12 WC 32701
16 IWCC 506

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

RICARDO HARO,

Petitioner,

vs.

NO. 12 WC 32701
16 IWCC 506

CARL BUDDIG,

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 a clerical error in the Decision and Opinion on Review of the Commission dated August 1, 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 THEREFOR ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated August 1, 2016 is hereby recalled pursuant to Section 19(f) for clerical error contained therein.

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

DATED: AUG 9 - 2016

RWW/dw
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Ruth W. White

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident/Causation	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICARDO HARO,

Petitioner,

vs.

NO: 12 WC 32701
16 IWCC 506

CARL BUDDIG,

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 issues of accident, causation, temporary total disability, permanent partial disability, medical expenses both current and prospective, and penalties and fees, and being advised of the facts and law, reverses the Decision of the Arbitrator, and finds that Petitioner proved a compensable accident occurring on February 6, 2012 which caused a current condition of ill being.

Findings of fact and Conclusions of Law

1. Petitioner testified that on February 6, 2012 he was working for Respondent as a forklift driver and had been for a little over a year. He loaded and unloaded trucks, made orders, and put away stock. He had to lift cases of product "all day sometimes." On the date noted above, he was making orders and to expedite the process they would push "six to eight layers of boxes together" down to another skid. "The whole layer would be like 6, 12, 24, like 28 boxes in a row, sometimes, depending how big, what the box is. So it was 26 times *sic* from the layers." It weighed "like 100 pounds." He was pushing the boxes with a coworker, Gustavo. After he pushed them he felt pain in the left side of his lower back. In an eyewitness report, the coworker reported that on February 6, 2012 they were pushing three layers of product when Petitioner said that he pulled a muscle.

2. Petitioner stopped working for about 10 minutes but he noticed the pain had not gone away. He went to the office and reported the accident to his supervisor, Mario. Mario called security and somebody from security took him to the emergency room at Ingalls Memorial Hospital. X-rays were taken, Petitioner was given Ibuprofen and Skelaxin, and he was referred to Ingalls Occupational Health for follow up.

3. Petitioner was examined at Ingalls Occupational Health the next day. He returned about weekly at which times he was examined, it was determined what he "was able to do," and given more medication. He went to physical therapy for about two months. He was put on restrictions, which Respondent did not always accommodate. A doctor at Ingalls recommended an MRI but that was not approved by Respondent.

4. Petitioner was released to return to work on a trial basis on March 26, 2012. However, he was not able to continue working because it increased his back pain. He worked the entire day of the 26th but returned to Ingalls the next day. He complained of low back pain and some pain in his left leg. He was put back in physical therapy and on restricted duty; again an MRI was recommended and again it was denied. Ingalls stopped physical therapy as of April 6, 2012, after about 18 sessions. Petitioner was still on restricted duty, which Respondent could not accommodate.

5. Petitioner also testified that the last time he went to Ingalls was on May 9, 2012. He was told to continue his medication and once again an MRI was recommended. Also in May 2012, Respondent sent him to Dr. Heller for an examination under Section 12 of the Act. Respondent terminated medical treatment after Dr. Heller issued her report. Thereafter, Petitioner began treating at MetroSouth Medical Center, where his primary care physician practices. He saw three doctors there. He returned there "like every month." They kept examining him and prescribing additional medication. Nevertheless, he experienced more pain in his back and left leg, "all the way to the toes."

6. On about four or five occasions doctors at MetroSouth took him off work and released him to work. Petitioner returned to work on October 1, 2012 and worked about 16 days. He experienced pain in his back and left leg down to his toes. His toes became numb, swollen, and painful. He last work for Respondent on October 16, 2012, and has been off work since.

7. Petitioner eventually had an MRI on October 23, 2012. It showed he had a herniated disc. He was referred to an orthopedist, Dr. Amine, whom he saw on November 15, 2012. He administered three injections, the last on August 30, 2013. However, he still had pain which was getting worse. He noticed no improvement from the injections. He returned to Dr. Amine on September 26, 2013 and asked to have surgery. Dr. Amine ordered a repeat MRI, after which he performed surgery on February 10, 2014. The surgery did not resolve his back/leg pain. Dr. Amine prescribed Vicodin and Neurontin. He also recommended physical therapy, but that was not approved by insurance. He last saw Dr. Amine on September 18, 2014.

8. At Respondent's direction, on March 10, 2014 Petitioner had another examination under Section 12 with Dr. Singh. He saw Dr. Singh again on August 14, 2014. He recommended a 3rd MRI, which he had on August 18, 2014. Thereafter, Dr. Singh recommended a second surgery, and Petitioner agreed to treat with him. He scheduled surgery for September 9, 2014, but it was not approved. Dr. Singh indicated Petitioner could not return to work until he had surgery. Petitioner wants the surgery. Petitioner has not seen Dr. Singh since the MRI. However, Dr. Singh keeps refilling his medications, Tramadol, Ibuprofen, Gabapentin, and another he could not remember.

9. Petitioner further testified he never injured or had treatment for his lower back prior to February 6, 2012. He has not reinjured his back in any way subsequent that date. Petitioner has not received any workers' compensation benefits since Dr. Heller's report. He has no source of income and is surviving economically by living with his parents and with help from his girlfriend. He is subject to "a couple of lawsuits" due to his inability to pay bills.

10. Petitioner identified a person sitting in the hearing room as Dave Streeter. He has not given Mr. Streeter permission to contact his doctors. Petitioner has not experienced any benefit from his surgery. He still has pain in his lower back and left leg, foot, and toes.

11. On cross examination, Petitioner testified that at the time of his accident he had seven year old son and five year old daughter weighing about 70 and 50 lbs, respectively. There are different shapes of boxes and cases of product with different weights, but he doesn't know exactly what they weigh. He agreed that making an order involves "taking several layers of boxes and transferring them to another pallet." He reiterated that at the time of his accident he was pushing "like six layers" of boxes. Petitioner denied he told his doctors that he was pushing only three layers of boxes. Petitioner was shown the accident report he filled out. He agreed that it did not show how many layers of boxes he was pushing.

12. After the Section 12 examination with Dr. Heller, in May 2012, Respondent sent him a letter asking him to return to work. The day after he went back to work he went to Dr. Hajat, who was his primary care physician. He told her he had pain in his back but he did not ask her to take him off work. Petitioner denied that in August of 2012 he told Dr. Hajat that he experienced back spasms picking up and carrying his son; he once told her he experienced spasm "from walking from the house to his school." He did not remember whether he told her about carrying his son 100 yards.

13. Petitioner agreed that he did tell Dr. Hajat he moved some chairs and his back hurt more after. He had an MRI on October 23, 2012, which was about six weeks after he told Dr. Hajat about moving chairs. He had tried to help out by trying to move "not even six chairs." He tried to help with the furniture, but he could not move the chairs because of the pain. Petitioner was referred to Dr. Amine by Dr. Hajat because of the results of the MRI.

14. When asked whether it was true that he did not have any numbness in his leg or toes until after he "lifted the party tent," Petitioner could not remember. However, he later denied he was setting up a party tent but was just moving chairs. He again testified that he did not reinjure his back. He agreed that he did not receive any bills from Dr. Singh and Respondent likely paid them.

15. On redirect examination, Petitioner testified that since he injured his back on February 6, 2012 "everything" aggravates his back pain, including walking, lying, and sitting. Ingalls recommended MRIs on February 29, 2012, March 7, 2012, and March 27, 2012, which were all denied.

16. David Streeter was called by Respondent for which he worked as safety and security manager for six and a half years. Mr. Streeter has been in safety and human resources for about 20 years. Probably more than 50% of his time is spent on the work floor so he has a lot of interaction with the employees. He creates and ultimately enforces all safety-related policies and procedures. He also administers return to work programs. Respondent has a 100% return to work program; they honor all light duty restrictions. If there were restrictions he would contact the employee and indicate they would accommodate them. Employees can be assigned to drive a forklift with no lifting, "cycle counts" in parts and maintenance, or even simply to do paperwork and make copies.

17. Mr. Streeter thought Petitioner started working for Respondent about when he did, so he thought he knew him for about six years. He believed he was informed of the alleged accident the next day because it occurred late. He was told Petitioner was sent to the clinic.

18. Mr. Streeter identified documents, which were Petitioner's accident report, an eyewitness report, and supervisor's report, respectively. They indicated Petitioner was injured while pushing layers of boxes into an empty pallet. Respondent has a policy that when employees are pushing layers of boxes "they should work as a team and should push a maximum to two layers." There was nothing unsafe about pushing two layers of boxes. Mr. Streeter was "surprised to see that they had pushed three layers;" the force needed to push two was acceptable, three was not.

19. It was the witness' understanding that doctors' reports indicated that Petitioner suffered a muscle strain. Mr. Streeter did not recall any resistance from any employees about accommodating Petitioner's restrictions and he did not recall whether Petitioner complained to him of pain after he returned to light-duty work. After he received Dr. Heller's report indicating Petitioner could return to work without restrictions, Mr. Streeter asked him to return to work at full duty.

20. On cross examination, Mr. Streeter testified he was aware that Ingalls put Petitioner on restricted duty. When asked whether it was true that Respondent did not provide work within his restrictions, he answered that he did not recall. He also did not recall whether Respondent paid him workers' compensation benefits.

21. Mr. Streeter repeated his testimony that Respondent attempts to accommodate all restrictions, and he believed that it always does. He would have to review the paperwork to see whether Respondent accommodated Petitioner's restrictions. He did not recall whether he sent Petitioner a letter informing him light duty was available, but he certainly believed he spoke to him in person.

22. Mr. Streeter also testified he did not remember whether he called Ingalls and told them that Petitioner had a history of trying not to work and he believed Petitioner was exaggerating symptoms. However, he acknowledged that there was a note indicating he called on February 8, 2012. What he saw was that he "called in regard to his restrictions." Petitioner did not give him a signed authorization to contact his doctor, but he thought it was legal to contact a doctor about restrictions.

23. Mr. Streeter also testified he did not specifically recall seeing Dr. Singh's Section 12 report. However, he believed he remembered that he indicated Petitioner had a herniated disc. He did not remember whether he contacted Petitioner after he saw that report.

24. On redirect examination, Mr. Streeter testified after injuries employees are informed that Respondent "would abide by restrictions" and wants them to return to work. He told Petitioner that Respondent was willing to accommodate any restrictions. He presumed it would have been the day after the accident when he became aware of the injury. He had no reason to disbelieve the account of the witness that they were pushing three layers of boxes. Moving six layers made no sense to him; he was not even sure it was possible. Six layers "would be an entire pallet. So it would not make sense for us to push all the boxes from one pallet to another pallet. We would just utilize that existing pallet of product." If the witness remembered correctly, the type of box Petitioner was moving weighed about three pounds each. If an order included three layers, employees would be expected to move two layers and return for the third.

25. On re-cross examination, Mr. Streeter testified the number of boxes in a layer depended on the product. He estimated that there would be 16 to 20 boxes per layer at three pounds per box. Therefore, three layers of boxes would be in excess of 100 pounds.

26. Louis Draganich was called by Respondent and testified he has a "Ph.D. in bioengineering focusing in biomechanics." He is "an expert consultant in injury biomechanics." He studies the effect of forces or displacements on the body. Respondent's lawyer asked him to assess records and "try to make a determination whether or not the activity alleged resulted in the injury alleged" in the current instance.

27. Mr. Draganich read the medical and workplace records, researched the literature, performed an inspection, oversaw a reenactment demonstration of the alleged incident, and issued a report. The enactment was performed by Mr. Streeter and Mr. Pacheco, the coworker who worked with Petitioner on February 6, 2012. The enactment included three layers of boxes totaling about 85 boxes, which were reported to be identical to those involved in the incident.

28. Mr. Draganich then asked Respondent's lawyer to serve as a surrogate because he is the same height as Petitioner, and the variation of weight, Petitioner was 185 pounds and the lawyer was 150 pounds, was sufficiently close to satisfy Mr. Draganich. Mr. Pacheco was involved in the incident and set up the demonstration as it was at the time of the incident.

29. Mr. Draganich explained that "it's been pretty conclusively demonstrated that for a healthy disc, a compressive force can't rupture the disc unless also the vertebral end plates, the bony end plates, are ruptured. And among investigators, it's accepted that his is primarily a fatigue injury, due to, for example, a cyclic flexion/extension loading." He saw no evidence of any such fractures in the medical records. That implies to him that "this ruptured disc was not produced acutely," but rather the result of fatigue. Statistically, 21% of individuals in Petitioner's age category, 21-39, would have asymptomatic herniated discs.

30. In the demonstration Mr. Draganich found that it took 72 lbs of force to push the boxes. The compressive force on L5-S1 was between 485 and 630 pounds. By comparison, fast walking would produce 545 lbs of compressive force on the lumbar spine, bending over at about 80 degrees would cause about 561 pounds of compressive force, a sit up would produce about 600 pounds of compressive force, and carrying a typical carry-on suitcase would produce 621 pounds of compressive force which was almost exactly the same as the alleged accident.

31. Mr. Draganich concluded that the force exerted in the alleged accident was very similar to those exerted in normal exercise and activities of normal everyday living. He determined that for Petitioner's "age and weight," "his tolerance limit was a little over 2,000 pounds" to fracture the bone. Therefore the force was not sufficient to cause the ruptured disc or to aggravate any preexisting condition.

32. On cross examination, Mr. Draganich agreed that many activities that do not require much heavy lifting can cause disc herniations. He gathered information about the mechanism of the alleged injury from reports of Mr. Streeter and Mr. Pacheco. Mr. Pacheco had engaged in the activity for decades. Mr. Draganich is not a doctor or a board certified orthopedist. He agreed that Mr. Streeter was not present at the time of the accident. Mr. Draganich was aware that Dr. Singh had a degree in engineering.

33. On redirect examination, Mr. Draganich testified he worked regularly with orthopedic surgeons. He not only performed research, he taught medical students. For coughing or sneezing to result in a herniated disc it would be "the straw that broke the camel's back" after fatigue.

34. Petitioner testified in rebuttal that the letter dated May 10, 2012 was the only letter he received about returning to work from Mr. Streeter. He had no conversations with Mr. Streeter about returning to work in a light-duty capacity. After he was first injured there was no light duty work available or Respondent did not honor his restrictions.

35. On cross examination, Petitioner testified that he was informed by the supervisor Alex that he could not work with the restrictions that were imposed. That was when he returned with the restrictions from the doctor. He took his restrictions in every time he went back. Mr. Streeter never mentioned Respondent's 100% return to work policy.

36. The medical records indicated that a little after midnight on February 7, 2012, Petitioner presented to the emergency department at Ingalls complaining of 8/10 non-radiating lower back pain with swelling after injuring his back at work pushing boxes off one skid to another skid. X-rays were normal. Lumbar sprain was diagnosed, medication prescribed, and Petitioner was advised to return for reevaluation at Ingalls Occupational Health in two days.

37. Petitioner returned on February 8th with 5/10 pain and did not think he was improving. He was not in physical therapy and found his pain was exacerbated by bending and lifting. Petitioner's supervisor called the previous day and indicated Respondent could accommodate no bending and lifting restrictions and asked whether Petitioner could drive a forklift. Dr. Reddy indicated he would allow it on a trial basis. Petitioner reported that his pain increased by the end of the day "because he did not have any breaks and was required to use stairs and inclines very often." Tenderness and reduced flexion was noted. Restrictions and medications were continued.

38. An addendum treatment note indicated that David Streeter called. He was concerned about the restrictions and indicated Petitioner had a history of "trying not to work and believes he is exaggerating symptoms." He also stated there are no stairs at Respondent's facility. Dr. Reddy suggested he send a case manager at the next visit and they might consider physical therapy.

39. Petitioner continued to treat at Ingalls Occupational Health, including physical therapy, through May 9, 2012 with little improvement. Repeated requests for MRIs by doctors at Ingalls were denied by Respondent.

40. On August 20, 2012, Petitioner presented to his principle care provider, Dr. Hajat because of a sore throat and back spasms. He had pain since the previous day when he carried his son and carried him for over 100 yards. He was unable to walk since August 15th. Dr. Hajat did not find muscle spasms and sent him back to work on August 27th.

41. Petitioner returned to Dr. Hajat on September 11, 2012 reporting back pain for past two days "after putting up a party tent and furniture." He was unable to return to work. Dr. Hajat noted paraspinal spasms in both the thoracic and lumbar spine, ordered an MRI, and sent him back to work as of September 16th.

42. On November 15, 2012, Petitioner presented to Dr. Amine and reported feeling a snap in his back in the February 6, 2012 incident and had intermittent low back pain with radiculopathy since. He had physical therapy for a couple of weeks and could not tolerate a return to work. Dr. Amine noted that an October 23, 2012 MRI showed a left L5-S1 disc herniation with extrusion into the left neural foramen.

43. By September 20, 2013, Dr. Amine's notes indicated he had administered three epidural steroid injections. Petitioner left sided back pain radiating down the left leg was almost constant and he wanted to proceed with surgery. Dr. Amine ordered a repeat MRI, which showed an acute-appearing herniated disc at L5-S1 with compression of the L5 nerve roots at the neural foramen and lateral recess, respectively.

44. On February 10, 2014, Dr. Amine performed left L5-S1 laminectomy, foraminotomy, and medial facetectomy for a herniated disc and radiculopathy.

45. On March 10, 2014, at the direction of Respondent, Petitioner presented to Dr. Singh for a medical examination under Section 12. He reported pushing boxes weighing about 100 pounds when he developed low back pain. He currently had 8/10 low back and left leg pain. He recently had lumbar surgery and was not working.

46. Dr. Singh noted that an October 2012 MRI showed a large herniated disc at L5-S1 causing L5 nerve compression and an October 2013 MRI showed no change. Dr. Singh indicated that Petitioner's condition was consistent with the reported mechanism of injury, which was "no different than can be expected result from normal daily activity."

47. Dr. Singh opined that Petitioner's work injury caused his condition of ill being. Treatment provided, including surgery, was indicated. He could have worked light duty up to the injections and surgery but was currently unable to work. Petitioner was not at maximum medical improvement and needed physical therapy and work conditioning. He disagreed with the report of Dr. Heller because Petitioner had a herniated disc and an earlier MRI would have been prudent and could have expedited treatment.

48. Petitioner continued to treat with Dr. Amine, with little improvement. Prescriptions for physical therapy were denied. Dr. Amine noted that the denial seemed to make Petitioner depressed.

49. On August 11, 2014, Petitioner presented to Dr. Singh for him to become his treating doctor and for his recommendations for additional treatment. He reported 7-8/10 low back pain, 5-6/10 with medication, with radiation in the L5-S1 distribution. He found little relief from the laminectomy/discectomy performed in February 2014. Dr. Singh ordered a repeat MRI and took Petitioner off work.

50. Dr. Singh noted the MRI showed a large residual L5-S1 disc herniation causing severe foraminal stenosis with disc height loss at L5-S1. He recommended a revision laminectomy/discectomy with interbody fusion and iatrogenic facet resection for the recurrent disc herniation. The MRI report indicated a moderate posterior disc bulge with paracentral annular tear, small osteophytes, and moderate to severe foraminal and mild spinal canal stenosis at L5-S1.

51. On October 28, 2014, Dr. Heller, Respondent's initial Section 12 medical examiner, testified by deposition. She testified she was board certified in physical medicine and rehabilitation. She is also a licensed physical therapist. She sees 50 to 75 spine injury patients and performs one Section 12 examination per week.

52. She examined Petitioner on May 12, 2012 and issued a report. She did not remember Petitioner but normally she would review the medical records she is supplied by the requesting party prior to her examination. In her report she noted that Petitioner told her "he was pushing some stacked boxes of fairly light items four to five feet on a skid and he felt some pain in his low back."

53. Dr. Heller diagnosed that Petitioner suffered a mild lumbar strain in the incident. She based that opinion on the medical records, discussion with Petitioner, and her physical examination, which was essentially normal. She concluded that Petitioner's injury did not seem severe compared to other patients she has seen. She believed Petitioner achieved maximum medical improvement at the time of her examination because he did not need any additional treatment based on her normal physical exam, his extensive physical therapy, and because he was taught "how to change positions properly."

54. On cross examination, Dr. Heller testified that while Petitioner continued to complain of lower back pain in his weekly exams through April 6, 2012, the physical exams were normal except for tenderness and decreased range of motion; there were no findings of sensory or motor deficits. Her dictation does not indicate that Petitioner began complaining of radiating left leg pain. If he had pain to the knee, that would generally not be radicular pain, radicular pain would involved below the knee with numbness and tingling. Leg pain in the front of the leg would be inconsistent with an L5-S1 herniation.

55. Dr. Heller did not believe an MRI was indicated because Petitioner did not complain of radicular or leg pain and the Ingalls records showed no such symptoms. She was shown the Ingalls note from March 21, 2012 in which Petitioner reported low back pain with radiation to the base of the buttocks and the posterior of the left leg to the knee with no numbness or tingling. "That is not hard and fast radicular to" her. The report of pain could be referred pain because his symptoms did not follow the nerve distribution. Dr. Heller agreed that the October 2012 MRI showed a large disc herniation. However, that did not change her opinion that when she saw him he had only a mild lumbar strain. At that time he did not complain of leg pain, numbness or tingling, and normal sensory normal motor sensors. When she saw him his exam was "practically normal." Dr. Heller acknowledged she did not know anything about Petitioner's condition or treatment rendered after her examination.

56. Dr. Singh testified by deposition on March 19, 2015. He testified he is board certified in orthopedic surgery and an associate professor at Rush University Medical School. He performs 400 to 500 spine surgeries a year. He first saw Petitioner on March 10, 2014 for a Section 12 medical examination on referral "by the insurer." An MRI in 2012 showed a disc herniation at L5-S1 and one from 2013 showed no change. He opined that Petitioner's reported work injury caused the herniated disc at L5-S1.

57. Dr. Singh explained his notation that "the mechanism of injury is no different than can be the expected result from normal daily activity" meant that he thought that either pushing boxes or normal activities were plausible mechanisms of injury.

58. Petitioner returned on August 11, 2014. Dr. Singh noted positive straight leg raises and weakness in his calf muscle and big toe. He recommended a repeat MRI because he had "actually [neurological] deficit at that time."

59. The MRI showed a large disc herniation was still present causing nerve compression at L5 and the previous surgery had "taken away a lot of the L5-S1 facet joint." Dr. Singh felt "that the patient's symptoms were essentially unchanged, now with a new neurological deficit." He also "felt that the residual disc herniation was a direct byproduct of his original work-related injury." He reasoned that the "initial surgery resulted in a large portion of the facet being taken down, rendering it unstable," though he thought the surgery was reasonable.

60. On cross examination, Dr. Singh agreed that his initial Section 12 examination was essentially normal. Nevertheless, he thought Petitioner's pain complaints were very reasonable considering he was only four weeks postop. He saw no indications of symptom magnification. Dr. Singh's undergraduate degree was in biomechanical engineering. However, based on the interrogatories he was given, he did not believe he was asked to utilize any such analysis in his report. He would not defer to a biomechanical analysis; he would have to analyze it. However, he felt it would be "highly unlikely" that one would change his opinion on causation.

61. Dr. Singh also indicated that the previous treaters who diagnosed lumbar muscular strain were clearly incorrect because the MRI revealed a large disc herniation. He also noted that those doctors did not have the benefit of an MRI because it had not been approved. The fact that Petitioner treated for chronic low back pain since 1997 would be consistent with degeneration seen at L5-S1, but not the disc herniation.

62. Dr. Singh also testified that it was not accurate to say that lifting a 100 pound weight would cause a larger disc herniation that lifting a five pound weight because "it related to the integrity of the disc, the time of lifting, the integrity of the annulus fibrosis all those factors in to determine the size of the disc herniation." The cause of neurological deficit was twofold, there was the still present large disc herniation and after the surgery his spine was a little more unstable which can cause more compression of the nerve root.

63. Dr. Singh noted that Dr. Amine did what surgeons have to do. Unfortunately you "have to take off some bone to get at the disc herniation." Petitioner should stay off work pending surgery because the spinal segment at L5-S1 is unstable with a large herniation causing nerve root compression. About 3-4% of patients with lumbar spine surgery will have recurrent or residual disc herniation possibly necessitating a lumbar fusion.

The Arbitrator found Petitioner did not prove accident because his testimony about "a compensable accident occurring," was "not credible regarding the mechanism of his alleged injury, history of chronic back pain, and several documented intervening causes." She specifically noted that his testimony that he was pushing six to eight layers of boxes was contradicted by his earlier reports his coworker's report, his reference to the required use of stairs, and his statements to providers that there was no light duty work available. She noted that the reference to the need for the use of stairs and the lack of available light duty work were specifically denied by Mr. Streeter.

The Arbitrator clearly premised her denial of compensation based on her finding that Petitioner did not prove accident rather than that he did not prove causation. She wrote specifically that "Petitioner has not proven, by a preponderance of the evidence, that an accident occurred that arose out of and in the course of his employment by Respondent therefore no benefits are awarded***. In that the Petitioner has not proven a compensable accident, all other issues are moot."

The Commission finds that the Arbitrator was incorrect in finding Petitioner did not prove a compensable "accident." In particular, the Commission finds the Arbitrator's reliance on the testimony of Mr. Streeter to be somewhat misplaced. His testimony that there is always light duty available to accommodate any restrictions is not credible and does not make sense intuitively. If that were indeed the case, one would think that Respondent would have documented its offer of light duty employment and terminated temporary total disability benefits if Petitioner refused; it did not. In addition, his testimony seemed to equivocate when asked if Respondent had actually offered Petitioner light duty work.

The Commission also finds the primary inconsistency in Petitioner's testimony, that he was pushing six layers of boxes rather than three, to be of limited importance. He testified the load weighed about 100 pounds and Mr. Streeter confirmed that three layers of boxes would weigh over 100 pounds. Therefore, based on Petitioner's immediate reporting of the accident, his consistent reports to medical providers, and corroboration by an eye witness, the Commission finds that Petitioner proved he sustained a compensable accident on February 6, 2012.

On the issue of causation, the Commission notes that Petitioner's complaints of pain and symptoms arose immediately after the accident and were consistent and persistent thereafter. In addition, the Commission finds the testimony and opinion of Dr. Singh more persuasive than that of Dr. Heller. The Commission considers noteworthy that Dr. Singh was hired to perform his examination by Respondent, which obviously valued his expertise and opinions. Nevertheless, Dr. Singh found Petitioner's herniated disc was consistent with the reported mechanism of injury, as reported by Petitioner, and that his condition was caused by the work accident. On the other hand, Dr. Heller did not have the benefit of MRI results when she examined Petitioner and issued her report. The very fact that there was no objective evidence of significant pathology for more than eight months was likely due to Respondent's denial of authorization for an MRI despite repeated requests from doctors at Ingalls Occupational Health, its preferred medical provider. The Commission also finds that Respondent did not successfully establish the incidents of increased symptoms after Petitioner reportedly carried his son and moved lawn furniture were intervening events severing causation.

Finally, regarding the testimony of Mr. Draganich, the Commission notes that while he may have tried to duplicate the mechanism of injury as closely as possible, it was impossible for him to precisely determine exactly how Petitioner performed the activities during the incident. In addition, his calculations were based on the force needed to herniate a health disc. There is no evidence as to Petitioner's back condition prior to the accident. Also, Mr. Draganich's analysis presumes that more than 1/5 of people in Petitioner's age group have one or more asymptomatic disc herniations. That statistic could certainly support the theory that Petitioner had a preexisting asymptomatic disc herniation which became symptomatic after the work accident. Finally, the fact that Dr. Singh has a degree in biomechanical engineering and found the mechanism consistent with the herniated disc injury, works to lessen the impact of Mr. Draganich's opinions.

On the issue of medical expenses, the Commission finds that all medical treatment rendered to date were necessary and reasonable and related to Petitioner's work-related injury. Respondent has not presented any evidence to the effect that any medical treatment rendered, and associated expenses incurred, thus far were either unnecessary or unreasonable. Therefore, the Commission awards all outstanding medical expenses incurred to date, subject to the applicable medical fee schedule. In addition, the Commission orders Respondent to authorize and pay for prospective treatment prescribed by Dr. Singh.

On the issue of temporary total disability, the Commission notes that Petitioner was taken off work and released back to work on several occasions. The Commission awards a total of 159&2/7 weeks of temporary total disability benefits representing off work status from February 8, 2012 through March 25, 2012, March 27 through May 23, June 11 through June 13, July 17 through July 24, August 14 through August 26, August 30 through September 30, and October 17, 2012 through July 17, 2015, the date of arbitration. The Commission awards benefits through the date of arbitration based on the testimony of Dr. Singh that Petitioner's spine was currently unstable and he could not work until after the recommended surgery.

At this time it is inappropriate for the Commission to award permanent disability benefits. Because the Commission has ordered prospective medical treatment, Petitioner clearly has not achieved maximum medical improvement. While this matter was not arbitrated pursuant to Sections 8(a)/19(b) of the Act, the effect of this decision is to require that the matter be remanded to the Arbitrator to determine any additional temporary total disability benefits as well as permanent disability benefits similar to an action commenced and arbitrated pursuant to Sections 8(a)/19(b).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 5, 2015 is hereby reversed and the Commission finds Petitioner proved a compensable accident on February 6, 2012 which caused a current condition of ill being.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $299.73 per week for a period of 159&2/7 weeks, that being the period of temporary total incapacity for work under §8(b), and this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay all outstanding medical expenses incurred to treat the work-related injury under §8(a) of the Act, subject to the appropriate fee schedule pursuant to §8.2.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent authorize and pay for prospective medical treatment recommended by Dr. Singh.

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: AUG 9 - 2016

Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin

RWW/dw
O-7/17/16
46

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE WORKERS' COMPENSATION COMMISSION OF ILLINOIS

Cindi Mandel,
Petitioner,

vs.

NO. 10WC 31801
16 IWCC 0462

State of Illinois Department of Transportation,
Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

Motion to recall pursuant to Section 19(f) of the Act, having been filed by the Respondent finds that a clerical error exists in its Decision and Opinion dated July 7, 2016 in the above captioned.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated July 7, 2016, is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein.

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

DATED: AUG 18 2016

Kevin W. Lamborn

STATE OF ILLINOIS)	☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF LAKE)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CINDI MANDEL,

Petitioner,

vs. NO: 10 WC 31801
16 IWCC 0462

STATE OF ILLINOIS (IDOT),

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 medical expenses, PPD and penalties and fees and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds no reason to disturb the Decision of the Arbitrator with respect to the findings pertaining to medical expenses and the conferred PPD award. The Commission does find, though, the record does not support the awarding of penalties and fees.

No petition for penalties and attorneys' fees is found in the evidentiary record. As such, the Commission is uncertain as to Petitioner's exact claims and bases its conclusion upon arguments made by the parties in their pleadings before the Commission and upon the Commission's own database.

The Commission finds Petitioner's Petition for Penalties and Attorneys' Fees is premised on Respondent's failure to pay for the FCE that was performed on August 12, 2014, at Function First Physical Therapy and for charges for services rendered to Petitioner by Suburban Orthopedics. For both instances, the Commission finds Petitioner failed to prove Respondent's

actions were vexatious or unreasonable as contemplated under both Section 19(k) of the Act.

It is noted Petitioner's Petition for Penalties and Attorneys' Fees, per the Commission database, predates the FCE by more than a year. The petition was filed with the Commission on February 5, 2013, but the FCE was not performed until August 12, 2014. There was not claim of Petitioner's petition being amended to reflect the charges of the FCE have gone unpaid. As such, the Commission is uncertain as to how the petition addressed charges that had yet been incurred.

Furthermore, with respect to the charges for the FCE, the Commission finds no evidence of Petitioner tendering a bill for the charges associated with the FCE prior to the date of the arbitration hearing. As such, the Commission finds Respondent cannot be faulted for not making a payment on a bill that it did not possess until the arbitration hearing.

Concerning the charges incurred in relation to Petitioner's treatment with Suburban Orthopedics, the Commission finds Respondent acknowledges payment of those charges was not made. Uncertain, however, is whether some or all of the charges have gone unpaid.

Respondent claims its inaction in paying charges attributable to Petitioner's treatment at Suburban Orthopedics is due to a dispute as to the reasonableness and necessity for some of the treatment Petitioner received there. Petitioner claims that such an issue exists as Respondent did not dispute causation. The Commission finds Petitioner's counterargument unpersuasive as it finds there can be agreement or acknowledgement concerning the compensability of an accident but disagreement as to the necessity and/or reasonableness of how an injury stemming from the agreed-upon accident should be treated. In this particular case, Respondent's questioning of the need for x-rays to be taken on each of Petitioner's visits to Suburban Orthopedics, including x-rays of body parts seemingly unrelated to the claimed injured body part, is deemed to be not unreasonable or vexatious.

The totality of the evidence before it precludes the Commission from finding Respondent acted in a manner that was either vexatious or unreasonable. Accordingly, the Commission vacates the penalties and liability for attorneys' fees imposed upon Petitioner in the Arbitration Decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $669.64 per week for a period of 300 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 60% loss of the persona as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $1,566.00 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that awards conferred upon Petitioner in the Decision of the Arbitrator pursuant to Section 19(k) and Section 16 of the Act are vacated.

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.

DATED: AUG 1 8 2016
KWL/mav
O: 5/10/16
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

16IWCC0462

MANDEL, CINDI, ON BEHALF OF SPOUSE MANDEL, ALAN DECEASED
Employee/Petitioner

Case# **10WC031801**

STATE OF ILLINOIS (IDOT)
Employer/Respondent

On 5/11/2015, 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 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1521 FITZ & TALLON LLC
NICHOLAS FITZ
30 N LASALLE ST SUITE 1510
CHICAGO, IL 60602

4987 ASSISTANT ATTORNEY GENERAL
LAURA HARTIN
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1430 CENTAL MGMGT SERVICES
WORKERS' COMP MGR
PO BOX 19208
SPRINGFIELD, IL 62794-9208

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 305/14

MAY 11 2015

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

STATE OF ILLINOIS)
)SS.
COUNTY OF Lake)

☐ 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

16IWCC0462

Cindi Mandel on behalf of Spouse Alan Mandel, deceased
Employee/Petitioner

Case # 10 WC 31801

v.

Consolidated cases: _____

State of Illinois (IDOT)
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 **George Andros**, Arbitrator of the Commission, in the city of **2/26/15 and**, on **3/13/15**. 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 **Benficiary(s) under the WC Act**

16IWCC0462

FINDINGS

On **8/10/10**, 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 **$65,547.04**; the average weekly wage was **$1,260.50**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **2** dependent children.

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 **$194,236.28** for TTD, $ for TPD, $ for maintenance, and **$82,362.57 (medical bills previously paid)** for other benefits, for a total credit of **$276,598.85**.

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

ORDER

Respondent shall pay to Petitioner and his attorney the reasonable and necessary medical services of $1,566.00 for bill of Function 1st PT, as provided in Section 8(a) of the Act. The Respondent shall further pay to the Petitioner and his attorney the additional sum of $6887.00 for balance of services for Suburban Orthopedics S.C. This is based upon the evidence. No contrary medical opinion, medical record review or Utilization Review under the Act was provided by Respondent's claims management services in response thereto to show charges/care of the treating doctor and physical therapy services were unreasonable or unnecessary.Quite the contrary , the section 12 examiner for Respondent endorsed the treatment and makes no objections to billing even though this IBJI doctor documents 4 years post accident that he had the treating doctors records.

Respondent shall pay Petitioner and his attorney the permanent partial disability benefits of $669.64/week for 300 weeks, because the injuries sustained caused the 60% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay to Petitioner and his attorney pursuant to Section 19K the sum of $4271.50 plus pay to the attorney the sum of $854.30 under section 16 of the Act, as amended.

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.

/s/ George Andros May 7th, 2015

MAY 11 2015

16IWCC0482

STATEMENT OF FACTS 10 WC 31801

The issues on the 2/26/15 stipulation Addendum are notice of accident, medical expenses, the nature and extent of the injury, penalties and beneficiaries.

The petitioner was a bridge crew worker for the State of Illinois-Department of Transportation, the Respondent at bar

. By stipulation of the attorneys and by the testimony of Respondent's own employee Vito Mazzana, the worker was injured on the job during bridge repair while using a jack hammer. The hammer point entangled with a rebar causing the undisputed accident. Vito Mazzana the lead worker plus supervisor Lou Capuzzi and co - worker Nick Cassada picked him up. The State employee –lead person testified he took the injured worker to the designated company clinic namely the occupational clinic affiliated with Alexian Brothers Medical Center. Mr. Mazzana testified the supervisors affiliated with the State instruct people to go there. Respondent employee, Mr. Mazzana, testified the worker was treated there and all attendant paperwork and notice to IDOT was done. No other State of Illinois employees testified. Mr. Capuzzi the supervisor was the one who took the worker to the company clinic. Given the ultimate restrictions Mr. Mandel never returned to work for the State after he reached medical stability post FCE and final assessment by his orthopedic doctor.

The Petitioner passed away of unrelated causes as per the death certificate in evidence. The parties agree that the death is unrelated to the condition of ill being. Widow Cindi Mandel so testified she and the Petitioner married prior to the date and injury at bar. The documentation in evidence shows said marriage. The Application was amended to show the widow in the capacity as widow and effectively a successor to the Petitioner in the Application for Adjustment of Claim 10 WC 31801. Thus the Stipulations show Cindi Mandel on behalf of Alan Mandel, deceased, as Petitioner.

The Arbitrator takes judicial notice of two filings over a decade ago under 01 WC 64918 plus 05 WC 54682. One represents 20% loss of use of the right arm under 8(e). The other represents 7.5% under 8(d)2. The records of treatment show indications of a prior shoulder injury.

After progression of treatment including diagnostics by October 11, 2010 his complaints continued.

Surgery was prescribed then completed on 1/21/11. Relative to lack of payment of medical bills and claim for penalties it is important to cite the records in evidence offered by each attorney as follows: this surgery is about 1090 days before the last medical bill review (audit) by Tristar Managed Care per Respondent Exhibit 1, pp 1-4 un-numbered). Yet, no offer of even one Tristar Bill Review record was offered for the basis for denial of bills Not any offer of proof or indication was made of a Utilization Review Report under the reform workers compensation act of 2005. Said Uitization Report would have been a prime facie statutory bar to assessment of penalties under one of the two "reform" Workers Compensation Act, 2005 & 2011.

Surgery ensued via extraction of loose bodies, a chondroplasty of glenoid and humeral head which showed microfracture, biceps tendinosis with a subacromial decompression, distal clavicle resection plus rotator cuff repair.

By mid February his shoulder symptoms were manifested while exiting a shower. This is not an intervening accident given no medical opinion designated it as such. It appears the complaints to the upper extremity continued with indications for the future surgeries to elbows and wrists.

By 8/1/11 Dr. Freeburg performed the predicted left carpal tunnel decompression, release of the Guyon's canal and median nerve neurolysis. The right hand and elbow symptoms continued per the records. Eventually, he was placed on a light or sedentary status.

On 1/23/12 he had a right CTS release, guyon canal release plus median nerve neurolysis. By June he still had numbness but the tingling resolved.

By 2013 he was seen by Dr. Freeburg's colleague for his spine, the relationship to the injury is not clear.

In March 2013 he had continuing complaints of elbow and right shoulder pain resulting in injection. He consented to a right cubital tunnel decompression with debridement of the bone. By the fall of 2013 the doctor wants to operate on the right elbow.

Dr. T. Baxamusa of Illinois Bone and Joint was Respondent section 12 examiner. He found causation to right shoulder, bilateral elbows and wrist complaints. Petitioner was not placed at maximum medical improvement.

On February 6, 2014 he had MRI to lumbar area showing degenerative pathology in great significance. He did have a shot for the left arm complaints This neck seemed to be a source of complaints but there is no clear causation.

The Petitioner is recommended a right CTD (Arbitrator infers carpal tunnel decompression) surgery with cervical spine & evaluation due to leg pain. He reported years of leg pain after his 2010 on the job injury. Given his multifactorial medical problems no surgical indications were deemed proper. In April 2014 He was sent to Dr. Noveselsky for pain management for leg pain, lumbar stenosis and alike.

On August, 7, 2014 he saw Dr. Freedburg. He was to have an FCE to add information regarding his 10 pound lifting restriction. By then he had stage four lung cancer plus began chemo. He had significant right upper extremity complaints. An SRS disability report was completed. As to restrictions, Dr. Freedberg opined he was sedentary for shoulder, elbow and wrist issues. The record is bare for lumbar issues.

On August 12, 2014, Decedent underwent a Functional Capacity Evaluation at Function 1st Physical Therapy. The therapist upon FCE concluded he could perform 18.8% of the physical demands of a highway maintainer. It placed him in the light physical demand category. Decedent could lift 10 pounds to shoulder height and could push and pull 15 pounds. He had occasional tolerance for pinching, gross coordination, simple grasping and fine coordination.

Prior to death he told the doctor on 12/30/14 he had only brief relief from his right shoulder injection. He reported shoulder, wrist and neck problems.

The notes show the treating doctor agreed with the section 12 doctor's report. Dr. Freeburg did not pursue medical treatment, did not expect change in his clinical condition. He placed Petitioner at maximum medical improvement. He thereafter died on 1/14/15.

Cindi Mandel stated under oath Alan had one minor child at death namely Alexandra Donna Mandel, by birth certificate born November 9, 1999. Evidence shows Judgment for Dissolution of Marriage between Alan and Francine Mandel in 2002. The Judgment documents Samantha, born April 25, 1989, Nicolette born June 17, 1992 and Alexandra born November 7, 2000. Petitioner testified that she had no children with Alan either before or after they married in 2013.

Mrs. Mandel stated Alan has trouble using his hands and arms with spasms, weaknes and control issue. Activities of daily living were significantly impacted. He was depressed by her observation not by clinical diagnosis.

The entire records, highlights above are underscored, is the basis for the Conclusions of law below and the Award.

CONCLUSIONS OF LAW

As to the issue of Notice:

The Arbitrator adopts the testimony of the State of Illinois employee that he, a coworker, plus supervisor Lou Capuzzi witnessed the accident. Mr. Capuzzi drove the worker to the company designated occupational clinic. Treatment ensued. Workers Compensation benefits were thereafter paid.

Based upon the totality of the evidence and by a preponderance thereof that as a matter of law and fact notice was given under section 6© of the Act.

As to the issue of casual connection:

The Arbitrator holds by stipulation signed by both attorneys that causal connection exists and was not in issue. However, the Arbitrator infers that stipulation exists only as to the upper extremities, shoulders , elbows and wrists. The records of both Dr. Freeburg and Dr. Baxamusa seem to agree to much of the medical basis for that stipulation. The evidence supports this conclusion.

Both the treating doctor plus Respondent section 12 examiner agree that the injury resulted in his sedentary and or light work capacity, and, deemed the functional capacity valid. The Arbitrator sees much of the FCE dealt with limited lifting but not testing road construction body mechanics and work with a jack hammer and other tasks.

Based upon the totality of the evidence and the preponderance thereof, the Arbitrator finds as a matter of law and fact that causation exists to the injury to his shoulder(s), both arms, elbows and wrists which resulted in significant physical incapacitation under section 8(d)2 to his ability to work his pre-injury trade as a road maintainer. Both doctors agree he could not perform his pre injury trade. See The Act, as amended section 8 (d) 2.

To wit: Dr. Baxamusa of IBJI report of 1/09/2014 response #5 finds causation and need for treatment. Response #6 indicates he may need future treatment. #7 indicates he may require continued physical restrictions or limitations. He agreed with a current assessment of a light duty restriction.

No treatment ensued to the cervical or lumbar area or left leg until close to three years after the accident. All records are devoid of causation to the accident. The history taken if accurate shows Alan Mandel told the doctor he had back complaints since the time of his prior accident.

As to the reasonable and necessity of treatment and whether Respondent has paid all medical expenses under section 8 per Stipulation paragraph 7 in Second stipulation marked Amended Stipulation presented at close of proofs:

The Stipulations show agreement by Respondent to hold Petitioner harmless for reasonable and related medical bills. Respondent documents show medical bills paid and temporary total disability paid (Rx. 1)

Petitioner exhibit 4 is a compendium of medical bills from two providers that the parties agree are unpaid. The first is the bill of Function 1st Physical therapy. (Px 4). That is for the FCE. The bill in evidence shows $1566.00.

The second bill is the balance from Suburban Orthopedics for $6887.00. Respondent counsel seems to dispute the bill based upon a medical theory the lack of need for X rays taken in this complex medical matter. Per the Statement of Facts supra, at least 12 "Bill Reviews" were performed by Respondent's agent named TriStar Managed Care through April 29, 2014. Not one scintilla of medical evidence and or a Utilization Report, even from some out of state provider, was tendered into evidence from TriStar.

Awards cannot be made by speculation or conjecture. The Award must be based upon the medical evidence adduced by the parties not by arguments of counsels.

The medical evidence shows Suburban Orthopedics treated this worker over a number of years for current significant shoulder and upper extremity and wrist issues.

Critical in the Award of bills and penalties is the Respondent's own section 12 report being the medical report dated 1/9/14 in evidence proves that Dr. T. Baxamusa of Illinois Bone and Joint Institute had the medical records of Mr. Mandel's treatment based upon his concern about the workers complete history of all his medical problems years before the section 12 exam. Thus, someone obtained and provided the section 12 expert with the workers' records of Suburban Orthopedics. However, Dr. Baxamusa offered nothing by way of a criticism or affirmation of the billing, documentation or treatment of Suburban.

The law provides two possible ways to dispute the reasonableness and necessity of medical care, either retroactively or prospectively. The first way has been and may still be now by way of the opinion of a section 12 examiner i.e. an expert witness.

For treatment after Sept 1, 2011, the newest of two "reform" Workers Compensation Acts in black letter law states the Respondent may avail itself of the officially sanctioned utilization review process. This may address either retroactive treatment or prospective treatment. See Act as amended for bar to penalties under UR.

A close, detailed study of Dr. Baxamusa's report shows no commentary or even one scintilla of dispute or question of the reasonableness or necessity of the care, treatment or charges from Suburban Orthopedics S.C. or the charges of the FCE provider. Dr. Baxamusa actually agrees on the care. It one point he does caution on the future results that may be obtained after future elbow surgery.

Respondent's claims management provider failed to obtain or furnish a statutorily sanctioned Utilization Review report to justify the nonpayment of the remaining bills from Suburban Orthopedics or the FCE . This UR statute provides the UR report, if obtained, is the absolute first line of defense to a claim for penalties for nonpayment of medical bills. To foist this claims failing on their Counsel is disingenuous on the part of claims management while counsel was diligently defending this case at every turn. Assertions from (either) counsel are not evidence on which an Award must be based.

Based upon the medical evidence, not argument by either counsel, the Arbitrator holds the Respondent is liable for the medical expenses of $8453.00.

Thus, based upon the totality of the evidence and preponderance thereof, the Respondent is ordered to pay to the Petitioner and his attorney the sum of $8453.00.

A. What is the nature and extent of Decedent's injury?

The medical records establish that as a result of the accident, he suffered permanent injuries to his right shoulder, elbows and hands. Both the treating doctor and the section 12 examiner adopt the above mentioned functional capacity evaluation.

The evidence clearly shows Mr. Mandel sustained injuries that prevented him from returning to his usual and customary line of employment as a highway maintainer for IDOT. This conclusion comports with one of the three categories of disability that places a case under section 8(d) 2 of the Act and not section 8(e).

This case is one of what's known as disability to man as a whole and not a specific loss to the extremities. Both doctors find either sedentary/ light or light in terms of his physical ability to return to work. This category via a close reading of the records relates more to "lifting" that to on the job body mechanics of this worker. The evidence via employee from the State of Illinois is adopted that the work of a highway maintainer or bridge repairer is heavy.

See Award for Conclusion based upon the totality of the evidence that Petitioner decedent sustained as a result of the accident serious and permanent injuries under section 8 (d) 2 of the Act to the extent of sixty per cent thereof.

As to the issue of beneficiaries:

The Arbitrator holds both Cindi Mandel plus Alexandra Mandel are beneficiaries under the Act. They are entitled as a matter of law to the Award in the case at bar.

As to the Issue is Respondent liable for Penalties for non payment of Medical Expenses plus attorneys fees:

The evidence admitted on the issue of medical bills fails to show a medical opinion ,even couched by inference in the Respondent IME report, on the unreasonableness of the treatment or charges relating to treatment either before or after 9-1-11.

Moreover, per their statutory right no utilization report or medical bill review was offered to this Arbitrator why Respondent did not pay the bills of the FCE (after 9-1-11) or Suburban Orthopedics for services after 9-1-11.

The evidence failed to show even a letter advising opposing counsel why these benefits were not paid- per the Rules of the Commission.

Therefore, in an Award rarely ever given by this Arbitrator: The Arbitrator finds as a matter of law and fact the Respondent shall pay to the Petitioner and his attorneys $8543.00 (see above) for medical bills admitted plus 50% penalties under section 19 (K) thereon plus an additional 20 % attorney's fees payable to Petitioner's counsel under section 16.