantha Hoevel, Respondent's vocational rehabilitation counselor, who concluded that Petitioner would be able to earn on average \$12 per hour in suitable employment. (PX 6). Petitioner participated in vocational rehabilitation under the direction of Ms. Hoevel from December 18, 2012 to the present. (RX 3); (RX 6); (RX 8). Ms. Hoevel specifically noted that Petitioner was compliant in vocational training. Further, Petitioner participated in a job search under Ms. Hoevel's direction from February 19, 2013 through July 8, 2015. (PX 6). During the job search, Petitioner contacted over 1200

16IWCC0147

employers. (PX 6). Petitioner attended job fairs with Ms. Hoevel and followed up on any job leads provided to him by Ms. Hoevel. (PX 8). Despite all these efforts, Petitioner only had a few interviews and did not receive any job offers as a result of vocational services and the job search. (PX 8). Ms. Hoevel relied on a labor market survey in rendering her opinion. (RX 4). Ms. Hoevel targeted jobs of customer service representative, assembler and security. (RX 4). Petitioner has never worked as a customer service representative or assembler. In vocational rehabilitation, Petitioner only participated in computer classes. He did not participate in any other training. (RX 8). Additionally, Ms. Hoevel also targeted supervisory jobs for Petitioner. (RX 8). She set forth that an employment goal for Petitioner should be to obtain a job as a maintenance supervisor. (RX 8). Ms. Hoevel set forth that Petitioner's past history included working as a maintenance supervisor. (RX 8). However, Petitioner testified that he has never worked in a supervisory capacity.

Despite some of the problems with Ms. Hoevel's vocational rehabilitation efforts pointed out by Petitioner's expert, the Arbitrator notes that both experts are less than \$1.00 apart in their assessment on how much Petitioner could earn on an hourly basis. Given the amount of time Ms. Hoevel has worked with the Petitioner, the Arbitrator places greater weight on her opinion in assessing the Petitioner's wage loss.

(v) Evidence of Disability Corroborated by Medical Evidence. Petitioner's medical records corroborate Petitioner's testimony that a work injury occurred on November 10, 2011, resulting in a right paracentral disc protrusion at L4-5 and left postero-lateral disc protrusion at the L5-S1 level, and requiring surgical intervention involving a right facetectomy, redo microdiscectomy and fusion with PEEK cage, bone graft and bilateral pedicle screws. Petitioner was eventually released from medical care with the following permanent work restrictions: sedentary to light duty level work only, no lifting over 20 lbs, no bending at waist level, no stooping, and avoid prolonged sitting or standing over 1 hour. Petitioner credibly testified that he has ongoing complaints and limitations consistent with his medical evidence. The Arbitrator places significant weight on this factor.

Based on all the factors above, the Arbitrator concludes that that Petitioner sustained a loss of earnings as a result of his work injury, and is entitled to a Wage Differential Award pursuant to Section 8(d)1 of the Illinois Workers' Compensation Act. Petitioner is entitled to a weekly wage differential of \$232.31, which is two-thirds of the difference between \$828.47 and \$480.00. The \$480.00 baseline amount is based on the evidence from Ms. Samantha Hoevel that Petitioner can expect to earn \$12.00 an hour at a future employer.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stanley Nelson Moore, Sr.,
Petitioner,

vs.

NO: 14 WC 07649

Pace Suburban Bus Company,
Respondent.

ORDER ON 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 January 8, 2016 , having been filed by Petitioner and Respondent is under consideration by the Commission. Upon consideration of said Petition, the Commission is of the Opinion that the Petition should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision dated January 8, 2016 is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein. The parties should return their original Decisions to Commissioner Mario Basurto.


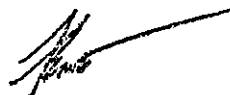
IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision shall be issued simultaneously with this Order.

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.

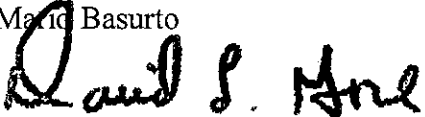
DATED: MAR 24 2016

MB/jm

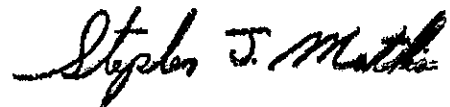
43

Mario Basurto



David L. Gore



Stephen Mathis

STATE OF ILLINOIS)	<input checked="" 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 COOK)	<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

Stanley Nelson Moore, Sr.,
 Petitioner,

vs.

NO: 14 WC 07649
 16IWCC0028

Pace Suburban Bus Company,
 Respondent.

CORRECTED DECISION AND OPINION UNDER SECTION 19(f)

Timely Petition for Review under §19(b)/8(a) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, temporary total disability and whether Petitioner's current condition of ill-being is connected to the accident date of January 16, 2014, 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 with the one exception noted below. 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).

The Commission finds that in the Order section of the May 20, 2015 arbitration decision the Arbitrator ordered Respondent to pay reasonable and necessary medical services in the amount of \$11,603.00, as provided in Sections 8(a) and 8.2 of the Act. The Commission further finds that the Arbitrator itemized the outstanding medical expenses on page 7 of the decision and these expenses total \$12,208.00. The Commission finds these two figures are internally inconsistent. On January 8, 2016, the Commission issued a decision in which it affirmed the Arbitrator's decision and it did not acknowledge the internal inconsistency. Pursuant to an Agreed Order dated February 29, 2016, the Commission finds that the correct amount of outstanding medical bills is \$12,208.00 and the Commission awards the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent is ordered to reasonable and necessary medical services in the amount of \$12,208.00, as provided in Sections 8(a) and 8.2 of the Act.

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 \$12,300.00. 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: **MAR 24 2016**

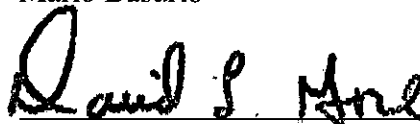
MB/jm

O: 11/12/15

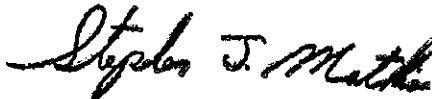
43



Mario Basurto



David L. Gore



Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b)/8(a) ARBITRATOR DECISION

MOORE SR, STANLEY NELSON

Employee/Petitioner

Case# **14WC007649**

14WC007650

PACE SUBURBAN BUS COMPANY

Employer/Respondent

16IWCC0028

On 5/20/2015, 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 0.08% 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:

0311 KOSIN LAW OFFICE LTD
DAVID X KOSIN
134 N LASALLE ST SUITE 1340
CHICAGO, IL 60602

1505 SLAVIN & SLAVIN
NICOLE NELSON ESQ
20 S CLARK ST SUITE 510
CHICAGO, IL 60603

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
19(b)/8(a)

Stanley Nelson Moore, Sr.
Employee/Petitioner

Case # 14 WC 07649

v.

Consolidated cases: 14 WC 07650

Pace Suburban Bus Company
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 **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **5/14/2014**. 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 _____

16IWCC0028

FINDINGS

On the date of accident, **January 16, 2014**, 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, in part*, causally related to the accident.

In the year preceding the injury, Petitioner earned **\$54,600.00**; the average weekly wage was **\$1,050.00**.

On the date of accident, Petitioner was **59** years of age, *married* with **0** dependent children.

Respondent *has not* 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

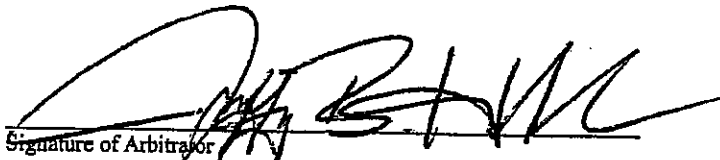
Respondent shall pay reasonable and necessary medical services of **\$11,603.00**, as provided in Sections 8(a) and 8.2 of the Act.

Petitioner's claim for temporary total disability and for prospective medical care and treatment is denied. Petitioner failed to prove a causal connection between the accidental injuries of January 16, 2014 and his current condition of ill-being regarding his low back and left shoulder.

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

May 19, 2015
Date

MAY 20 2015

FINDINGS OF FACT

This case was tried in conjunction with a consolidated case, No.14 WC 07650, which involved the same parties. The issues in dispute in both cases were: Causal Connection; Temporary Total Disability; and Incurred and Prospective Medical Expenses.

Petitioner was employed by Respondent as a bus operator. He was hired in October of 2006. Before he was hired by Respondent, he worked as a dockworker and had some low back and left shoulder sprain/strain type injuries. After he began to work for Respondent, and before the accident date, his low back and left shoulder were in excellent condition. As a bus driver, Petitioner would turn the steering wheel, open and close the doors, engage the emergency brake, shift the gear box and operate controls with his left arm. Many of the controls are on the left side and he continuously used his left arm when operating the bus.

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of his employment by Respondent on January 16, 2014. It was early in the morning and Petitioner slipped and fell on ice in Respondent's parking lot. He fell on his low back and left shoulder. His back hit first and then the shoulder. He noticed sharp pain on the top of the shoulder where the ball goes into the socket. He had sharp pain in his low back, midline above the beltline. The accident was reported. Petitioner continued to work the rest of his shift. He had discomfort and pain. He felt that the pain was worsening as his seat would move.

Petitioner did not seek medical treatment on the day of accident. He took some hydrocodone that he had from a 2011 right knee injury. The medication controlled the pain, but it did not go away. Petitioner did not go in to work the next morning, but did work the next evening of January 17-January 18.

Petitioner was then involved in a motor vehicle accident (car vs. bus) on January 18, 2014. That accident is the subject of Case No. 14 WC 07650. Petitioner was driving his bus in the curb lane. His bus was struck by a passing vehicle at a high rate of speed. Petitioner was going 40 mph. The car that hit the bus was going 50-60 mph. Petitioner described the impact as "heavy". The impact rocked and shocked Petitioner. Petitioner had pain before this accident. He chased the car for a couple of blocks and then pulled over. Petitioner was taken by ambulance to Roseland Hospital.

Petitioner received treatment at the Roseland emergency room. According to Petitioner, he had complaints about his left shoulder, neck and low back in the ER. The records of Roseland Hospital show that there were no complaints or findings regarding the left shoulder. There was no history of the prior fall noted. The work up was for head, neck and back pain after a motor vehicle crash. X-rays were taken of the cervical and lumbar spine. The impression of the x-rays was multi-level DJD. The discharge diagnosis was lumbar and cervical sprain/strain. Petitioner was registered at 2:25 am and discharged at 7:10 am. A Chicago Fire Department form indicates that Petitioner had no complaints and refused treatment at first, but then asked to be checked out (LOC, CP, SOB-no trauma noted). He was taken from the bus by stairchair, rode on the bench in the ambulance and was transported from the ambulance to the ER by wheelchair. (PetEx. 1)

Petitioner was scheduled to work on January 20, 2014, but did not. He had to take a drug test and be cleared to return to work by Respondent. Petitioner returned to work on January 24, 2014 as a full time bus operator. He had continued pain in his left shoulder and low back. He had trouble moving his left arm, hand over hand, to make a right turn. He had pain using the controls. He felt that his pain was

increasing and his range of motion was worsening. Petitioner continued to work as a bus operator until February 19, 2014.

Petitioner next sought care from South Holland Injury Care and Dr. Cammarano. The first visit was on January 21, 2014. There is no chart note for the initial exam. The chart note of January 22, 2014 notes that the patient was being seen in follow-up. He fell on January 16, 2014 at his place of employment and hurt his lumbar spine and left shoulder. He also was involved in an accident while driving a Pace bus on January 18, 2014 which further injured his lumbar spine and left shoulder and cervical spine. Petitioner began a course of chiropractic care with Dr. Cammarano which lasted until April 15, 2014. Initially, Petitioner's pain complaints regarding his neck and back were 8/10 and the shoulder complaints were 9/10. The complaints were the same on February 18, February 19 and February 20, 2014. At the last visit, the neck complaints were 6/10, the back complaints were 8/10 and the shoulder complaints were 8/10. Petitioner was not taken off work by this provider. (PetEx. 2)

Petitioner testified that he tried to get treatment by his PCP, Dr. Cressa Perish, but was told that he could not be seen until February 19, 2014. Dr. Perish's records show that petitioner called on January 20, 2014, giving the history of the MVA on 1/18/14 and didn't think he should go back to work until he was feeling better "mentally/physically". Dr. Perish said that the patient must be seen in the office before any note can be considered. The patient was to bring the police report and any medical exams that occurred after the accident. (PetEx. 3)

On February 19, 2014, Petitioner slipped and fell on ice again and again injured his low back and left shoulder. He had the same pain and discomfort, although it was temporarily worsened by this fall. The accident happened at a gas station and he was taken by ambulance to St. James/Olympia Fields Hospital. Petitioner testified that he had left shoulder and low back pain and a headache when he was seen at the hospital. He saw Dr. Perish later that evening.

Dr. Perish's chart note of February 19, 2014 says that the reason for the visit was work injury/med refill. Petitioner's problem list from 1/8/2013 included low back problems. The HPI was: "pt states he slipped on some ice this morning at the gas station and his low back is in extreme pain and pt L arm is stiff and hard for him to lift (lift?)". The patient could not abduct his arm beyond 40 degrees. The shoulder exam showed tenderness to palpation along the trapezius and supraspinatus and on active abduction to 40 degrees. It was non-tender along the AC joint and posterior capsule area and there was no bruising. The lumbar exam showed full range of motion with slight tenderness at L5 on flexion with tenderness noted at more than 90 degrees flexion and negative sitting SLR. Motor strength was 5/5 and sensation was normal in all extremities. The diagnosis was lumbar strain, acute and left shoulder strain. Petitioner was taken off work and was to follow up in one week. When Petitioner was seen on February 26, 2014 it was for follow-up on back pain. The patient said that his pain was still the same and he was still requesting MRI (not charted at the prior visit). The patient was very agitated with the staff of Dr. Perish and with that of Drs. Dilella/Thometz, so that ORTHO office refused to see him. Dr. Perish was able to refer Petitioner to Integrity Orthopedics and they were to determine if an MRI of the shoulder was indicated. The MRI studies were performed on March 5, 2014. The lumbar study showed multi-level degenerative changes without evidence of disc protrusion or significant stenosis, along with an acute compression fracture of the superior endplate of T12 with moderate associated bone marrow edema. The left shoulder study had extensive findings: "Massive full-thickness cuff tear of supraspinatus and infraspinatus tendons. Full-thickness tear of the biceps tendon. Large full-thickness tear of the subscapularis tendon. Posterior superior labral tear with mild to moderate joint effusion with synovitis and loose bodies. A widening of the acromioclavicular joint might represent old trauma". (PetEx. 3)

16IWCC0028

The records of St. James/Olympia Fields show that Petitioner was treated in the ER on February 19, 2014 from 6:41-8:19 am for left shoulder and low back pain. He fell on ice at a gas station. He could not get up. He was taken to the ER via ambulance. Petitioner had 10/10 shoulder pain. Decreased range of motion and tenderness of the shoulder was noted. There was no swelling, deformity or effusion. Pain with flexion and abduction of the shoulder was noted. There was minimal back pain. Lumbar x-rays were compared to a film from 10/2/2006. The current shoulder and lumbar x-rays were limited due to movement and difficulty positioning the patient. Degenerative findings were noted and no acute defects were seen. The ER physician recommended follow-up with a specialist for the shoulder, given the history of a fall and decreased ROM. There was no history of the accidents of January 16, 2014 and January 18, 2014. (ResEx. 1)

Petitioner was seen at Integrity Orthopedics by Dr. James Krcik on February 27, 2014, with a chief complaint of left shoulder pain. Back and neck pain were noted on the physical exam. There was a history of a slip and fall on ice on 1/16/14 while at work and of another fall on 2/19/14. Both falls he landed on his back and tried to break his fall with his left arm. There was a history of RTC tear in the right arm. The pain in the left shoulder prevents the patient from pulling up his pants, reaching behind his back and there is pain when tying his shoes. The physical exam of the shoulder showed no defects, no tenderness and no effusion. Pain and limited range of motion was noted. Strength was limited and several tests were positive for impingement. An MRI was ordered and Petitioner was taken off work until the study was reviewed by Dr. Krcik. The diagnosis was: "Pain-Shoulder Condition: uncontrolled, acute exacerbation: Location: left". Petitioner was seen again by Dr. Krcik on March 13, 2014. Petitioner complained of shoulder pain. Dr. Krcik thought that Petitioner had a complex rotator cuff tear and biceps tendon tear which will need surgical repair. The patient was referred to Dr. Joy for surgery. Dr. Krcik charted: "Due to no previous MRI unable to clearly state if new or old tear, patient asked if you can tell when this occurred and I cannot determine this and if it actually occurred at work or not." (PetEx. 2)

Petitioner had a consult with Dr. Edward Joy on March 14, 2014. The physical exam and impingement test results were consistent with that of Dr. Krcik. Dr. Joy thought that the MRI showed massive retracted tendon tears and moderate fatty degenerative changes, so successful surgical repair is not predictable, but the patient may benefit from limited debridement vs. partial repair. Dr. Joy recommended open rotator cuff repair with reinsertion of ruptured biceps/triceps tendon, w/wo tendon graft and arthroscopic repair of the slap lesion. Petitioner was released to modified/sedentary duty by Dr. Joy.

Petitioner received a release to return to work and he did so, on April 17, 2014. He has been working full duty as a bus driver since then.

Petitioner has never received TTD or an approval for the suggested surgery from Respondent. He has not received a written explanation for the denial of benefits.

Petitioner testified that his low back and left shoulder hurt. He has constant sharp pain that is constant. He has a hard time getting on and off the bus. It is hard for him to get in his seat. It is difficult for him to lie on his left side. He has the same pain, consistently, after the accident.

Petitioner's Bills Exhibit was Number 5.

CONCLUSIONS OF LAW

The Arbitrator adopts the Findings of Fact set forth above in support of the Conclusions of Law set forth below.

WITH RESPECT TO ISSUE (F), IS THE PETITIONER'S PRESENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator finds that Petitioner has failed to prove a causal connection between the accidental injuries of January 16, 2014 and Petitioner's current condition of ill-being with respect to his left shoulder and his low back. The Arbitrator finds that as a result of the accident Petitioner suffered sprain/strain injuries to the low back and left shoulder. The current pathology shown in the MRI studies of March 5, 2014 is not related to the accident of January 16, 2014.

Petitioner did not seek medical care until after the MVA of January 18, 2014. There is no contemporaneous record of Petitioner's low back and left shoulder condition after the fall on January 16 and before the MVA.

The only causal connection opinion submitted is Dr. Krcik's chart note regarding the left shoulder where he could not state whether the tears were new or old, when they occurred and if it actually occurred at the patient's work or not.

There is no causal connection opinion in the records of Dr. Cammarano and the initial evaluation of the patient is not included in the submitted records. The first documented physical examination of the left shoulder is after the fall at the gas station (St. James/Olympia Fields and Dr. Perish). The MRI regarding the left shoulder reveals extensive pathology which cannot be related to the fall of January 16, 2014 without a competent expert medical opinion. Given the two subsequent injuries of January 18, 2014 and February 19, 2014 and the fact that Petitioner continued to work his regular duties as a bus operator until February 19, 2014, a finding of causal connection regarding the Petitioner's left shoulder condition would be entirely speculative.

The Petitioner did testify that he had continued complaints of pain and decreasing function in his left arm after the accident of January 16, 2014, but the Arbitrator will not speculate on causation regarding the left shoulder, given the evidence that has been adduced.

Regarding the Petitioner's low back condition, there is no causal connection opinion in the medical records. The St. James records show a prior lumbar x-ray took place in October of 2006. The x-rays from Roseland and St. James do not confirm the existence of the T12 fracture. Dr. Perish's records show that low back pain was on Petitioner's problem list from January of 2013. The work up at Roseland Hospital showed degenerative changes in Petitioner's lumbar spine and the diagnosis was lumbar and cervical sprain/strain. The records do not show any findings of tenderness in the T12 area which would be consistent with the compression fracture shown on the lumbar MRI. A finding of causal connection as to the T12 fracture and the accident of January 16, 2014 would be entirely speculative, given the evidence adduced.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner's Exhibit 5 was the bills exhibit. The bills from Roseland Community Hospital and City of Chicago-EMS directly relate to the accident of January 18, 2014 and are addressed in Case No. 14 WC 7650.

Respondent did not submit UR reports to challenge the treatment that underlies the claimed bills herein. While the Arbitrator has found that Petitioner's pathology shown on the MRI studies is not causally related, the Arbitrator also has found that Petitioner suffered a strain/sprain type injury to the left shoulder and low back as a result of the fall of January 16, 2014. Absent UR evidence or a persuasive medical opinion disputing the bills, the testimony of Petitioner and the medical records support a finding that the treatment and bills submitted are reasonable and necessary to cure or relieve the injuries of January 16, 2014.

Accordingly, the submitted bills from South Holland Injury Care (\$6,185.00); Cressa Perish, MD (\$115.00); Integrity Orthopedics (\$605.00); and Ingalls Memorial Hospital (\$5,303.00) are awarded, pursuant to §8(a) and §8.2 of the Act.

WITH RESPECT TO ISSUE (K), IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the Arbitrator's finding on the issue of causal connection, Petitioner is not entitled to any prospective medical care.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

Based upon the Arbitrator's finding on the issue of causal connection, no award is made for TTD benefits.

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

Thomas Kaufmann,
Petitioner,

vs. NO. 12 WC 43433

State of Illinois-Dept. of
Financial & Professional Regulation,
Respondent,

ORDER OF RECALL UNDER SECTION 19(f)


The Commission on its own Motion pursuant to Section 19(f) of the Workers' Compensation Act recalls the Review Decision dated December 14, 2015.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision dated December 14, 2015 is hereby vacated and recalled pursuant to Section 19(f) in that the wrong Arbitrator's Decision was attached and contained therein. The parties should return their original Decision to Commissioner Mario Basurto.

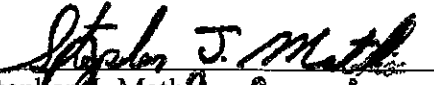
IT IS FURTHER ORDERED BY THE COMMISSION that a Decision bearing the correct Arbitrator's Decision shall be issued simultaneously with this Order.

DATED: MAR 28 2016

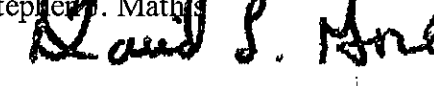
MB/mam
43



Mario Basurto



Stephen J. Mathis



David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with comment	<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 checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Kaufmann,

Petitioner,

vs.

NO: 12 WC 43433
15 IWCC 0915

State of Illinois – Dept. of
Financial & Professional Regulation,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, extent of temporary total disability, nature and extent of permanent disability and medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which are attached hereto and made a part hereof.

The Arbitrator awarded permanent partial disability of 10% loss of use of the left hand, 12.5% loss of use of the right hand and 12.5% loss of use of the right arm at \$695.78 per week. The Arbitrator noted that the total weeks awarded for permanent disability was 74.375. In its December 14, 2015 Decision and Opinion on Review, the Commission corrected the Arbitrator's Decision to reflect the hand awards based on the percentage of 205 weeks, rather than 190 weeks as the Arbitrator had awarded. The Commission finds this correction was in error. Therefore, the Commission recalls the Decision and Opinion on Review 15 IWCC 0915 under §19(f) of the Act. §8(e)9 awards up to 190 weeks if the accidental injury occurs on or after June 28, 2011 and if the accidental injury involves carpal tunnel syndrome due to repetitive or cumulative trauma. Petitioner sustained repetitive trauma accidental injuries arising out of and in the course of his

employment manifesting on January 26, 2012 which resulted in carpal tunnel syndrome. The Commission affirms the Arbitrator's awards of 10% loss of use of the left hand (19 weeks), 12.5% loss of use of the right hand (23.750 weeks) and 12.5% loss of use of the right arm (31.625 weeks), a total of 74.375 weeks at \$695.78 per week and otherwise affirms the Arbitrator's Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review 15 IWCC 0915 is hereby recalled under §19(f) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,200.00 per week for a period of 7-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$695.78 per week for a period of 19 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the left hand to the extent of 10%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$695.78 per week for a period of 23.750 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the right hand to the extent of 12.5%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$695.78 per week for a period of 31.625 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the permanent disability of the right arm to the extent of 12.5%.



IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical expenses related to the treatment of the left hand, right hand and right arm under §8(a) of the Act, subject to the Medical Fee Schedule under §8.2 of the Act. Respondent shall have §8(j) credit for medical expenses paid.

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. The Commission notes that Respondent paid \$9,463.33 for temporary total disability benefits.

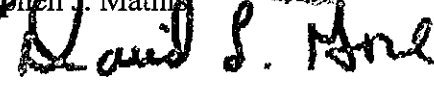

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

DATED:
MB/maw
o10/15/15
43

MAR 28 2016



Mario Basurto



Stephen J. Mathis

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KAUFMANN, THOMAS

Employee/Petitioner

Case# 12WC043433

12WC043435

12WC043458

SOI-DEPT OF FINANCIAL & PROFESSIONAL
REGULATION

Employer/Respondent

15IWCC0915

On 4/14/2015, 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 0.10% 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:

2934 BOSCHARDY LAW OFFICE PC
JOHN V BOSCHARDY
1610 S 6TH ST
SPRINGFIELD, IL 62703

0499 CMS RISK MANAGEMENT
WORKERS' COMP MANGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

4993 ASSISTANT ATTORNEY GENERAL
AMY S OXLEY
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 306/14

APR 14 2015



Ronald A. Rascia
RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<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

Thomas Kaufmann
Employee/Petitioner

Case # 12 WC 43433

v.

Consolidated cases: 12 WC 43435

State of Illinois - Dept. of Financial & Professional Regulation
Employer/Respondent

12 WC 43458

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on February 24, 2015. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

15IWCC0915

FINDINGS

On January 26, 2012, 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 \$93,600.00; the average weekly wage was \$1,800.00.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$9,463.33 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$9,463.33.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

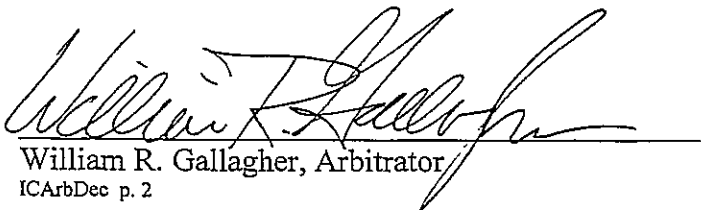
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of Act.

Respondent shall pay Petitioner temporary total disability benefits of \$1,200.00 per week for seven and four sevenths (7 4/7) weeks commencing April 26, 2012, through June 17, 2012, as provided in Section 8(b) of the Act.

~~Respondent shall pay Petitioner permanent partial disability benefits of \$695.78 per week for 74.375 weeks because the injuries sustained caused the 12 1/2% loss of use of the right arm, 12 1/2% loss of use of the right hand and 10% loss of use of the left hand, as provided in Section 8(e) of the Act.~~

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.


William R. Gallagher, Arbitrator
ICArbDec p. 2

April 7, 2015
Date

APR 7 4 2015

15IWCC0915

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim all of which alleged that he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Applications all alleged Petitioner sustained repetitive trauma to the bilateral upper extremities, right thumb and right arm. The only difference between the three Applications was the date of accident (manifestation) that was alleged. Case 12 WC 43435 alleged a date of accident (manifestation) of January 11, 2012. Case 12 WC 43433 alleged a date of accident (manifestation) of January 26, 2012. Case 12 WC 43458 alleged a date of accident (manifestation) of February 10, 2012 (Petitioner's Exhibit 1). The three cases were previously consolidated for trial. In all three cases, Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Bank Examiner for over 28 years. Petitioner's job duties consisted primarily of making on-site inspections of financial institutions' computer and security systems. Petitioner would generally drive 100 to 1,000 miles per week.

Petitioner testified that during the bank examinations, he would work in whatever area the bank provided for him and would review the banks' documents, policies and procedures. A bank examination would take approximately three to five days. Petitioner stated that he would use his hands for virtually the entire time he was conducting the examination. Petitioner would review documents that described the bank's policies and procedures. Petitioner would also interview bank employees to determine if they were following the appropriate policies and procedures. Such an interview could take between 20 minutes and two hours and Petitioner would take handwritten notes. After completing the preceding, Petitioner would write a work program report.

Petitioner testified that he hand wrote the work program report and subsequently typed them on a manual typewriter. Petitioner took a manual typewriter with him to the banks and it took four to five hours to write a report, depending on the bank. While Petitioner did not write reports every day, he was still writing four to five hours per day every day. Sometime in the late 1980's, the manual typewriters were replaced by laptops which are periodically updated in the 1990's and 2000's.

In the early 1990's, Petitioner became a Field Supervisor and split his time between working in an office and the field. From the mid 1990's onward, Petitioner spent most of his time in the office and did keyboarding for five to six hours per day. Petitioner used an old style metal desk and his hands were kept in a flexed position pointing upwards when he was keyboarding.

Petitioner testified that in 2002, two secretaries assigned to his office retired and were replaced by temporary workers who were only there on a sporadic basis. This resulted in an increase of Petitioner's keyboarding. Petitioner also used a computer mouse which he described as being difficult to use.

15IWCC0915

Over time, Petitioner began to experience tightness, soreness and numbness in both hands which would wake him at night. Petitioner noticed that the soreness was present with both typing and mouse use; however, his symptoms were not as severe over the weekends when he was not using his hands as much.

Petitioner initially sought medical treatment from Dr. James Bohan, his family physician, who evaluated him on January 11, 2012 (the manifestation date alleged in 12 WC 43435). At that time, Petitioner complained of numbness in both hands for the preceding seven to eight years, worse on the left than right. There was no history of trauma or any reference to Petitioner's work activities in Dr. Bohan's record of that date. Dr. Bohan's assessment was tingling and numbness and he subsequently referred Petitioner to Dr. Edward Trudeau for nerve conduction studies (Petitioner's Exhibit 2).

Dr. Trudeau saw Petitioner on January 26, 2012 (the manifestation date alleged in 12 WC 43433) and noted that Petitioner worked using both upper extremities. The nerve conduction studies were positive for bilateral carpal tunnel syndrome, moderately severe in the right and mild in the left, as well as cubital tunnel syndrome of the right elbow (Petitioner's Exhibit 3).

Petitioner advised his Supervisor via e-mail that he had bilateral carpal tunnel syndrome that had a gradual onset of the preceding seven years. The date of Petitioner's e-mail was February 10, 2012 (the date of manifestation alleged in 12 WC 43458). On March 1, 2012, a Supervisor's Report of Injury was prepared (Petitioner's Exhibit 7).

On February 14, 2012, Petitioner completed an Employee's Notice of Injury Form wherein he stated that he had bilateral carpal tunnel which was a gradual condition that had been getting worse over time. He attributed the condition to typing, e-mail and using the mouse on a computer (Respondent's Exhibit 1).

Petitioner was seen by Dr. Brett Wolters, an orthopedic surgeon, on February 15, 2012. At that time, Petitioner informed Dr. Wolters that he worked as a Manager in the IT Department and that he worked on computers for eight hours per day. Petitioner had symptoms of pain, numbness and cramping of both hands, in particular, when he was typing or doing work with a mouse. Dr. Wolters diagnosed Petitioner with bilateral carpal tunnel syndrome, right wrist de Quervain's tenosynovitis and right cubital tunnel syndrome. Dr. Wolters prescribed a splint for Petitioner to use at night and gave an injection in the right wrist (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Wolters on March 23, 2012, and Dr. Wolters recommended Petitioner have surgery on both upper extremities. Dr. Wolters performed a right carpal tunnel and right cubital tunnel surgical release on April 23, 2012. Dr. Wolters performed a left carpal tunnel release on May 21, 2012. Petitioner recovered from the surgeries and Dr. Wolters authorized him to return to work on June 18, 2012 (Petitioner's Exhibit 4).

Petitioner was last seen by Dr. Wolters on August 15, 2012. At that time, Petitioner advised that the numbness was completely gone but that he still had a little bit of weakness in his left hand. Dr. Wolters opined that Petitioner was at MMI (Petitioner's Exhibit 4).

15IWC0915

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, a hand surgeon, on March 19, 2013. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records as well as information regarding Petitioner's job duties that was provided to him by Respondent. Dr. Stewart confirmed the diagnoses of bilateral carpal tunnel syndrome and right cubital tunnel syndrome. In regard to causality, Dr. Stewart opined that Petitioner's upper extremity conditions were not related to his data entry and computer work (Respondent's Exhibit 3).

Dr. Stewart was deposed on October 18, 2014, and his deposition testimony was received into evidence at trial. Dr. Stewart's testimony was consistent with his medical report and he reaffirmed his opinion that Petitioner's upper extremity conditions were not related to his work activities. Dr. Stewart's opinion was based, in part, on what he described as medical research and literature (Respondent's Exhibit 4; pp 15-18).

On cross-examination, Dr. Stewart agreed that he had no knowledge of how repetitious Petitioner's job duties were nor did he have any knowledge as to the ergonomics of Petitioner's workstation. He also agreed that Petitioner did not have any other systemic conditions associated with carpal tunnel syndrome (Respondent's Exhibit 4; pp 23-25).

Dr. Wolters was deposed on January 23, 2015, and his deposition testimony was received into evidence at trial. Dr. Wolters' testimony was consistent with his medical records regarding his diagnoses and treatment of Petitioner. In regard to causality, Dr. Wolters opined that Petitioner's history of typing and using a computer mouse for multiple hours per day could cause or aggravate both carpal tunnel and cubital tunnel syndrome. In response to a hypothetical question which summarized Petitioner's work duties, Dr. Wolters reaffirmed his opinion regarding causality. He also noted that Petitioner did not have any systemic conditions that could contribute to both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 6; pp 8, 15-18).

At trial, Petitioner testified that he ceased working for Respondent in October, 2012; however, he obtained a job as a Bank Examiner for the Federal Reserve Bank. Petitioner's job duties are essentially identical to those when he was employed by Respondent. Petitioner stated that his upper extremity symptoms improved following the surgery; however, he still has some residual symptoms. In regard to the right hand/arm, Petitioner stated that he still has some symptoms of tightness, soreness and numbness especially upon active use. He still experiences some tingling in the right elbow. In regard to the left hand, Petitioner still experiences some tightness and diminished strength.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to both upper extremities that arose out of and in the course of his employment for Respondent that manifested itself on January 26, 2012, and that his current condition of ill-being is causally related to same.

15IWCC0915

In support of this conclusion the Arbitrator notes the following:

Petitioner first sought medical treatment on January 11, 2012; however, Dr. Bohan did not opine as to a specific diagnoses nor did he opine as to whether Petitioner's upper extremity conditions were work-related.

Petitioner was diagnosed with bilateral carpal tunnel syndrome and right cubital tunnel syndrome on January 26, 2012, when nerve conduction studies were performed by Dr. Trudeau. Dr. Trudeau noted that Petitioner worked using both upper extremities. Subsequent to this medical evaluation, on February 10, 2012, Petitioner advised Respondent via e-mail that he had bilateral carpal tunnel syndrome which he believed to be work-related.

Based on the preceding, the Arbitrator finds the date of manifestation to be January 26, 2012, the date the condition was diagnosed by Dr. Trudeau.

Petitioner's testimony regarding the repetitive nature of his job duties was un rebutted.

When Dr. Stewart was deposed, he opined that Petitioner's upper extremity conditions were not related to his work activities and this opinion was based, in part, on what he described as medical research and literature. Timely objections were made to this portion of his testimony. The Arbitrator sustained said objections and, to the extent that Dr. Stewart's testimony summarizes this medical research and data is hereby stricken. Weekley v. Industrial Commission, 615 N.E.2d 59 (Ill. App. 2nd Dist. 1993).

Dr. Wolters testified that Petitioner's work activities could have caused or aggravated both the carpal tunnel and cubital tunnel syndromes.

Both Dr. Wolters and Dr. Stewart agreed that Petitioner had no other systemic conditions that could contribute to both carpal tunnel and cubital tunnel syndromes.

Based on the preceding, the Arbitrator finds the opinion of Dr. Wolters to be more persuasive than that of Dr. Stewart.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and that Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 5, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of Act.

15IWCC0915

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of seven and four sevenths (7 4/7) weeks commencing April 26, 2012, through June 17, 2012.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 12 ½% loss of use of the right arm, 12 ½% loss of use of the right hand and 10% loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

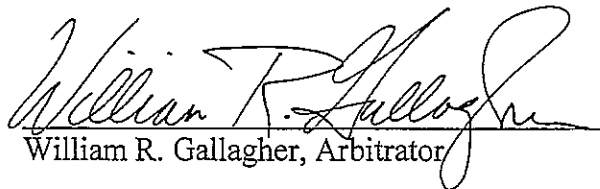
Neither Petitioner nor Respondent tendered into evidence an AMA impairment rating report. The Arbitrator gives this factor no weight.

Petitioner's occupation is a Bank Examiner which requires a significant amount of keyboarding and use of a mouse. Petitioner still has symptoms associated with his work. The Arbitrator gives this factor significant weight.

Petitioner was 51 years of age at the time of the injury. Petitioner will have to live with the effects of this injury for the remainder of his working and natural life. The Arbitrator gives this factor moderate weight.

Petitioner left Respondent's employment and secured a similar position with the Federal Reserve Bank. There was no evidence that the injury will have any effect on Petitioner's future earning capacity. The Arbitrator gives this factor moderate weight.

Petitioner's upper extremity injuries required bilateral carpal tunnel surgical releases and a right cubital tunnel surgical release. While Petitioner's symptoms improved following the surgeries, he continues to experience symptoms in both upper extremities especially upon active use. The Arbitrator finds Petitioner's complaints are consistent with the injuries he sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

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

Thomas Kaufmann,
Petitioner,

vs.

NO. 12 WC 43435

State of Illinois-Dept. of
Financial & Professional Regulation,

Respondent,

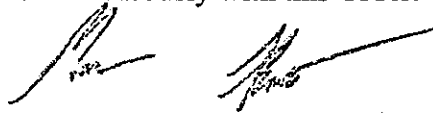
ORDER OF RECALL UNDER SECTION 19(f)

The Commission on its own Motion pursuant to Section 19(f) of the Workers' Compensation Act recalls the Review Decision dated December 14, 2015.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision dated December 14, 2015 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein. The parties should return their original Decision to Commissioner Mario Basurto.

IT IS FURTHER ORDERED BY THE COMMISSION that a Decision bearing the correct Arbitrator's Decision shall be issued simultaneously with this Order.

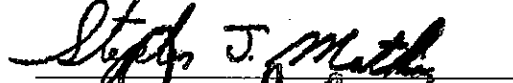

DATED: MAR 28 2016



Mario Basurto

MB/mam

43


Stephen J. Mathis
David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with comment	<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 checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Kaufmann,
Petitioner,

vs.

NO: 12 WC 43435
15 IWCC 0916

State of Illinois – Dept. of
Financial & Professional Regulation,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, extent of temporary total disability, nature and extent of permanent disability and medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which are attached hereto and made a part hereof.

The Commission recalls the Decision and Opinion on Review 15 IWCC 0916 under §19(f) of the Act based upon an error made in a companion case. The Commission affirms and adopts the Arbitrator's Decision, which denied compensation finding that Petitioner failed to prove he sustained repetitive trauma accidental injuries arising out of and in the course of his employment manifesting on January 11, 2012.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review 15 IWCC 0916 is hereby recalled under §19(f) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015 is hereby affirmed and adopted.

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.

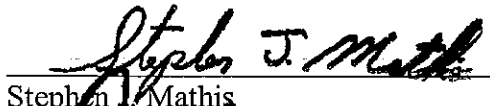
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

DATED:
MB/maw
o10/15/15
43

MAR 28 2016



Mario Basurto



Stephen J. Mathis



David L. Gore



ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KAUFMANN, THOMAS

Employee/Petitioner

Case# **12WC043435**

12WC043433

12WC043458

**SOI-DEPT OF FINANCIAL & PROFESSIONAL
REGULATION**

Employer/Respondent

15IWCC0916

On 4/14/2015, 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 0.10% 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:

2934 BOSHARDY LAW OFFICE PC
JOHN V BOSHARDY
1610 S 6TH ST
SPRINGFIELD, IL 62703

0499 CMS RISK MANAGEMENT
WORKERS' COMP MANGER
P O BOX 19208
SPRINGFIELD, IL 62794-9208

4993 ASSISTANT ATTORNEY GENERAL
AMY S OXLEY
500 S SECOND ST
~~SPRINGFIELD, IL 62706~~

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 306 / 14

APR 14 2015



Ronald A. Rascia
RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<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

Thomas Kaufmann
Employee/Petitioner

Case # 12 WC 43435

v.

Consolidated cases: 12 WC 43433

State of Illinois - Dept. of Financial & Professional Regulation
Employer/Respondent

12 WC 43458

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on February 24, 2015. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

15IWCC0916

FINDINGS

On January 11, 2012, 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 not sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned \$93,600.00; the average weekly wage was \$1,800.00.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

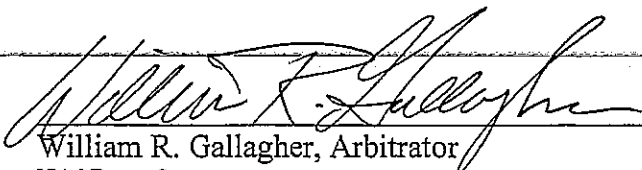
Respondent is entitled to a credit of \$0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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.



William R. Gallagher, Arbitrator
ICArbDec p. 2

April 7, 2015

Date

APR 7 2015

15IWCC0916

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim all of which alleged that he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Applications all alleged Petitioner sustained repetitive trauma to the bilateral upper extremities, right thumb and right arm. The only difference between the three Applications was the date of accident (manifestation) that was alleged. Case 12 WC 43435 alleged a date of accident (manifestation) of January 11, 2012. Case 12 WC 43433 alleged a date of accident (manifestation) of January 26, 2012. Case 12 WC 43458 alleged a date of accident (manifestation) of February 10, 2012 (Petitioner's Exhibit 1). The three cases were previously consolidated for trial. In all three cases, Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Bank Examiner for over 28 years. Petitioner's job duties consisted primarily of making on-site inspections of financial institutions' computer and security systems. Petitioner would generally drive 100 to 1,000 miles per week.

Petitioner testified that during the bank examinations, he would work in whatever area the bank provided for him and would review the banks' documents, policies and procedures. A bank examination would take approximately three to five days. Petitioner stated that he would use his hands for virtually the entire time he was conducting the examination. Petitioner would review documents that described the bank's policies and procedures. Petitioner would also interview bank employees to determine if they were following the appropriate policies and procedures. Such an interview could take between 20 minutes and two hours and Petitioner would take handwritten notes. After completing the preceding, Petitioner would write a work program report.

Petitioner testified that he hand wrote the work program report and subsequently typed them on a manual typewriter. Petitioner took a manual typewriter with him to the banks and it took four to five hours to write a report, depending on the bank. While Petitioner did not write reports every day, he was still writing four to five hours per day every day. Sometime in the late 1980's, the manual typewriters were replaced by laptops which are periodically updated in the 1990's and 2000's.

In the early 1990's, Petitioner became a Field Supervisor and split his time between working in an office and the field. From the mid 1990's onward, Petitioner spent most of his time in the office and did keyboarding for five to six hours per day. Petitioner used an old style metal desk and his hands were kept in a flexed position pointing upwards when he was keyboarding.

Petitioner testified that in 2002, two secretaries assigned to his office retired and were replaced by temporary workers who were only there on a sporadic basis. This resulted in an increase of Petitioner's keyboarding. Petitioner also used a computer mouse which he described as being difficult to use.

Over time, Petitioner began to experience tightness, soreness and numbness in both hands which would wake him at night. Petitioner noticed that the soreness was present with both typing and mouse use; however, his symptoms were not as severe over the weekends when he was not using his hands as much.

Petitioner initially sought medical treatment from Dr. James Bohan, his family physician, who evaluated him on January 11, 2012 (the manifestation date alleged in 12 WC 43435). At that time, Petitioner complained of numbness in both hands for the preceding seven to eight years, worse on the left than right. There was no history of trauma or any reference to Petitioner's work activities in Dr. Bohan's record of that date. Dr. Bohan's assessment was tingling and numbness and he subsequently referred Petitioner to Dr. Edward Trudeau for nerve conduction studies (Petitioner's Exhibit 2).

Dr. Trudeau saw Petitioner on January 26, 2012 (the manifestation date alleged in 12 WC 43433) and noted that Petitioner worked using both upper extremities. The nerve conduction studies were positive for bilateral carpal tunnel syndrome, moderately severe in the right and mild in the left, as well as cubital tunnel syndrome of the right elbow (Petitioner's Exhibit 3).

Petitioner advised his Supervisor via e-mail that he had bilateral carpal tunnel syndrome that had a gradual onset of the preceding seven years. The date of Petitioner's e-mail was February 10, 2012 (the date of manifestation alleged in 12 WC 43458). On March 1, 2012, a Supervisor's Report of Injury was prepared (Petitioner's Exhibit 7).

On February 14, 2012, Petitioner completed an Employee's Notice of Injury Form wherein he stated that he had bilateral carpal tunnel which was a gradual condition that had been getting worse over time. He attributed the condition to typing, e-mail and using the mouse on a computer (Respondent's Exhibit 1).

Petitioner was seen by Dr. Brett Wolters, an orthopedic surgeon, on February 15, 2012. At that time, Petitioner informed Dr. Wolters that he worked as a Manager in the IT Department and that he worked on computers for eight hours per day. Petitioner had symptoms of pain, numbness and cramping of both hands, in particular, when he was typing or doing work with a mouse. Dr. Wolters diagnosed Petitioner with bilateral carpal tunnel syndrome, right wrist de Quervain's tenosynovitis and right cubital tunnel syndrome. Dr. Wolters prescribed a splint for Petitioner to use at night and gave an injection in the right wrist (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Wolters on March 23, 2012, and Dr. Wolters recommended Petitioner have surgery on both upper extremities. Dr. Wolters performed a right carpal tunnel and right cubital tunnel surgical release on April 23, 2012. Dr. Wolters performed a left carpal tunnel release on May 21, 2012. Petitioner recovered from the surgeries and Dr. Wolters authorized him to return to work on June 18, 2012 (Petitioner's Exhibit 4).

Petitioner was last seen by Dr. Wolters on August 15, 2012. At that time, Petitioner advised that the numbness was completely gone but that he still had a little bit of weakness in his left hand. Dr. Wolters opined that Petitioner was at MMI (Petitioner's Exhibit 4).

15IWC0916

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, a hand surgeon, on March 19, 2013. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records as well as information regarding Petitioner's job duties that was provided to him by Respondent. Dr. Stewart confirmed the diagnoses of bilateral carpal tunnel syndrome and right cubital tunnel syndrome. In regard to causality, Dr. Stewart opined that Petitioner's upper extremity conditions were not related to his data entry and computer work (Respondent's Exhibit 3).

Dr. Stewart was deposed on October 18, 2014, and his deposition testimony was received into evidence at trial. Dr. Stewart's testimony was consistent with his medical report and he reaffirmed his opinion that Petitioner's upper extremity conditions were not related to his work activities. Dr. Stewart's opinion was based, in part, on what he described as medical research and literature (Respondent's Exhibit 4; pp 15-18).

On cross-examination, Dr. Stewart agreed that he had no knowledge of how repetitious Petitioner's job duties were nor did he have any knowledge as to the ergonomics of Petitioner's workstation. He also agreed that Petitioner did not have any other systemic conditions associated with carpal tunnel syndrome (Respondent's Exhibit 4; pp 23-25).

Dr. Wolters was deposed on January 23, 2015, and his deposition testimony was received into evidence at trial. Dr. Wolters' testimony was consistent with his medical records regarding his diagnoses and treatment of Petitioner. In regard to causality, Dr. Wolters opined that Petitioner's history of typing and using a computer mouse for multiple hours per day could cause or aggravate both carpal tunnel and cubital tunnel syndrome. In response to a hypothetical question which summarized Petitioner's work duties, Dr. Wolters reaffirmed his opinion regarding causality. He also noted that Petitioner did not have any systemic conditions that could contribute to both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 6; pp 8, 15-18).

At trial, Petitioner testified that he ceased working for Respondent in October, 2012; however, he obtained a job as a Bank Examiner for the Federal Reserve Bank. Petitioner's job duties are essentially identical to those when he was employed by Respondent. Petitioner stated that his upper extremity symptoms improved following the surgery; however, he still has some residual symptoms. In regard to the right hand/arm, Petitioner stated that he still has some symptoms of tightness, soreness and numbness especially upon active use. He still experiences some tingling in the right elbow. In regard to the left hand, Petitioner still experiences some tightness and diminished strength.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to both upper extremities that arose out of and in the course of his employment for Respondent that manifested itself on January 26, 2012, and that his current condition of ill-being is causally related to same.

15IWCC0916

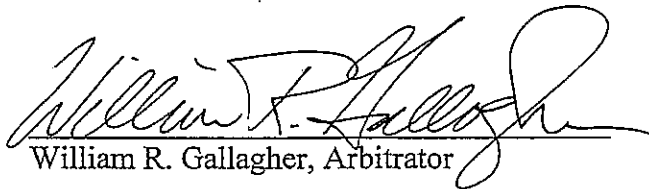
In support of this conclusion the Arbitrator notes the following:

Petitioner first sought medical treatment on January 11, 2012; however, Dr. Bohan did not opine as to a specific diagnoses nor did he opine as to whether Petitioner's upper extremity conditions were work-related.

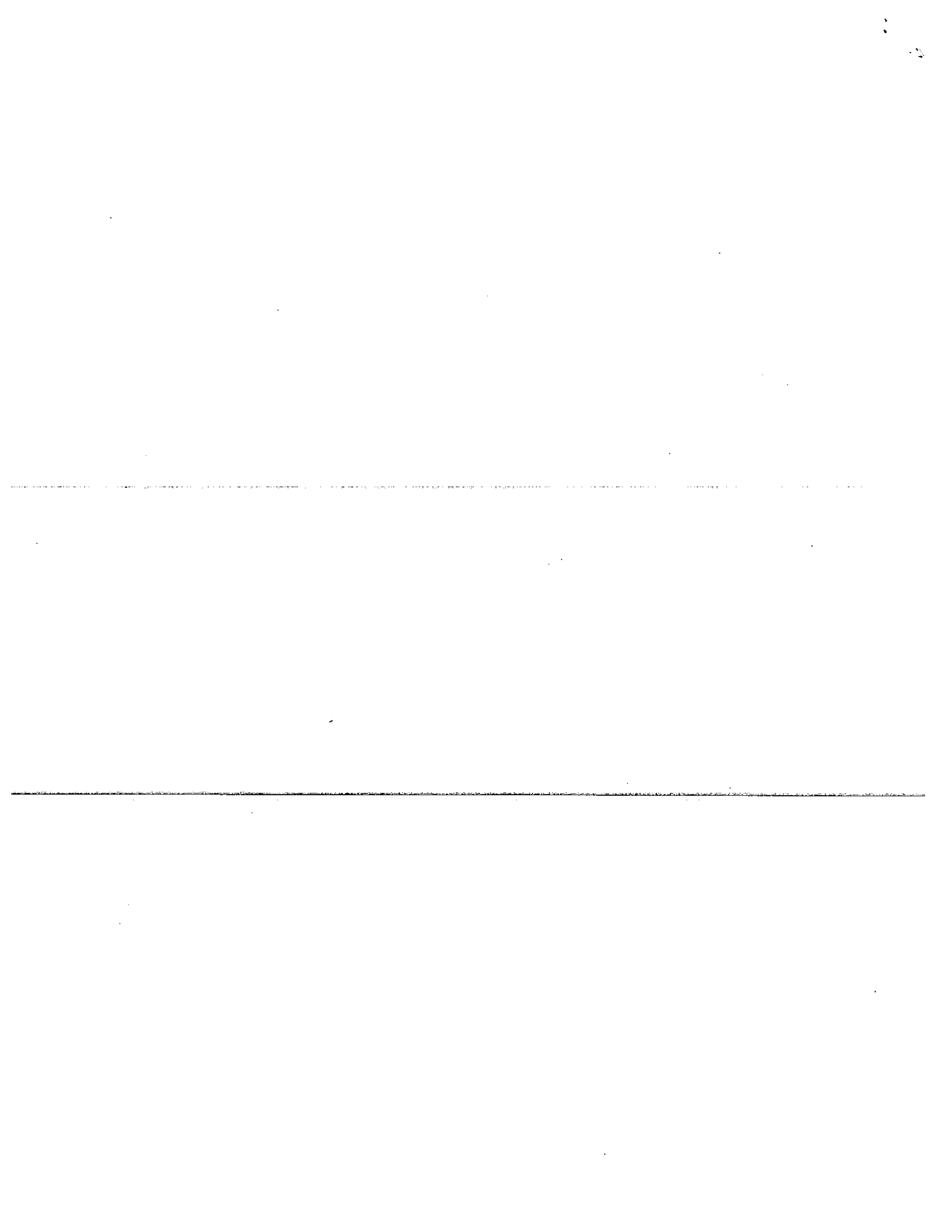
Petitioner was diagnosed with bilateral carpal tunnel syndrome and right cubital tunnel syndrome on January 26, 2012, when nerve conduction studies were performed by Dr. Trudeau. Dr. Trudeau noted that Petitioner worked using both upper extremities. Subsequent to this medical evaluation, on February 10, 2012, Petitioner advised Respondent via e-mail that he had bilateral carpal tunnel syndrome which he believed to be work-related.

Based on the preceding, the Arbitrator finds the date of manifestation to be January 26, 2012, the date the condition was diagnosed by Dr. Trudeau and not January 11, 2012, the date he saw Dr. Bohan.

In regard to disputed issues (J), (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrator's conclusions in disputed issues (C) and (F).



William R. Gallagher, Arbitrator



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

Thomas Kaufmann,
Petitioner,

vs. NO. 12 WC 43458

State of Illinois-Dept. of
Financial & Professional Regulation,
Respondent,

ORDER OF RECALL UNDER SECTION 19(f)

The Commission on its own Motion pursuant to Section 19(f) of the Workers' Compensation Act recalls the Review Decision dated December 14, 2015.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision dated December 14, 2015 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein. The parties should return their original Decision to Commissioner Mario Basurto.

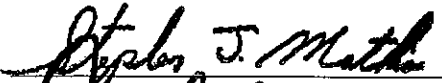

IT IS FURTHER ORDERED BY THE COMMISSION that a Decision bearing the correct Arbitrator's Decision shall be issued simultaneously with this Order.

DATED: MAR 28 2016

MB/mam
43

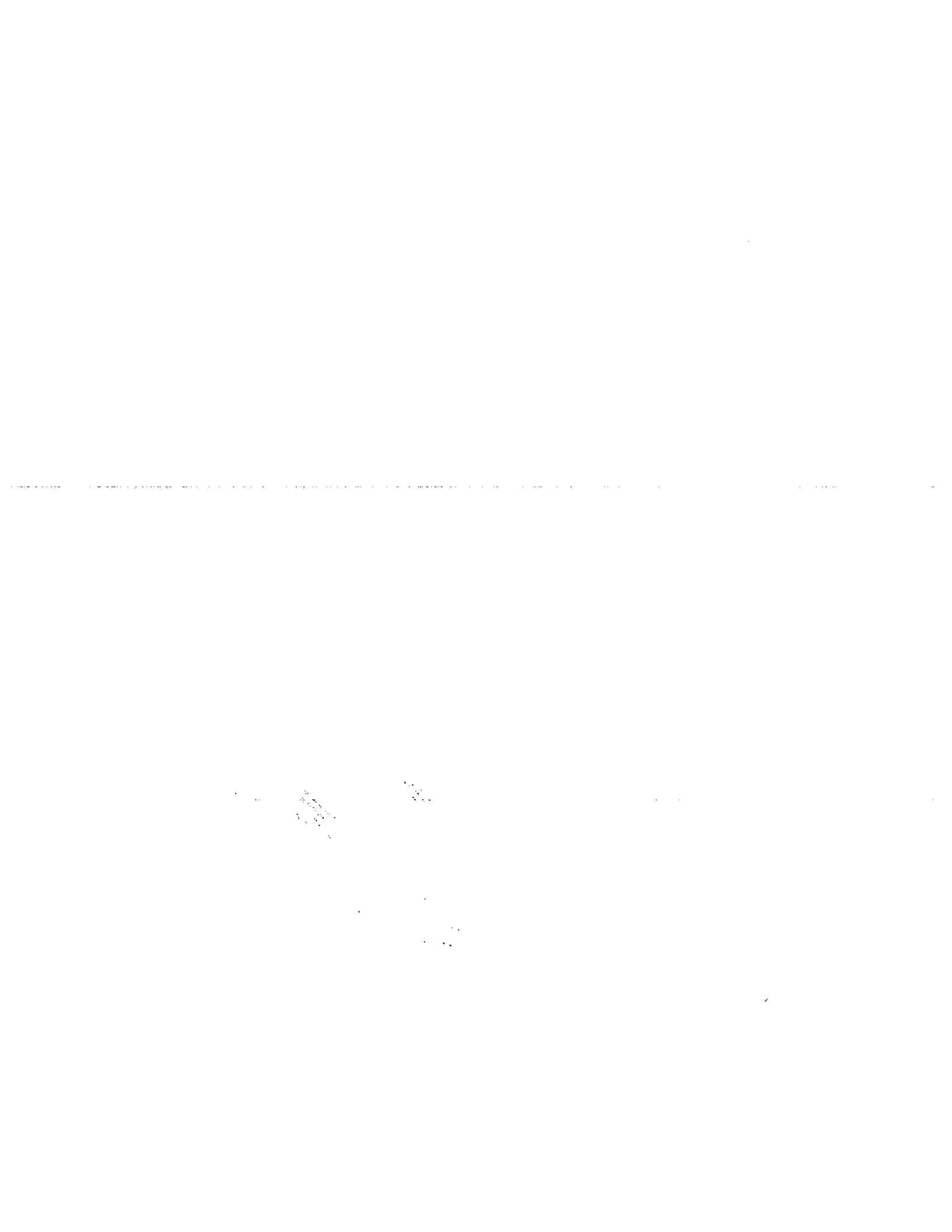


Mario Basurto

Stephen J. Mathis

David L. Gore



STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with comment	<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 checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Thomas Kaufmann,

Petitioner,

vs.

NO: 12 WC 43458
15 IWCC 0917

State of Illinois – Dept. of
Financial & Professional Regulation,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, extent of temporary total disability, nature and extent of permanent disability and medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which are attached hereto and made a part hereof.

The Commission recalls the Decision and Opinion on Review 15 IWCC 0917 under §19(f) of the Act based upon an error made in a companion case. The Commission affirms and adopts the Arbitrator's Decision, which denied compensation finding that Petitioner failed to prove he sustained repetitive trauma accidental injuries arising out of and in the course of his employment manifesting on February 10, 2012.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review 15 IWCC 0917 is hereby recalled under §19(f) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 14, 2015 is hereby affirmed and adopted.

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.

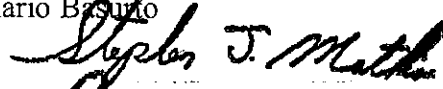
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

DATED:
MB/maw
o10/15/15
43

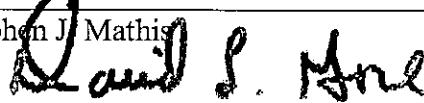
MAR 28 2016



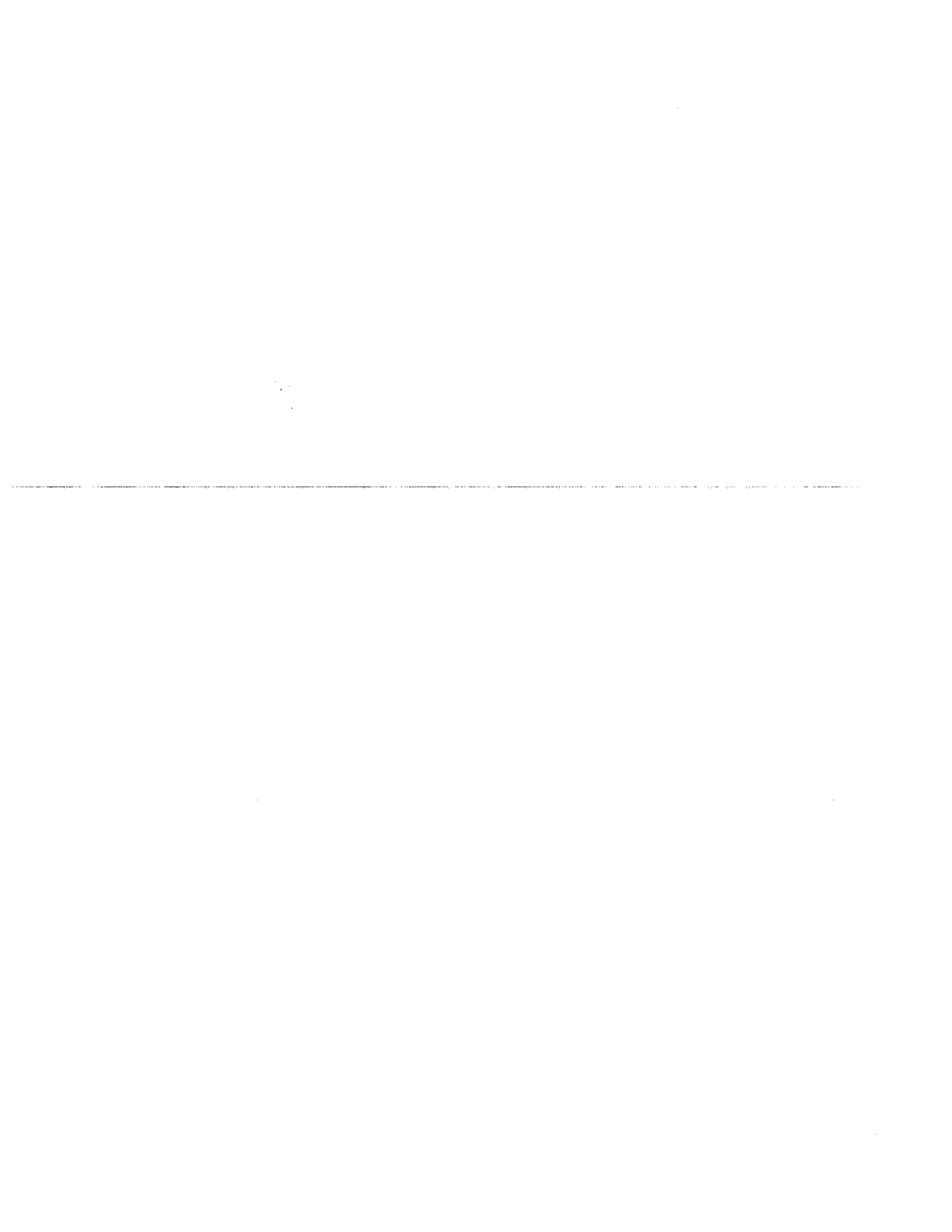
Mario Brasuto



Stephen J Mathis



David L. Gore



ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KAUFMANN, THOMAS

Employee/Petitioner

Case# **12WC043458**

12WC043433

12WC043435

**SOI-DEPT OF FINANCIAL & PROFESSIONAL
REGULATION**

Employer/Respondent

15IWCC0917

On 4/14/2015, 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 0.10% 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:

2934 BOSHARDY LAW OFFICE PC
JOHN V BOSHARDY
1610 S 6TH ST
SPRINGFIELD, IL 62703

0499 CMS RISK MANAGEMENT
WORKERS' COMP MANGER
PO BOX 19208
SPRINGFIELD, IL 62794-9208

4138 ASSISTANT ATTORNEY GENERAL
AMY S OXLEY
500 S SECOND ST
SPRINGFIELD, IL 62706

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601-3227

0502 STATE EMPLOYEES RETIREMENT
2101 S VETERANS PARKWAY
PO BOX 19255
SPRINGFIELD, IL 62794-9255

**CERTIFIED as a true and correct copy
pursuant to 820 ILCS 306 / 14**

APR 14 2015



Ronald A. Rascia
RONALD A. RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

15IWCC0917

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<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

Thomas Kaufmann
Employee/Petitioner

Case # 12 WC 43458

v.
State of Illinois - Dept. of Financial & Professional Regulation
Employer/Respondent

Consolidated cases: 12 WC 43433
12 WC 43435

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 William R. Gallagher, Arbitrator of the Commission, in the city of Springfield, on February 24, 2015. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

15IWCC0917

FINDINGS

On February 10, 2012, 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 not sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being is not causally related to the accident.

In the year preceding the injury, Petitioner earned \$93,600.00; the average weekly wage was \$1,800.00.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

Respondent is entitled to a credit of \$0.00 under Section 8(j) of the Act.

ORDER

Based upon the Arbitrator's Conclusions of Law attached hereto, claim for compensation is denied.

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.


William R. Gallagher, Arbitrator

ICArbDec p. 2

April 7, 2015

Date

APR 14 2015

15IWCC0917

Findings of Fact

Petitioner filed three Applications for Adjustment of Claim all of which alleged that he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Applications all alleged Petitioner sustained repetitive trauma to the bilateral upper extremities, right thumb and right arm. The only difference between the three Applications was the date of accident (manifestation) that was alleged. Case 12 WC 43435 alleged a date of accident (manifestation) of January 11, 2012. Case 12 WC 43433 alleged a date of accident (manifestation) of January 26, 2012. Case 12 WC 43458 alleged a date of accident (manifestation) of February 10, 2012 (Petitioner's Exhibit 1). The three cases were previously consolidated for trial. In all three cases, Respondent disputed liability on the basis of accident and causal relationship (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a Bank Examiner for over 28 years. Petitioner's job duties consisted primarily of making on-site inspections of financial institutions' computer and security systems. Petitioner would generally drive 100 to 1,000 miles per week.

Petitioner testified that during the bank examinations, he would work in whatever area the bank provided for him and would review the banks' documents, policies and procedures. A bank examination would take approximately three to five days. Petitioner stated that he would use his hands for virtually the entire time he was conducting the examination. Petitioner would review documents that described the bank's policies and procedures. Petitioner would also interview bank employees to determine if they were following the appropriate policies and procedures. Such an interview could take between 20 minutes and two hours and Petitioner would take handwritten notes. After completing the preceding, Petitioner would write a work program report.

Petitioner testified that he hand wrote the work program report and subsequently typed them on a manual typewriter. Petitioner took a manual typewriter with him to the banks and it took four to five hours to write a report, depending on the bank. While Petitioner did not write reports every day, he was still writing four to five hours per day every day. Sometime in the late 1980's, the manual typewriters were replaced by laptops which are periodically updated in the 1990's and 2000's.

In the early 1990's, Petitioner became a Field Supervisor and split his time between working in an office and the field. From the mid 1990's onward, Petitioner spent most of his time in the office and did keyboarding for five to six hours per day. Petitioner used an old style metal desk and his hands were kept in a flexed position pointing upwards when he was keyboarding.

Petitioner testified that in 2002, two secretaries assigned to his office retired and were replaced by temporary workers who were only there on a sporadic basis. This resulted in an increase of Petitioner's keyboarding. Petitioner also used a computer mouse which he described as being difficult to use.

Over time, Petitioner began to experience tightness, soreness and numbness in both hands which would wake him at night. Petitioner noticed that the soreness was present with both typing and mouse use; however, his symptoms were not as severe over the weekends when he was not using his hands as much.

Petitioner initially sought medical treatment from Dr. James Bohan, his family physician, who evaluated him on January 11, 2012 (the manifestation date alleged in 12 WC 43435). At that time, Petitioner complained of numbness in both hands for the preceding seven to eight years, worse on the left than right. There was no history of trauma or any reference to Petitioner's work activities in Dr. Bohan's record of that date. Dr. Bohan's assessment was tingling and numbness and he subsequently referred Petitioner to Dr. Edward Trudeau for nerve conduction studies (Petitioner's Exhibit 2).

Dr. Trudeau saw Petitioner on January 26, 2012 (the manifestation date alleged in 12 WC 43433) and noted that Petitioner worked using both upper extremities. The nerve conduction studies were positive for bilateral carpal tunnel syndrome, moderately severe in the right and mild in the left, as well as cubital tunnel syndrome of the right elbow (Petitioner's Exhibit 3).

Petitioner advised his Supervisor via e-mail that he had bilateral carpal tunnel syndrome that had a gradual onset of the preceding seven years. The date of Petitioner's e-mail was February 10, 2012 (the date of manifestation alleged in 12 WC 43458). On March 1, 2012, a Supervisor's Report of Injury was prepared (Petitioner's Exhibit 7).

On February 14, 2012, Petitioner completed an Employee's Notice of Injury Form wherein he stated that he had bilateral carpal tunnel which was a gradual condition that had been getting worse over time. He attributed the condition to typing, e-mail and using the mouse on a computer (Respondent's Exhibit 1).

Petitioner was seen by Dr. Brett Wolters, an orthopedic surgeon, on February 15, 2012. At that time, Petitioner informed Dr. Wolters that he worked as a Manager in the IT Department and that he worked on computers for eight hours per day. Petitioner had symptoms of pain, numbness and cramping of both hands, in particular, when he was typing or doing work with a mouse. Dr. Wolters diagnosed Petitioner with bilateral carpal tunnel syndrome, right wrist de Quervain's tenosynovitis and right cubital tunnel syndrome. Dr. Wolters prescribed a splint for Petitioner to use at night and gave an injection in the right wrist (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. Wolters on March 23, 2012, and Dr. Wolters recommended Petitioner have surgery on both upper extremities. Dr. Wolters performed a right carpal tunnel and right cubital tunnel surgical release on April 23, 2012. Dr. Wolters performed a left carpal tunnel release on May 21, 2012. Petitioner recovered from the surgeries and Dr. Wolters authorized him to return to work on June 18, 2012 (Petitioner's Exhibit 4).

Petitioner was last seen by Dr. Wolters on August 15, 2012. At that time, Petitioner advised that the numbness was completely gone but that he still had a little bit of weakness in his left hand. Dr. Wolters opined that Petitioner was at MMI (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Patrick Stewart, a hand surgeon, on March 19, 2013. In connection with his examination of Petitioner, Dr. Stewart reviewed medical records as well as information regarding Petitioner's job duties that was provided to him by Respondent. Dr. Stewart confirmed the diagnoses of bilateral carpal tunnel syndrome and right cubital tunnel syndrome. In regard to causality, Dr. Stewart opined that Petitioner's upper extremity conditions were not related to his data entry and computer work (Respondent's Exhibit 3).

Dr. Stewart was deposed on October 18, 2014, and his deposition testimony was received into evidence at trial. Dr. Stewart's testimony was consistent with his medical report and he reaffirmed his opinion that Petitioner's upper extremity conditions were not related to his work activities. Dr. Stewart's opinion was based, in part, on what he described as medical research and literature (Respondent's Exhibit 4; pp 15-18).

On cross-examination, Dr. Stewart agreed that he had no knowledge of how repetitious Petitioner's job duties were nor did he have any knowledge as to the ergonomics of Petitioner's workstation. He also agreed that Petitioner did not have any other systemic conditions associated with carpal tunnel syndrome (Respondent's Exhibit 4; pp 23-25).

Dr. Wolters was deposed on January 23, 2015, and his deposition testimony was received into evidence at trial. Dr. Wolters' testimony was consistent with his medical records regarding his diagnoses and treatment of Petitioner. In regard to causality, Dr. Wolters opined that Petitioner's history of typing and using a computer mouse for multiple hours per day could cause or aggravate both carpal tunnel and cubital tunnel syndrome. In response to a hypothetical question which summarized Petitioner's work duties, Dr. Wolters reaffirmed his opinion regarding causality. He also noted that Petitioner did not have any systemic conditions that could contribute to both carpal tunnel and cubital tunnel syndrome (Petitioner's Exhibit 6; pp 8, 15-18).

At trial, Petitioner testified that he ceased working for Respondent in October, 2012; however, he obtained a job as a Bank Examiner for the Federal Reserve Bank. Petitioner's job duties are essentially identical to those when he was employed by Respondent. Petitioner stated that his upper extremity symptoms improved following the surgery; however, he still has some residual symptoms. In regard to the right hand/arm, Petitioner stated that he still has some symptoms of tightness, soreness and numbness especially upon active use. He still experiences some tingling in the right elbow. In regard to the left hand, Petitioner still experiences some tightness and diminished strength.

Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury to both upper extremities that arose out of and in the course of his employment for Respondent that manifested itself on January 26, 2012, and that his current condition of ill-being is causally related to same.

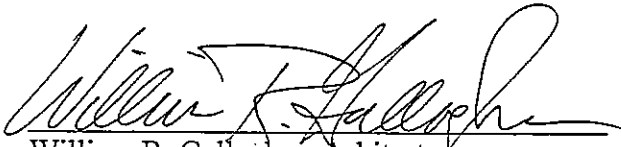
In support of this conclusion the Arbitrator notes the following:

Petitioner first sought medical treatment on January 11, 2012; however, Dr. Bohan did not opine as to a specific diagnoses nor did he opine as to whether Petitioner's upper extremity conditions were work-related.

Petitioner was diagnosed with bilateral carpal tunnel syndrome and right cubital tunnel syndrome on January 26, 2012, when nerve conduction studies were performed by Dr. Trudeau. Dr. Trudeau noted that Petitioner worked using both upper extremities. Subsequent to this medical evaluation, on February 10, 2012, Petitioner advised Respondent via e-mail that he had bilateral carpal tunnel syndrome which he believed to be work-related.

Based on the preceding, the Arbitrator finds the date of manifestation to be January 26, 2012, the date the condition was diagnosed by Dr. Trudeau and not February 10, 2012, when he e-mailed his Supervisor regarding the diagnosis.

In regard to disputed issues (J), (K) and (L) the Arbitrator makes no conclusions of law as these issues are rendered moot because of the Arbitrations conclusions in disputed issues (C) and (F).



William R. Gallagher, Arbitrator

.....

.....