

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS'
COMPENSATION COMMISSION

Shannon Stiles)
Petitioner,)
)
vs.)
)
LaSalle County Sheriff's Office)
Respondent.)

No. 15 WC 02494
19IWCC0211

ORDER

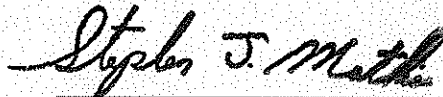
This matter comes before the Commission on Petitioner's Petition to Recall the Commission Decision to Correct Clerical Error pursuant to Section 19(f) of the Act. The Commission having been fully advised in the premises finds the following:

The Commission finds that said Decision should be recalled for the correction of a clerical/computational error.


IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Motion is granted and that the Commission Decision dated April 29, 2019, is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner Stephen Mathis.


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

DATED: JUN 19 2019
06/13/19


Stephen Mathis

SM/mw
044


Deborah L. Simpson


Marc Parker

STATE OF ILLINOIS)
) SS.
COUNTY OF)
KANKAKEE

<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="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHANNON STILES,

Petitioner,

vs.

NO: 15 WC 02494

LaSALLE COUNTY SHERIFF'S OFFICE,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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 causal connection, medical expenses, temporary total disability, prospective medical care and 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

The Commission finds:

1. Petitioner was a Corrections Officer for Respondent.
2. On January 14, 2015 Petitioner was taking a class which would enable her to work overtime. When she was released for lunch, she went to the restroom, then exited the building carrying her keys in her hand. As she was walking to her vehicle and looking straight ahead, she tripped over a brick and fell. She landed on both hands and knees. She testified that there was snow on the ground at the time.

3. Petitioner had no immediate pain, but by the time she returned from her hour-long lunch she noticed pain in her left knee all around her kneecap. She testified that it felt like a rock had been smashed against her kneecap. She completed her training and had a scheduled day off the following day. She returned to work on January 16, 2015 but had a lot of knee and back pain.
4. Petitioner presented to Dr. Syed at Liberty Medical Center later that day. She complained of knee pain with full extension, swelling and tenderness, and stated that it was painful to sit. She also complained of aching neck, low back and bilateral hip pain. She was taken off work and completed an accident report.
5. On January 22, 2015 Petitioner still had pain and swelling. She was referred for physical therapy and returned to light duty work until she completed a physical therapy evaluation.
6. To fulfill the light duty order, Respondent placed Petitioner in the Master Control Room, where she opened and unlocked heavy doors and checked in visitors and medical staff. This job was difficult for her due to her inability to sit for long periods and having to scoot around in a roller chair. This led to increased knee pain and swelling.
7. On January 27, 2015 Dr. Syed diagnosed a sprain and strain of the left knee. He took Petitioner off work again.
8. Petitioner began physical therapy on February 10, 2015.
9. On March 17, 2015 Petitioner treated with Dr. Chilelli, who examined her and found medial and lateral joint line tenderness. He diagnosed left knee pain and recommended an MRI to check for a meniscus tear. Three days later, an MRI revealed no evidence of a meniscus or ligament tear, but did show mild diffuse thinning and fraying of the patellar articular cartilage.
10. On April 2, 2015 Dr. Chilelli diagnosed a likely left knee soft tissue contusion and released Petitioner to light duty. Petitioner was again given a position in the Master Control Room.
11. On April 7, 2015 the majority of Petitioner's pain was in the anterior portion of her left knee. However, she also had low back pain, radiating pain to her ankle and right knee pain. Dr. Mathew reviewed lumbar X-rays and found minimal disc space narrowing at L4-5 and L5-S1. Three days later a lumbar MRI revealed mild left facet arthropathy at L5-S1, mild left neural foraminal stenosis without mass effect on the existing nerve root and a mild disc bulge and posterior annular fissure at L4-5.
12. On April 17, 2015 Petitioner continued complaining of low back pain. Dr. Mathew opined that the lumbar MRI did not show any significant findings that would require surgery, and that the findings were degenerative.

13. Petitioner underwent trial L4-5 epidural injections on April 29, 2015 and May 13, 2015. Neither injection provided significant relief and Petitioner still had intermittent left knee pain. Dr. Mathew stated that the left knee pain was unlikely to be discogenic since the injections did not reduce pain. She opined that the left knee pain was due to chondromalacia from the patellar.
14. On June 3, 2015 the physical therapist noted Petitioner had deficits in lower extremity strength, swelling and increased pain.
15. On July 6, 2015 Petitioner reported her pain was improving, but sitting for prolonged periods at work still caused pain.
16. On July 21, 2015 Petitioner reported 0 low back and left knee pain on a scale of 1 to 10. She had no pain 95% of the time and was pleased with her functional status. She testified that her pain depended on her amount of activity on a given day. Regarding her back pain, she stated that prolonged sitting was a major issue and standing was an issue.
17. On July 22, 2015 Petitioner testified that she tripped over her dogs at home and did "the splits" and landed on her buttocks. She testified that she experienced a new onset of pain at that time on the right side of her body. A Morris Hospital Emergency Room record on that date diagnosed Petitioner with a right hip strain.
18. On July 24, 2015 Dr. Mathew noted that Petitioner's left knee and low back pain had resolved with physical therapy. Her new symptoms included severe right groin and buttocks pain radiating to her leg and occasionally her foot. She also had associated numbness and tingling. Dr. Mathew diagnosed right lumbar radiculitis.
19. On July 28, 2015 Petitioner complained of severe low back pain radiating to her leg.
20. On August 21, 2015 Petitioner reported that she was doing much better, although she could not sit or walk for long periods. She complained of left knee pain.
21. On September 10, 2015 Petitioner reported worsening pain in her left posterior thigh radiating to her knee, with intermittent numbness and tingling to her left foot. Due to the aforementioned epidural injections, Dr. Mathew opined that disc pathology was probably not the cause of this pain.
22. On October 15, 2015 Petitioner complained of intermittent numbness and tingling in all four extremities. It was acknowledged that Petitioner had a bulging disc at L4. A cervical MRI revealed a disc bulge at C5-6 causing mild central canal stenosis, and a disc bulge at C6-7 causing mild foraminal narrowing.

23. Petitioner treated conservatively for her cervical and lumbar conditions, but at trial testified that no treatment provided permanent relief.
24. On October 31, 2016 Petitioner presented to Dr. Komanduri, an orthopedic surgeon, complaining of neck, low back, hip and left knee pain. Dr. Komanduri opined that Petitioner sustained left knee, bilateral hip and bilateral shoulder injuries on the accident date. He opined that Petitioner's complaints were not related to a cervical or lumbar injury. He believed instability and muscle spasms in the trapezius and latissimus musculature were near the cervical spine, and thus mis-diagnosed as a cervical condition. A left knee exam revealed joint line tenderness, a positive McMurray's sign, and patellofemoral instability with fixed lateral subluxation consistent with chronic pain associated with a meniscal tear.
25. Dr. Komanduri also found evidence of bilateral shoulder Type II SLAP lesions and instability, as well as a femoroacetabular impingement in Petitioner's left hip with a probable labral tear.
26. Dr. Komanduri opined that Petitioner's twisting injury and direct blow to the knee upon falling caused a meniscal tear. Since the tear had been left untreated, Dr. Komanduri opined that it had since led to chronic patellofemoral instability. Based on the physical exam he performed, Dr. Komanduri opined that the March 20, 2015 left knee MRI revealed a false negative result. He termed the left knee causation "pretty straightforward."
27. Dr. Komanduri acknowledged that, while femoroacetabular impingement is a congenital condition, it is not guaranteed to become symptomatic. He noted that it possibly became symptomatic due to Petitioner's fall.
28. With regards to Petitioner's bilateral shoulder conditions, Dr. Komanduri opined that Petitioner fell directly onto her outstretched arms, which could have caused her injuries.
29. Dr. Komanduri opined that Petitioner did not require any further back treatment, and recommended MRI's for her left hip, left knee and MR Arthrograms for both shoulders. Any further treatment would depend on the results.
30. Dr. Komanduri acknowledged Petitioner's statements in July 2015 that her low back and left knee pain had resolved. He believed this was simply due to temporary relief from physical therapy. He also acknowledged that Petitioner's trip and fall over her dogs at home was an aggravating incident, but did not believe that this negated the accident in question.
31. Petitioner was terminated by Respondent February 1, 2017.
32. Dr. Levin performed an Independent Medical Exam (IME) on Petitioner on May 2, 2017. He noted multiple subjective complaints which could not be corroborated objectively. He

noted Petitioner had illogical complaints, such as tingling down her arms when he pressed on her neck, low back pain when he pressed on her ear lobe, and numbness in her fingers when he squeezed her arm. Chiropractic records as far back as 2009 indicated Petitioner was already treating for chronic neck and lumbar pain. Further, Dr. Levin was unable to find any objective corroboration for Petitioner's bilateral shoulder and left hip conditions, and a left knee MRI revealed no acute traumatic changes.

33. Dr. Levin had Petitioner complete pain questionnaires, and stated that her scores were elevated, suggesting symptom magnification. He opined that her score levels were that of a person who was incapacitated and not very functional.
34. Petitioner underwent a left knee MRI on July 6, 2017. Dr. Komanduri reviewed the results and diagnosed a "pretty clear" medial meniscus tear in the left knee with probable anteromedial plica.
35. On August 17, 2017 Dr. Komanduri performed arthroscopic surgery on Petitioner's left knee. He noted a large anteromedial plica impinging on the patellofemoral joint, grade 3 chondral wear of the patella and a small posterior horn lateral meniscus tear.
36. Petitioner began post-operative physical therapy on August 30, 2017. Records indicate that the plan was to have Petitioner treat 2-3 times weekly for 4 weeks. Her long-term goals of decreased pain, increased range of motion to allow for kneeling, increased strength to allow for squatting and sleeping over 6 hours were scheduled to be reached by October 4, 2017. A return to full duty work was also contemplated.
37. On October 27, 2017 Petitioner cancelled all future physical therapy appointments on advice from her Counsel and physician.

The Commission affirms the Arbitrator's rulings on causal connection, medical expenses, temporary total disability and prospective medical care as they pertain to Petitioner's cervical spine, lumbar spine, bilateral lower extremity and bilateral shoulder conditions.

However, the Commission modifies the Arbitrator's award with regards to Petitioner's left knee condition. The Commission views the evidence slightly different than does the Arbitrator, finding Dr. Komanduri's causal connection opinion on Petitioner's left knee condition to be more persuasive than that of Dr. Levin's. Dr. Levin found no objective evidence suggesting an accident or aggravation to Petitioner's left knee occurred on the date in question, including a left knee MRI that revealed no acute traumatic changes. However, Dr. Komanduri examined Petitioner's left knee in October 2016 and found joint line tenderness, a positive McMurray's sign, and patellofemoral instability with fixed lateral subluxation consistent with chronic pain associated with a meniscal tear. He opined that Petitioner's twisting injury and direct blow to the knee upon falling on the date in question caused a meniscal tear. Further, since the tear had been left untreated, it had since led to chronic patellofemoral instability. Based on this exam, Dr.

Komanduri opined that the March 2015 left knee MRI which revealed no acute injuries was simply a false negative result. Dr. Komanduri's opinion was confirmed during his August 17, 2017 arthroscopic surgery on Petitioner's left knee. The surgery revealed a large anteromedial plica impinging on the patellofemoral joint, grade 3 chondral wear of the patella and a small posterior horn lateral meniscus tear. Accordingly, the Commission modifies the Arbitrator's causal connection ruling, and finds causal connection between the accident in question and Petitioner's left knee condition.

In keeping with the causal connection ruling. The Commission also modifies the Arbitrator's denial of temporary total disability benefits. Petitioner was taken off work from January 17, 2015 through January 21, 2015. She was taken off work again from January 27, 2015 through April 2, 2015. Thus, the Commission awards Petitioner temporary total disability benefits for Petitioner's left knee for a period of 10-1/7 weeks.

Additionally, the Commission finds that Petitioner voluntarily terminated further medical treatment on the advice of her Counsel and physician on October 27, 2017, thus giving rise to a determination of permanent partial disability benefits. Using the factors set forth in §8.1b of the Act, the Commission finds:

- i. No reported level of impairment was offered into evidence, thus the Commission gives no weight to this factor;
- ii. Petitioner was a Corrections Officer at the time of accident. Her employment lends itself to potentially demanding events. The Commission gives some weight to this factor;
- iii. Petitioner was 41 years of age at the time of accident. She could potentially deal with any residual knee issues for the remainder of her career, which could be a significant amount of time. The Commission gives a significant amount of weight to this factor;
- iv. Dr. Komanduri opined that there was a high likelihood that Petitioner would be able to return to her duties as a Corrections Officer. Moreover, physical therapy records provided a rehabilitation prognosis of "good" and contemplated a return to full duty work. Thus, there appears to be no change in Petitioner's future earning capacity with respect to her left knee condition. The Commission gives no weight to this factor;
- v. Dr. Komanduri performed arthroscopic left knee surgery on Petitioner on August 17, 2017. Petitioner's physical therapy discharge record on October 27, 2017 indicated that she still struggled with getting up from a squat position and still had impairments related to range of motion and strength, although she was making improvements in these areas. Due to the fact that Petitioner has a good rehabilitation prognosis, the Commission gives some weight to this factor.

Based on these factors, the Commission finds that Petitioner sustained a 13.5% loss of use of her left leg.

Lastly, the Commission awards Petitioner all reasonable and necessary medical expenses related to her left knee condition from January 14, 2015 through her discharge date of October 27, 2017. This award includes, but is not limited to, any bills related to Petitioner's left knee treatment with Dr. Syed on January 16, 2015. The January 22, 2015 and January 27, 2015 progress notes are follow-ups to the January 16, 2015 visit, thus any bills from these dates that are related to Petitioner's left knee shall also be included in the medical expenses award.

Likewise, the medical expenses award also includes, but is not limited to, any bills related to Petitioner's physical therapy treatment for her left knee from February 10, 2015 through March 12, 2015.

Finally, the medical expenses award also includes, but is not limited to, any bills associated with Dr. Mathew's treatment related to a differential diagnosis to determine the cause of Petitioner's left knee pain.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner suffered a left knee injury on January 14, 2015 that was causally related to her employment with Respondent.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$696.35 per week for a period of 10-1/7 weeks, that being the period of temporary total incapacity for work under §8(b).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses related to Petitioner's left knee condition from January 14, 2015 through October 27, 2017 under §8(a) of the Act.

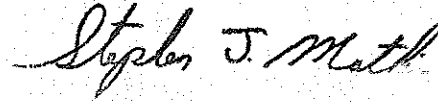
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$626.40 per week for a period of 29.025 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused a 13.5% loss of use of her left leg.

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.

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.

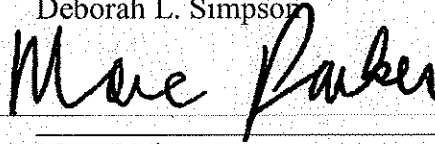
DATED: **JUN 19 2019**
O: 4/4/19
SM/wde
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Stephen Mathis



Deborah L. Simpson



Marc Parker

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input checked="" 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="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

Sandra Bintz,
Petitioner,

vs.

NO: 17 WC 25014
19 IWCC 240

Jewel-Osco,
Respondent.

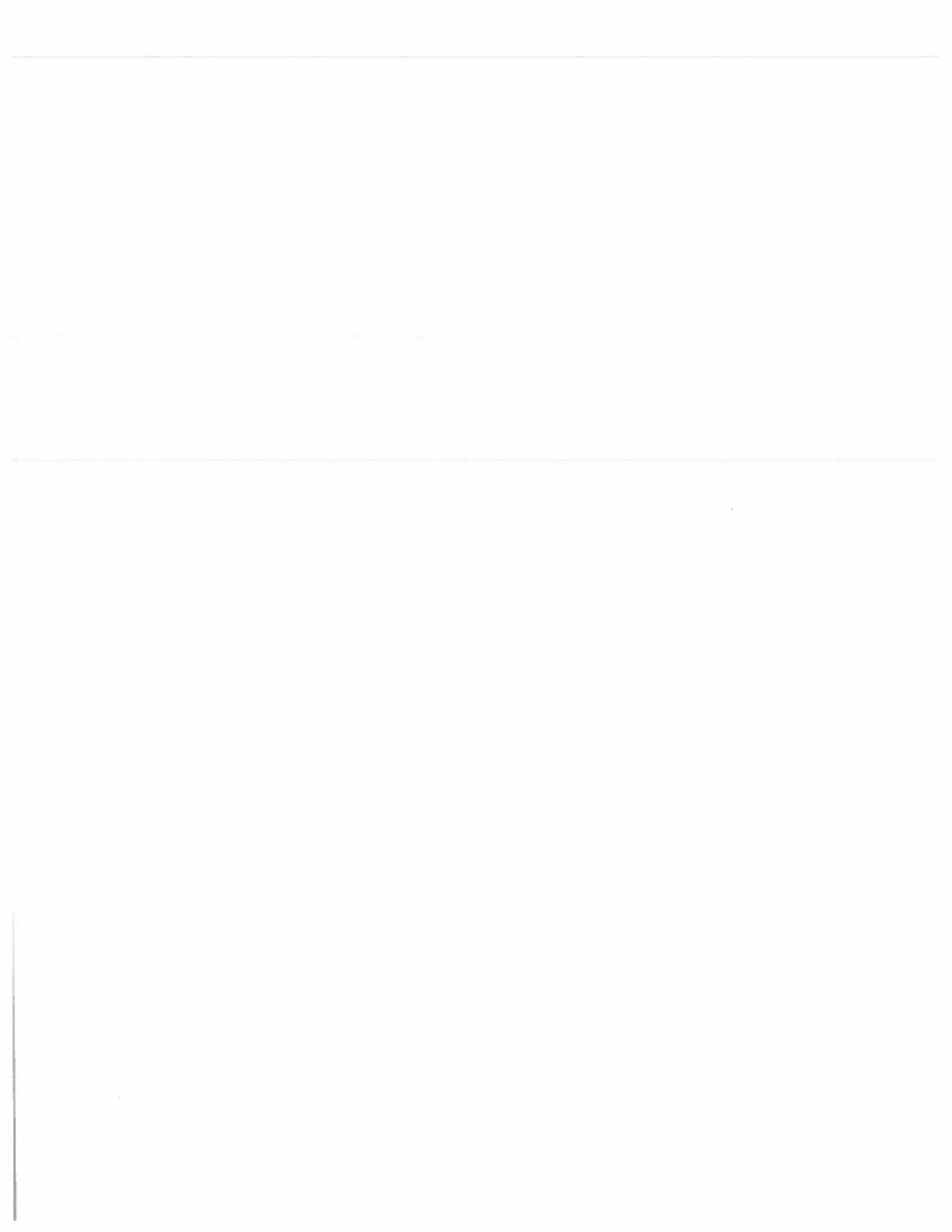
CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, permanent partial disability, medical expenses, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 26, 2018, is hereby affirmed and adopted.


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.



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: JUN 6 - 2019
TJT:yl
o 4/23/19


Deborah L. Simpson


Barbara N. Flores

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator in its entirety. After carefully considering the evidence, I believe Petitioner met her burden of proving that the August 1, 2017, right shoulder injury occurred due to an accident arising out of and in the course of her employment. Petitioner's testimony as well as the video evidence submitted by Respondent support a finding that Petitioner sustained a compensable right shoulder injury on the date of accident.

I believe the majority unnecessarily focuses on minor inconsistencies in Petitioner's testimony and disregards the irrefutable evidence of a compensable work injury. The majority has fixated on the fact that Petitioner was wearing a walking boot on her right foot instead of slip resistant shoes, and that Petitioner placed a plastic garbage bag around her right foot and leg while working. When one evaluates all the evidence, it is clear Petitioner's injury is compensable pursuant to the Act.

There is no question that Petitioner's right shoulder injury occurred in the course of her employment. After all, it is clear from the video evidence that Petitioner's right shoulder was uninjured when she began her shift. Petitioner is seen performing various duties throughout her shift with no apparent right arm or shoulder pain. It is also clear that sometime after 4:30 a.m., Petitioner injured her right shoulder in the prep kitchen away from the video camera. Thus, the true dispute is whether Petitioner's injury is the result of an accident arising out of her employment. I believe Petitioner's injury is the result of a distinct employment-related risk.

There are three types of risks to which an employee may be exposed: 1) risks distinctly associated with one's employment, 2) risks that are personal to the employee, and 3) neutral risks that have no personal or employment characteristics. *Nee v. Ill. Workers' Comp. Comm'n*, 2015 IL App (1st) 132609WC, ¶ 21. The evidence supports a finding that Petitioner's injury is the result

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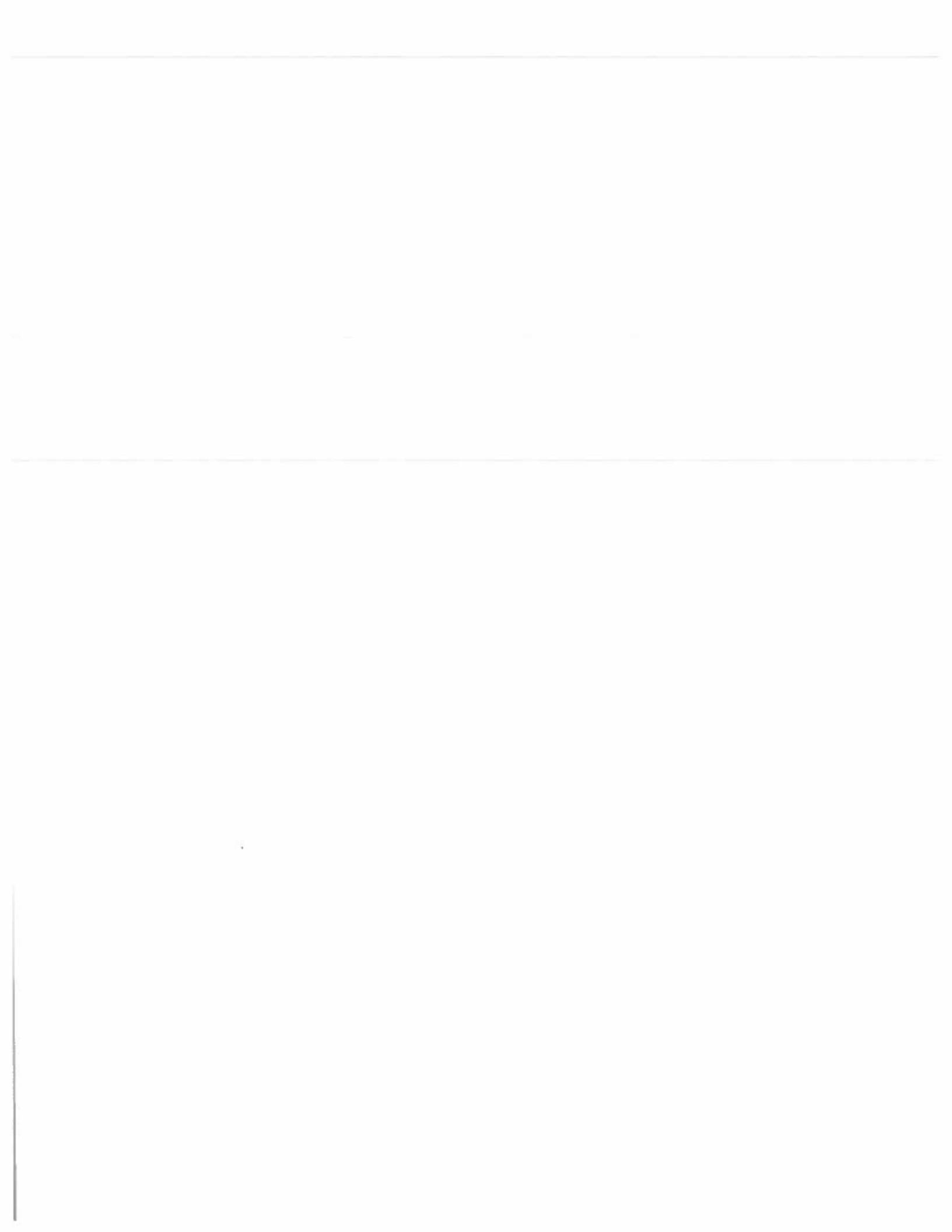
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of a distinct employment risk. Petitioner's position requires her to work in the refrigerated prep kitchen while chopping and packaging fresh fruit. Respondent does not dispute Petitioner's detailed description of her job duties as a fruit chunker. At the beginning of each shift, Petitioner gathered and sanitized the fruit she needed prior to chopping and packaging the fruit. Petitioner testified that she always wore winter boots in the prep kitchen to avoid slipping on the floor. Respondent's witness, Brent Smith, testified that all employees working in the produce department are required to wear slip-resistant shoes. Thus, it is clear the company recognizes that the floors in the areas with produce present a heightened risk of an employee slipping. It is highly likely that any area where employees wash, cut, and package fresh fruit will have a wet or sticky floor.

The fact that Petitioner wrapped her foot and leg in a plastic bag during her work shift has little, if any, bearing on the proper risk analysis. Petitioner testified that she wrapped her foot and leg to protect her right foot from becoming wet from the water and various fruit juices in the prep kitchen. Petitioner also testified that she received an accommodation regarding her use of the walking boot instead of her regular work boots. Even if Petitioner's use of the plastic bag around her leg contributed in any way to her work injury, the injury is still the result of a risk distinctive to her employment. After all, Petitioner only wrapped the foot due to the messy nature of her work and the surrounding work area. I also note that the way employees drape the garbage bags in the garbage containers presents a risk distinctive to Petitioner's employment. Petitioner testified that she fell when her left foot caught on the draped garbage bags. In either scenario, I believe it is indisputable that Petitioner's fall and right shoulder injury are the direct result of a risk particular to her employment as a fruit chunker.

For the forgoing reasons, I would reverse the Decision of the Arbitrator and find that Petitioner's right shoulder injury arose out of and in the course of her employment. I would also award any necessary medical treatment and bills and temporary disability benefits.


Thomas J. Tyrrell



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

BINTZ, SANDRA

Employee/Petitioner

Case# 17WC025014

JEWEL-OSCO

Employer/Respondent

19 IWCC0240

On 2/26/2018, 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 1.82% 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:

1505 SLAVIN & SLAVIN LLC
MARK F SALVIN
100 N LASALLE ST SUITE 25TH FL
CHICAGO, IL 60602

0560 WIEDNER & McAULIFFE LTD
LINDSEY V BEUKEMA
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

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)

Sandra Bintz
Employee/Petitioner

Case # 17 WC 25014

v.

Consolidated cases: _____

Jewel-Osco
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 **Brian T. Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **12/18/17**. 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 _____

FINDINGS

On the date of accident, 8/1/17, 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.
In the year preceding the injury, Petitioner earned \$27,348.36; the average weekly wage was \$525.93.
On the date of accident, Petitioner was 61 years of age, *single* with 0 dependent children.

ORDER

Compensation is hereby denied. All other disputed issues have been rendered moot.

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

2-23-2018
Date

FEB 26 2018

Sandra Bintz v. Jewel-Osco

17 WC 25014

Findings of Fact**Petitioner's Testimony – Direct Examination**

Petitioner testified that she has been employed with Jewel for three years. She was also concurrently employed as a bartender at the Elks Lodge. Her job at Jewel was to chop fruit and put it in containers and onto the sales floor. She worked overnight from 10:00 pm to 6:00 am. At the time of the accident, she was working four nights a week. Petitioner testified that when she arrived at work at 10:00 pm, she would go onto the sales floor and check the inventory to see what she needed to make to refill the fruit wall and the refrigerator. T. 14-15. She would then go back into the "big cooler" and get the fruit that she needed, bring that fruit into the "prep room" and sanitize it. At about midnight, petitioner would put on warm clothes and begin cutting.

The prep room, according to petitioner's testimony, is a refrigerated kitchen that contains sinks and is where the fruit is cut. Petitioner testified that she worked in the prep room alone overnight and would wear long underwear, pants, a turtleneck, Jewel shirt, fleece jacket, hat, and gloves. T. 15.

Petitioner testified on direct examination that on August 1, 2017 she performed her usual duties of cutting fruit. She stated that at about 5:00 a.m. she stopped to clean up and price all the fruit that she put in the bowls and containers. Petitioner stated that she was on the last round of cantaloupes and had them in her arms - - she got them out of the shopping cart - - and as she was going past the garbage can, got her foot caught in the garbage bag that hangs down, and she fell. Petitioner said she struck her right side on the ground. T. 17.

Petitioner presented a photograph purporting to contain a picture of the garbage can that she tripped over - Petitioner's Exhibit 6D. T. 19.

Petitioner testified that you can only put so much weight in each garbage bag, because they have to be taken out and put in the compactor and they cannot be too heavy. So you put that in a bag, tie it up and then put in another bag. So as more bags are layered on, it gets higher and higher and the bag gets longer and longer. T. 20. She testified that her foot got caught in the bag that was hanging down on the ground. T. 20.

Petitioner testified that after she fell, she felt that something was wrong with her right arm and shoulder. She got up and left the prep room to out onto the sales floor where she

found Clarence "Sonny" Wendling stocking shelves. T. 25. This was approximately 4:45 am. Petitioner testified that she told Sonny she thought she broke her arm and felt that she needed to go to the hospital. After Sonny told Jim O'Connor, the shift manager, Sonny drove petitioner to Northwest Community Hospital. T. 25-26.

Petitioner testified that upon return to the store after the hospital, she saw Carmen, the produce manager and petitioner's boss, and she told Carmen about the accident. T. 28.

Petitioner testified that she came under the care of Dr. Brian Moss who recommended physical therapy. T. 31.

Petitioner testified that she was off of work at both jobs from the date of accident through September 9, 2017. At that time, she returned to work as a bartender. T. 32. She testified that she has earned \$817.51 in gross wages as a bartender since her return to work there until the date of trial. T. 33. She testified that the week before Thanksgiving she returned to work light duty at Jewel. Her job duties included taking tomatoes off the counters and wiping down counters and stacking and tidying up and cleaning. Since her return, she has been working Monday through Thursday, five- hour shifts from 10:00 pm to 3:00 am. T. 33.

Petitioner testified that she has not received any workers' compensation benefits since the accident. T. 37. At the time of trial, Dr. Moss was recommending ongoing physical therapy.

Petitioner's Testimony – Cross-Examination

Petitioner testified that she was wearing winter boots on both feet the night of the accident. T. 38. She further testified that she was wearing those boots all night including the time of the accident and nothing else on her feet at any time that night. T. 38-39. Petitioner denied that there are guidelines for the type of footwear that she was required to wear to work in produce. T. 39.

Petitioner testified that Petitioner's Exhibit 6D does not show the area where petitioner fell. T. 40. The area where petitioner fell is also not depicted in Petitioner's Exhibit 6C. T. 40. Petitioner testified that she fell in front of the sinks. When looking at P. Ex. 6C - - that would be off of the top left of the photo horizontally to the left. T. 40. She said the work table was in front of her and the garbage can is "right to my left of my leg." T. 41. According to petitioner, to the left of that is the shopping cart where she kept the fruit that she was going to cut. She had to go over to the basket and get her last round of cantaloupes, which she had in her arms. As she walked past the garbage can, her foot got caught in the bag and she went down to the right. T. 42.

Petitioner testified that she fell at approximately 4:45 am. Petitioner denied that she did anything prior to going to get help on the sales floor. T. 42.

Petitioner agreed that Carmen did not fill out an accident report when petitioner spoke with her upon returning to the store from the hospital. Petitioner agreed that she spoke with Brent Smith, the assistant store director, later that day. T. 43.

Petitioner testified that despite having health insurance through Jewel, she had not submitted her medical bills to her group carrier because "it was supposed to be workmen's comp." T. 44.

Petitioner's Testimony – Re-direct Examination

On re-direct examination, petitioner testified that she uses more than one garbage can during her shift. T. 47. She testified that while she is working the liners are on the floor next to her. T. 48.

Testimony of Clarence Wendling

Mr. "Sonny" Wendling testified that in July of 2017, he worked at the same Jewel store as petitioner, also working the overnight shift from 10:00 pm to 6:00 am. Mr. Wendling testified that petitioner had normal shoes on the night of the accident. T. 53. He testified that he took petitioner to Northwest Community Hospital and stayed with her until she was released. He did not know why petitioner fell. T. 55.

Testimony of James O'Connor

Mr. O'Connor testified that he also worked at the same Jewel store as petitioner and was working at the time of the accident. His shift is from 10:30 pm to 7:00 am. He explained that he is the night crew clerk, not the shift manager, but the regular shift manager, Kathy Howell, was off the night of the accident. As she was off that night, Mr. O'Connor was technically in charge. T. 59-60. Mr. O'Connor testified that petitioner came to him after she fell and he authorized Sonny to take her to the hospital. Mr. O'Connor did not investigate the area where petitioner fell. T. 62.

Mr. O'Connor testified that he did not fill out an accident report that morning. However, he left a note for the manager. T. 64. He also recalled that the accident occurred around 4:00 am, or sometime before the store opened at 5:00 am. T. 64-65.

Testimony of Brent Smith – Direct Examination

Respondent called witness Brent Smith. Mr. Smith testified that he is the assistant store director at the Jewel store in Arlington Heights where petitioner was working at the time of the accident. He has been employed with Jewel for 16 years total and at this location for almost three years. T. 69-70. Mr. Smith testified that as an assistant store director, he is responsible for the total store operations. This includes going around the store to make sure that all of the departments are doing their jobs and processing and getting product out for the customers to buy. T. 71. Mr. Smith further testified that he is familiar with jobs in all departments. As part of his store director training, he has to go through and spend at least a week in every department of the store. T. 71. Mr. Smith testified that he had knowledge of petitioner's job duties, which included cutting up fruit into bite sized pieces and putting them in bowls and containers for customers to buy. T. 72.

Mr. Smith testified that when he came in to work on the morning of August 1, 2017, there was a note left for him that an accident had happened on the night shift. T. 72. He testified as to the protocol he follows as the assistant store director when an accident takes place. First, there is a form that is printed out from the company website portal with various questions that need to be answered. T. 73-74. Mr. Smith testified that he filled out the form - R. Ex. 1 - while speaking with petitioner on the phone on August 1, 2017. T. 74. The handwriting on R. Ex. 1 is Mr. Smith's. Per the report, Mr. Smith asked petitioner whether she was wearing slip-resistant shoes at the time of the accident and petitioner answered affirmatively. T. 75. Mr. Smith also noted "Produce cooler. Tripped on a bag. Fell on right shoulder." Mr. Smith testified that based on petitioner's responses to his questions, he did not question the validity of the incident. T. 75. He noted this on the form. R. Ex. 1.

Mr. Smith testified that after speaking with petitioner and obtaining the information he needed to complete R. Ex. 1, he called the Call Center and provided the information, which was then forwarded to Sedgwick. T. 75. He then received a response back – R. Ex. 1-A – which is a confirmation of what he had called in. These forms were then stored in a file cabinet in the store director's office. T. 77.

Mr. Smith testified that at the time he completed R. Ex. 1, he had not checked to see if there was video of the accident. T. 77. He later did so at the request of Sedgwick, Jewel's insurance administrator. T. 78. Mr. Smith testified that as part of his job as the assistant store director, he regularly reviews in-store video. T. 78 Mr. Smith testified he reviews video on the occasions of theft, customer slips and falls, parking lot vehicle accident, as well as employee incidents. T. 79. Mr. Smith testified that there are 48 cameras located throughout the store and a machine to review the cameras is in the store director's office. The videos are recorded onto

the hard drive and the length of video depends on the amount recorded. The cameras only record if there is movement. T. 79.

After Sedgwick requested that Mr. Smith look for video of petitioner's accident, he viewed footage from the cameras that record in the produce back room as petitioner told him the accident occurred in the produce cooler. After viewing the video, Mr. Smith burned it onto a CD and sent it to Sedgwick. T. 80.

Mr. Smith testified to the video that was recorded the night of the accident. He pointed out the date and time stamp indicating July 31st at 10:00 p.m. Mr. Smith testified that he started the video at that time because that is when petitioner's shift started. T. 81. Mr. Smith explained that the video records the produce warm room, which is the supply room. He pointed out that the boxes on the right side of the frame are supplies and the door that is seen leads into the cooler, also called the cutting room or the prep room. T. 82.

Mr. Smith identified the woman seen in the video at 10:07:57 as petitioner. T. 82. He testified that as seen on the video at 10:08:31, petitioner is wearing what appears to be a boot on her right foot. T. 83. At 12:20:33, Mr. Smith testified that petitioner was wearing a garbage bag over the boot on her right foot. T. 87. At 4:35:03, petitioner was seen uninjured, reaching with both arms. T. 89.

Mr. Smith testified that at 4:36:02 in the video, there was no movement seen. At 4:37:03, Mr. Smith visualized the petitioner behind the doors - - as seen through the right window. Mr. Smith observed petitioner bending over at 4:37:39. T. 90-91. At 4:38:09 on the video, Mr. Smith testified, he saw white through the windows on the doors and at 4:38:13, petitioner is seen walking out of the prep room with no bag on her foot. T. 91.

Mr. Smith testified that P. Ex. 6C represents the area of the produce cooler/prep room looking through the doors, approximately eight to ten feet down on the right side looking to the left. T. 94. He explained that you walk through the doors into the prep room from the warm supply room and when you walk in on the right-hand, side there is a row of tables up against the wall and this photo is probably eight to ten feet down that row of tables looking to the left side of the room. T. 95. Based on petitioner's testimony as to where she fell, Mr. Smith testified that would be through the doors seen in the video to the left. T. 95.

Mr. Smith testified that petitioner's fruit-chopping duties are called "chunking" and that means she cuts fruit into bite sized pieces and places them in bowls. The chunking process takes place in the prep room. There are two rows of tables in the prep room. Petitioner would wash the fruit in a solution to sanitize it and then throw the fruit rinds into the garbage can. The garbage cans, according to Mr. Smith in the prep room are 55 gallons. He testified that the "chunker," the person prepping the fruit, uses multiple bags. They will put a bag in the can.

They will throw the rinds from several pieces of fruit into the bag and then fold the bag down, put it in there, and put a new bag on top and continue the process. T. 97.

Mr. Smith testified that he took the photograph identified as R. Ex. 3, which a photo of a garbage can that is used in the cutting room to dispose of the rinds of the fruit. Mr. Smith took the photograph a few weeks prior to the trial. T. 98 He testified that after putting about three or four bags in the garbage can, the bags start to get really tight on the can and so they would never overflow over the top of the garbage can. He said they are not big enough to fit on a 55-gallon can and go all the way to the ground. T. 99. Mr. Smith testified that R. Ex. 3-A shows a garbage can with a bag in it with the rinds of a fruit, which shows the process. Mr. Smith testified that P. Ex. 6D is a picture of the same type of garbage can and bag. T. 100.

Mr. Smith testified that there are guidelines for people working in the produce department as to what type of footwear they are required to wear. Mr. Smith testified that any employee working in a "fresh shop" which includes the produce department, is required to wear slip resistant shoes. T. 101. He further testified that even if someone had the need to wear special footwear due to a medical condition, the medical accommodation department would not allow the employee to do so in a "fresh shop." T. 101.

Testimony of Brent Smith – Cross-Examination

Mr. Smith testified that he and the store director are the only ones with keys to the compactor and so he has unlocked it and thrown the garbage bags away several times. Mr. Smith testified that there are two kinds of garbage bags used, 32 gallon and 55 gallon. T. 104-105. Mr. Smith testified that the 32-gallon garbage can liner would not fit the garbage cans that the petitioner would use to perform her job duties. T. 106.

Mr. Smith does not work overnights and has not observed the petitioner chopping fruit. T. 109. Mr. Smith was shown a photograph (P. Ex. 11) that exhibited the garbage bag hanging over the side of the can significantly more than those in R. Ex 3, 3-A. Mr. Smith explained that was because there were not the layers of bags on top of the one in petitioner's exhibit. T. 113. Mr. Smith testified that his understanding of the way the job is done is that one does not push the air out of the garbage bags and that they are tight around the top of the garbage can. T. 117.

Testimony of Brent Smith – Re-direct Examination

Mr. Smith testified that the blue garbage can in P. Ex. 11 is a smaller garbage can than the cans in P. Ex. 6D and R. Ex. 3 and 3A. T. 119.

Mr. Smith testified that while the petitioner told him that she was wearing slip-resistant shoes at the time of the accident, the video showed otherwise. T.119. In addition, after viewing the video his opinion as to the validity of petitioner's claim changed. T. 120. After viewing the video, he believed that petitioner tripped over the garbage bag around her foot. T. 120.

Mr. Smith testified that he has never seen a garbage bag overflowing so that the liner reaches the floor. T. 122.

Testimony of Brent Smith – Re-cross Examination

When Mr. Smith comes into work in the morning, there are typically 10-15 bags piled up to be taken to the compactor. T. 122.

Petitioner's Testimony – Re-direct Examination

Petitioner testified that she took the photograph identified as P. Ex. 11 "a couple of weeks" before the trial. T. 124. She testified that she never had the bag that was tight around the garbage can like that showed in Respondent's exhibit. T. 128.

Petitioner testified that in July she had a broken toe on her right foot and had an orthotic shoe with Velcro straps on it with an open toe. T. 128. She testified that "everyone knew she had it." T. 128 She testified that her immediate manager, Carmen, knew that she wore the boot and that Cathy Tiske in HR knew that she wore it. T. 129. Petitioner further testified that she wrapped a small bag around it and taped it to her leg so that it was in a solid position all night and never got in her way. T. 129-130. Petitioner testified that her left foot got caught in the garbage bag hanging down. T. 131.

Re-cross of Petitioner

Petitioner testified that P. Ex. 11 shows the area where she fell, near where the blue garbage can is located. T. 137.

Re-direct of Petitioner

Petitioner testified as to where she fell in the photograph. T. 139-141.

Video – R. Ex. 2

Surveillance video from the night of the accident was admitted into evidence as Respondent's Exhibit 2. Of note, petitioner is seen working uninjured using both arms as late as 4:35:01. She is seen behind the doors, with the bag on her right foot, as late as 4:35:58 walking to the left of the screen. There is no movement seen behind the doors from 4:36:00 – 4:37:03, at which time she is seen again behind the doors. At 4:38:08, petitioner is seen behind the

doors bending over, removing the garbage can. At 4:38:13 she walks back into the warm room/supply room and at 4:37:39 is seen holding her arm.

Conclusions of Law

In support of his decision regarding issue (C) "Did an accident occur that arose out of and in the course of her employment by Respondent?", the arbitrator finds as follows:

The arbitrator finds that petitioner did not sustain an accident that arose out of and in the course of her employment by Respondent.

A claimant bears the burden of proving by a preponderance of the evidence that his accident arose out of and in the course of his employment. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799, 304 Ill. Dec. 722 (2006). The arbitrator finds that petitioner was not credible and therefore gives no weight to her testimony. In addition, the arbitrator finds that petitioner's injury arose of a personal risk, not related to her employment.

The arbitrator had the opportunity to observe the Petitioner when she testified and the arbitrator reviewed all of the evidence submitted. The arbitrator finds that petitioner was not credible and therefore gives no weight to her testimony. The arbitrator has considered (1) the witness' demeanor, (2) the interest or motivation of the witness, 3) the probability or improbability of the witness' version, 4) the internal inconsistencies in the witness' testimony and conduct, and 5) the external inconsistencies when the witness' testimony as compared with other evidence. After considering each of these, the arbitrator concludes that petitioner was not credible.

The arbitrator finds direct contradictions between petitioner's testimony and that of the video evidence and other witness testimony. Mr. Smith, the assistant store director and a 16-year Jewel employee, testified that petitioner told him just hours after the accident that she was wearing slip-resistant shoes. Mr. Smith contemporaneously made notes of this conversation, reflecting what petitioner told him. R. Ex. 1. Based on petitioner's statement, Mr. Smith initially did not question the validity of petitioner's claim. However, video evidence clearly contradicted what petitioner told Mr. Smith. The arbitrator finds that, based on the video, petitioner fell between 4:36:00 and 4:37:03 a.m. It is clear from the video that petitioner was *not* wearing slip resistant shoes at the time of the accident. R. Ex. 2. The arbitrator finds that petitioner was not truthful to Mr. Smith when reporting her accident.

At trial, petitioner also did not admit to her unauthorized footwear until confronted with video evidence. On cross-examination, petitioner was given an opportunity to be truthful about her footwear. Instead, petitioner testified that she was wearing normal winter boots at the time of the accident. She testified that she was wearing those boots on both feet, throughout the whole night, including at the time of the accident. When confronted with the video evidence to the contrary, petitioner claimed that she "forgot" that she was wearing the walking boot and garbage bag at the time of the accident. The petitioner's "forgetfulness" at the time of trial does not explain her failure to tell Mr. Smith the truth about her footwear *just hours after the accident*.

Moreover, Mr. Smith credibly testified, based on his experience and knowledge as a 16-year Jewel employee, assistant store director, and store director-in-training, that the way petitioner described the accident as having occurred could not have happened. T. 99-100. Mr. Smith's testimony remained consistent throughout direct and cross examination. He clearly testified that the garbage can shown in P. Ex. 11 is a 32-gallon can, and those seen in the other photos are 55-gallon cans. T. 119. He testified that the cans used to chop fruit are 55-gallon cans and that the garbage bags do not hang over the side to the floor.

Petitioner's testimony changed over the course of trial, after she heard Mr. Smith's testimony. At first, petitioner testified that the garbage can that is shown in P. Ex 6D was the same type of can that she was working with at the time of the accident. T. 19. However, she later testified that the can in P. Ex. 11 was the type of can she was working with at the time of the accident. T. 125-126. The arbitrator also notes that petitioner did not testify as to which foot got caught in the garbage bag until *after* seeing the video evidence.

In taking into account the varying accounts of how petitioner's fall may have occurred, the arbitrator again must consider the credibility of the witnesses. The arbitrator finds petitioner's testimony to be inconsistent and has already found that petitioner had been untruthful in her testimony.

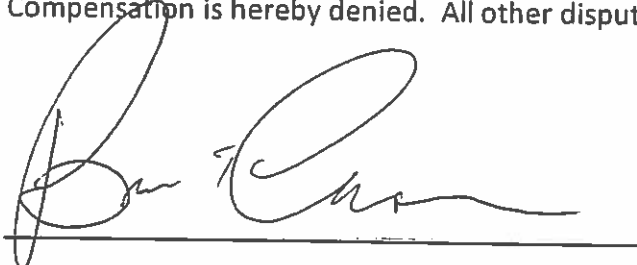
Even assuming petitioner's version of how she used the garbage bags to be true, the arbitrator still finds that petitioner's injury was due to a personal risk and thus, not compensable. An employee's injury is compensable under the Illinois Workers' Compensation Act only if it arises out of and in the course of the employment. An accident arises out of one's employment if its origin is in some risk connected with or incidental to the employment so as to create a causal connection between the employment and the accidental injury. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203 (2003). There are three categories of risk to which an employee may be exposed: 1) risks distinctly associated with her employment; 2) personal

risks; and 3) neutral risks which have no particular employment or personal characteristics. *Illinois Institute of Technology Research Institute v. Indus. Comm'n*, 314 Ill. App. 3d 149, 162 (1st Dist. 2000). In the course of employment refers to the time, place and circumstances surrounding the injury. *Sisbro* (supra).

Employment risks are "inherent in one's employment" and "include the obvious kinds of industrial injuries and occupational disease that are universally compensated." *Meierdirks v. Ill. Workers' Comp. Comm'n*, 2014 IL App (1st) 130749WC-U, P16. Employment risks also include hazards or defects at the employer's premises. Personal risks include exposure to elements that cause non-occupational diseases, personal defects or weaknesses, and confrontations with personal enemies. Finally, neutral risks are those which have no particular employment or personal characteristics. Injuries from a neutral risk generally are only compensable where the employee was exposed to the risk to a greater degree than the general public.

Due to the fact that petitioner was wearing an open-toed walking boot with a large plastic bag tied around it, petitioner's footwear exposed her to a personal risk - - not an employment risk. Petitioner was not told to wear her walking boot and garbage bag as part of her employment. In fact, Mr. Smith testified that that type of footwear was prohibited. The arbitrator finds that even if petitioner's testimony were to be given weight, her injury was due to a personal risk caused by her choice of footwear on the night of the accident and, thus, is not compensable under the Act.

Compensation is hereby denied. All other disputed issues have been rendered moot.



Brian T. Cronin

Arbitrator

2-23-18

Date

