STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☐ PTD/Fatal denied
- ☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William "Randy" Bunn,
Petitioner,

vs.

NO: 09 WC 49372
15 IWCC 0520

Gilster-Mary Lee Corp.,
Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated July 8, 2015 having been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated July 8, 2015 is hereby vacated and recalled pursuant to Section 19(f) for clerical errors contained therein.

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

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

DATED: OCT 15 2015
KWL:vf
42

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 WILLIAMSON)	☒ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIAM "RANDY" BUNN,

Petitioner,

vs. NO: 15 IWCC 0520
09 WC 049372

GILSTER-MARY LEE CORP.,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, jurisdiction, notice, temporary disability and permanent disability and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below on the issue of accident and subsequently awards benefits under the Act.

Arbitrator Lindsay found there to be evidence to support Petitioner's claim of sustaining an accident while working for Respondent on August 13, 2009, but found both that the Commission lacked jurisdiction to hear his claim and that the Petitioner's claim was time-barred from proceeding due to his failure to provide timely notice to Respondent. The Commission finds otherwise and reverses the arbitrator on both counts.

The threshold issue in the Decision of the Arbitrator was jurisdiction. Arbitrator Lindsay found the Commission had no jurisdiction to adjudicate Petitioner's claim. She found that there was no nexus between Petitioner's claim and the State of Illinois, as required by the Act. Petitioner, a resident of the State of Missouri, was injured in McBride, Missouri, while working for Respondent, an Illinois entity. Arbitrator Lindsay recognized elements of Respondent's hiring process involved Petitioner undertaking certain acts in Illinois but found those acts insufficient to confer jurisdiction to the Commission. Of most significance to Arbitrator Lindsay were the final actions taken in the formation of the employment contract between Petitioner and Respondent. By the arbitrator's view, the Petitioner's hire occurred within the State of Missouri. As explained below, the Commission finds the final elements of Petitioner's contract formation occurred in Illinois and, resultantly, confers jurisdiction to the Commission.

There is agreement between the parties that the hiring process began in Illinois. Petitioner testified that he submitted his application for employment to Respondent's headquarters in Chester, Illinois. Richard Welker, Respondent's Traffic Manager and the Respondent's employee responsible for human resource matters, acknowledged that applications are received there and the receipt of the same begins the hiring process. Mr. Welker indicated that applications are reviewed and background investigations are conducted in Chester, Illinois. Those applicants Respondent feels merit an interview are then interviewed in Chester, Illinois.

During the interview, a discussion is had about Respondent and the benefits it offers to its employees. A successful interview results in the applicant being sent to a Chester, Illinois, hospital to undergo drug screening and a physical examination. Following this process, the applicant is then brought to Respondent's Perryville, Missouri, facility where the applicant's driver's license and eligibility for employment as well as Respondent's operational policies are reviewed. Mr. Welker testified the hiring process is not completed until the meeting in Perryville, Missouri. Petitioner's testimony corroborated Mr. Welker's testimony except as to where the post-drug screening and physical examination meeting occurred. Petitioner testified this meeting occurred in the basement of Respondent's headquarters in Chester, Illinois.

The Commission is not satisfied with Mr. Welker's explanation of the hiring process. The Commission questions the claimed changing of venue from Respondent's headquarters in Chester, Illinois, to its facility in Perryville, Missouri. The Commission's questions this as no explanation was offered as to why the second meeting would take place in Perryville, Missouri, if the only actions taken there were for Respondent to review Petitioner's driver's license and his eligibility to work and to review Respondent's operational policies.

Lost upon the Commission is why Respondent would initially interview Petitioner in Chester, Illinois, and have Petitioner undergo drug screening and a physical examination in Chester, Illinois, only to have a subsequent meeting in Perryville, Missouri. What was not lost upon the Commission is Mr. Welker's admission that he could not say to a certainty that the as-testified-to hiring procedures were followed in this situation. The combination of the unexplained changing of venues from Chester, Illinois, to Perryville, Missouri, and Mr. Welker's uncertainty as to whether the process he described actually occurred as described leads the Commission to find Petitioner's testimony concerning the hiring process to be credible. The Commission, therefore, finds the actions taken to finalize the employment contract between Respondent and Petitioner occurred in Respondent's headquarters in Chester, Illinois. Accordingly, the Commission finds there is jurisdiction for it to consider Petitioner's claim under the Act.

Arbitrator Lindsay adopted Petitioner's claim of having sustained a compensable injury on August 13, 2009, noting the opinions of both Dr. deGrange and Dr. Riew were that Petitioner did sustain a work-related injury as the result of removing the fifth wheel pin to disconnect the trailer from his semi-tractor. The Commission was presented with no evidence that would cause it to disturb Arbitrator Lindsay's finding with respect to accident. Arbitrator Lindsay, notwithstanding her finding a lack of jurisdiction to adjudicate Petitioner's claim, nevertheless found Petitioner failed to give timely notice of his injury to Respondent and, as a result, not be entitled to benefits under the Act. The Commission finds Petitioner provided notice within the statutory timeframe to do so.

Petitioner described experiencing a sensation akin to a shock on August 13, 2009, when he pulled the fifth wheel pin. He continued to decouple the trailer from his semi-tractor and proceeded to go home. Two days later, on August 15, 2009, the back of his left hand, his left arm and left thumb became cold. He subsequently experienced tingling in his left arm as well. Petitioner was seen by his primary care

physician, Dr. Womack, on September 14, 2009. Petitioner claims it was only then that he became aware that the problems he presented to Dr. Womack for were the result of the incident he experienced on August 13, 2009. Petitioner testified to having notified Respondent of the accident on September 21, 2009, the Monday after he was seen by Dr. Womack. Respondent countered this testimony with a recorded statement Petitioner made that indicated he first informed Respondent of his accident on October 19, 2009. Petitioner did not dispute the accuracy of the recorded statement.

The Commission acknowledges Petitioner's proffered testimony of providing notice of his injury to Respondent following his September 14, 2009, visit was convincingly rebutted by the aforementioned recorded statement. The Commission, however, does not find this to be fatal as to the issue of Petitioner's notice of an accident to Respondent. It simply clarifies the date on which the Commission finds notice was received by Respondent from September 21, 2009, to October 19, 2009. The revised date is still within the timeframe, as set forth in Section 6(c) of the Act, requiring Petitioner to inform Respondent of his injury. Petitioner became aware of the connection of his then-current condition of ill-being and his August 13, 2009, injury on September 14, 2009, and reported this to Respondent on October 19, 2009. Under this circumstance, the Commission is satisfied the Petitioner provided Respondent notice of his accidental injury that comports with the Act.

The Decision of the Arbitrator, having found against Petitioner on the issues of jurisdiction and notice, did not address the remaining contested issues, deeming them to be moot. Having found otherwise, the Commission now addresses those issues.

The Commission finds Petitioner's complaints of ill-being to be causally related to his August 13, 2009, accident. Petitioner, in 2005, had a history of symptomatic cervical spinal stenosis and of treating this condition with a number of physicians in 2005. The absence of treatment records for the same between 2005 until August 13, 2009, implies the symptomatic nature of Petitioner's condition had resolved to a degree that made treatment unnecessary. The Commission finds only a 50-pound lifting restriction continued beyond Petitioner's treatment in 2005.

On August 13, 2009, Petitioner sustained an accident while removing the fifth wheel pin, an accident that caused his cervical spinal stenosis to become symptomatic once more. The treatment that ensued included a decompression with a laminectomy of C3, laminoplasties of C4-7, and left-sided foraminotomies from C4-7, all occurring on November 23, 2009. Later, he underwent an anterior cervical discectomy and fusion a C5-6 and C6-7, that being on January 3, 2011. Petitioner's treating physician, Dr. Daniel Riew, lends credence to this claim, by the finding of the causal relationship between Petitioner's August 13, 2009, accident and his need for two surgical interventions to his cervical spine. He noted Petitioner had continued to work following the 2005 diagnosis and did so without any problems with ambulation or complaints of numbness or cold affecting his arms and hands. Those problems emerged, per Dr. Riew, only after Petitioner's August 13, 2009, accident. The Commission notes, despite the multiple surgical interventions, Petitioner testified to experiencing continued pain, numbness in his hands and arms, and numbness and tingling in his legs with generalized weakness. The Commission finds Petitioner's August 13, 2009, accident to have resulted in the two surgeries, as well as his continuing complaints.

In treating the injuries to his cervical spine, Petitioner undertook medical treatment at Washington University Orthopedic, Barnes Jewish Hospital, the Brain and Neurospine Clinic of Missouri and Therapy Solutions and incurred medical bills as a result. Respondent contested these charges only on the issue of liability. The Commission finds these bills were reasonably and necessarily incurred to treat Petitioner's injuries and are the responsibility of Respondent.

Petitioner, over the course of treatment for his injuries, was medically precluded from working for a total of eighteen (18) weeks, from October 19, 2009, through January 5, 2010, and again from January 3, 2011, through February 20, 2011. This period of disability was as a result of Petitioner's two surgeries to his cervical spine. The Commission awards TTD benefits accordingly.

The Commission notes Petitioner made a successful return to his career as truck driver and returned to his unrelated baseline lifting restriction of 50 pounds. It also notes, however, Petitioner's residual symptoms include pain in his left hand, generalized weakness, occasional loss of balance and dizziness. For these lingering after effects, the Commission finds Petitioner sustained a 25% loss of the person as a whole stemming from his August 13, 2009, accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $875.30 per week for a period of 18 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 125 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of 25% use of the person as a whole

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $66,237.66 for medical expenses under §8(a) of the Act.

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: OCT 15 2015
KWL/mav
O: 5/11/15
42

Thomas J. Tyrrell

Michael J. Brennan

DISSENT

I respectfully dissent from the decision of the majority. Arbitrator Lindsay's findings are thorough, well-reasoned and grounded in the law. This decision is correct and should be affirmed.

Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Holmes,

Petitioner,

vs.

NO: 13 WC 34006
15 IWCC 701

Elite Staffing,

Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Order of the Commission dated September 10, 2015, having been filed by Respondent herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order dated September 10, 2015, is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

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

DATED: OCT 1 2015
TJT:yl
51

Thomas J. Tyrrell

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Holmes,

Petitioner,

vs.

NO: 13 WC 34006
15 IWCC 701

Elite Staffing,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The only award in this case, and the only benefit requested by Petitioner per the Request for Hearing (Arbitrator's exhibit 2), is prospective medical treatment. Because the Commission has no basis to determine a monetary value for this treatment, the bond required for appeal to the Circuit Court is the minimum of $100.00.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 5, 2015, is hereby affirmed and adopted.

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 removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. 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: OCT - 1 2015
TJT:yl
o 8/24/15
51

Thomas J. Tyrrell

Kevin-W. Lamborn

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF 19(b) ARBITRATOR DECISION

HOLMES, MICHAEL
Employee/Petitioner

Case# **13WC034006**

ELITE STAFFING
Employer/Respondent

15IWCC0701

On 1/5/2015, 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 0.13% 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:

3068 SCROGGINS LAW OFFICE
MORGAN SCROGGINS
1506 JOHNSON RD SUITE 200
GRANITE CITY, IL 62040

2396 KNAPP OHL & GREEN
L DAVID GREEN
6100 CENTER GROVE RD BOX 446
EDWARDSVILLE, IL 62025

15IWCC0701

STATE OF ILLINOIS)
)SS.
COUNTY OF ST. CLAIR)

- ☐ 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
19(b)

MICHAEL HOLMES
Employee/Petitioner

v.

ELITE STAFFING
Employer/Respondent

Case # **13** WC **34006**

Consolidated cases: _____

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Belleville**, on **September 29, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

15IWCC0701

On the date of accident, **August 2, 2013**, 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 sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**17,166.00**; the average weekly wage was $**330.10**.

On the date of accident, Petitioner was **47** years of age, with **0** dependent children.

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

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

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

ORDER

Respondent shall provide Petitioner with worker's compensation benefits to include prospective medical treatment for Petitioner's right shoulder injury pursuant to Section 8(a) of the Act.

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

12/12/14
Date

ICArbDec19(b)

JAN 5 - 2015

ARBITRATOR FINDS THE FOLLOWING FACTS:

Petitioner, MICHAEL HOLMES, now age 48, was employed by the Respondent, ELITE STAFFING, on August 2, 2013, and was working as a laborer.

On August 2, 2013, Petitioner was working as a laborer on the line. On the day in question, his shift started at 6:00 p.m. After returning to the line from lunch, a supervisor stopped Petitioner and told him to get a pair of safety glasses from the office. He was told to hurry because the line is stopped until he returned. He went to the restroom before returning. While in the restroom, Petitioner slipped and fell when he turned around on the wet floor. As a result of the fall, he injured his right shoulder.

The Petitioner slipped on a wet floor. This particular bathroom was the only one available to employees. It contained five urinals and three stalls. Since the employees had just returned from their lunch break, the floors were in more disarray. There was water and urine all about the floors from multiple employees urinating and washing their hands. Employees must wash their hands prior to returning to the floor. The janitor, Ed Harris, was notified of the incident when Mr. Dressler came to the break room to get him. The last time the bathroom was cleaned was 7:30 p.m., prior to the 8:00 p.m. break. The employees, per Mr. Harris, like to destroy a bathroom.

Further, the Petitioner testified that he was working on an "assembly line". The "line" stopped while he was getting his glasses and using the restroom. As a part of his working condition, the Petitioner had to hurry in and out of the bathroom, to return to the line so it could keep running.

When Petitioner returned to the line, his right shoulder hurt really bad. He then reported the incident to the line supervisor. The supervisor sent him to the office and they had him clock out and fill out the incident report. The main supervisor then took him back to the bathroom and showed him the floor. The floor was damp but had been cleaned. You could still see the mop streaks.

The Petitioner was transported by Ambulance to Anderson Hospital. They took X-rays of his shoulder. He was diagnosed with right shoulder pain, bruise, and degenerative at the glenohumeral joint. The Petitioner had delays in medical treatment because the Respondent would not approve treatment. On October 24, 2013, Petitioner was directed to obtain an MRI of the right shoulder due to the continuous pain. On November 21, 2013, the MRI revealed a rotator cuff tear with soft tissue edema. On December 12, 2013, Petitioner's doctor agreed with the MRI and felt the tear was acute in nature.

The Arbitrator finds the Petitioner still requires medical treatment for his right shoulder and accordingly orders Respondent to pay for such reasonable and necessary prospective medical benefits.

STATE OF ILLINOIS	)	
	) SS	BEFORE THE ILLINOIS WORKERS'
COUNTY OF WINNEBAGO	)	COMPENSATION COMMISSION
Robin Thiering,	)	
Petitioner,	)	
	)	No. 08WC 11926
vs.	)	15IWCC 686
	)	
Wal-Mart	)	
Respondent,	)	

ORDER

Motion to recall pursuant to Section 19(f) of the Act having been filed by the Petitioner on September 29, 2015, 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 the Commission Decision and Opinion dated September 8, 2015 is hereby recalled pursuant to Section 19(f) of the Act. The parties should return their original decisions to Commissioner David L. Gore.

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

David L. Gore

DATED: OCT 2 2 2015

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBIN THIERING,

Petitioner,

vs.

NO: 08 WC 11926
15IWCCC686

WAL-MART,

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 temporary total disability and nature and extent of Petitioner's permanent partial disability, 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.

The Commission affirms the ruling of the Arbitrator in total. However, the Commission corrects the clerical error in the award for permanent partial disability (PPD) benefits. The correct minimum PPD rate for such benefits on the date in question is $199.32.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 31, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to $34,920.86 in PPD benefits based on the minimum PPD rate on the accident date in question.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $31,800.00. 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: OCT 2 2 2015
DLG/wde
O: 9/3/15
45

David L. Gore

Mario Basurto

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

15IWCC0686

THIERING, ROBIN
Employee/Petitioner

Case# **08WC011926**

WAL-MART
Employer/Respondent

On 1/31/2014, 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 0.06% 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:

0529 GREG TUITE & ASSOC
119 N CHURCH ST
SUITE 407
ROCKFORD, IL 61101

0210 GANAN & SHAPIRO PC
COURTNEY M QUITTER
210 W ILLINOIS ST
CHICAGO, IL 60654

STATE OF ILLINOIS)
)SS.
COUNTY OF **Winnebago**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

Corrected

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

15IWCC0686

Robin Thiering
Employee/Petitioner

v.

Wal-Mart
Employer/Respondent

Case # **08** WC **11926**

Consolidated cases: **n/a**

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 **Edward Lee**, Arbitrator of the Commission, in the city of **Waukegan, IL**, on **September 27, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 _____

15IWCC0686

FINDINGS

On **February 5, 2007**, 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 $**16,537.56**; the average weekly wage was $**318.03**.

On the date of accident, Petitioner was **48** years of age, ***married*** with **0** dependent children.

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

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

Respondent shall be given a credit of $**6,024.77** for TTD, $**4,211.21** for TPD, $**-0-** for maintenance, and $**2,500.00** for other benefits, for a total credit of $**12,735.98**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $212.02/week for 28-2/7 weeks, commencing 2/5/2007 through 6/17/2007, 10/5/2007 through 10/18/2007, 11/15/2007 through 11/28/2007, and 12/10/2007 through 1/20/2008 as provided in Section 8(b) of the Act. Respondent shall be given a credit of $6,024.44 for temporary total disability benefits and $4,211.21 for temporary partial disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of $190.82/week for 100.2 weeks, because the injuries sustained caused the 60% loss of the right foot, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $190.82/week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall be given a credit of $2,500.00 for permanent partial disability benefits that have been paid.

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.

Edward Lee
Arbitrator

1/30/14
date

JAN 31 2014

STATEMENT OF FACTS

Robin Thiering (hereinafter "Petitioner") worked for Wal-Mart (hereinafter "Respondent") as a fitting room associate. Her job duties included hanging clothes, returning clothes and answering the phone. On February 5, 2007, Petitioner suffered an injury to her right foot when she slipped and fell on ice while walking to her car.

Petitioner was taken by ambulance to Beloit Memorial Hospital where she came under the care of Dr. Sauer. She was diagnosed with a right tibia-fibula fracture with extension towards the ankle joint and a posterior malleolar fracture. She underwent surgery on February 6, 2007 consisting of fixation of the right ankle fracture with screws and a rod. Petitioner was discharged from the hospital on February 9, 2007. RX #2; PX #7.

On February 21, 2007, Petitioner saw Dr. Sauer in follow-up and was placed in a short leg cast. Initially, Petitioner testified she used a wheelchair. However, when she saw Dr. Sauer on March 27, 2007, Petitioner's cast was removed and she was instructed to start weight bearing. She was authorized to return to work light duty, performing sit down work only and no driving. Petitioner began attending physical therapy at Beloit Memorial Hospital on April 19, 2007. RX #2; PX #3.

On May 10, 2007, Petitioner saw Dr. McCarty for purposes of a second opinion. She complained of discomfort with weight bearing localized to the fracture site. Petitioner reported she was told the fracture was not healing and that it may be four to six months before the fracture healed. Dr. McCarty diagnosed traumatic fractures of the right distal tibia and fibula without evidence of significant progression of healing. He discussed the treatment options which included removal of the proximal screw, progressive weight bearing as comfort allowed and a bone stimulator. PX #5.

Petitioner next returned to Dr. Sauer on May 16, 2007 with complaints of pain around the fracture area and irritation around the proximal interlocking screw. She was instructed to progress to full weight bearing. Dr. Sauer recommended Petitioner continue physical therapy. RX #2; PX #3.

On June 13, 2007, Petitioner saw Dr. Sauer in follow-up. She complained of ankle swelling with activity but noted she could walk full weight bearing, was using a cane and could drive. Dr. Sauer ordered compression stockings and an ultrasound stimulator. He continued to recommend physical therapy and authorized Petitioner to return to work light duty performing sit down work only with limited standing and walking, four hours per day for six weeks. RX #2; PX #3.

Beginning on June 18, 2007, Petitioner testified she returned to work for Respondent, four hours per day or 20-25 hours per week. She testified she was sitting in a fitting room with her leg elevated where she would answer phones and occasionally wait on people.

On July 25, 2007, Petitioner returned to Dr. Sauer with complaints of numbness in the great and second toes, which Dr. Sauer noted could be due to her socks and shoes being too tight. Dr. Sauer instructed Petitioner to discontinue physical therapy and start a home exercise program. He authorized Petitioner to return to work light duty with limited standing and walking for two months, working four hours per day and five days per week for two months. RX #2; PX #3. Petitioner testified she worked in the fitting room answering phones during June, July and August.

Petitioner saw Dr. Sauer on August 28, 2007 after an incident when she was sitting at a desk, felt pain and heard a snap after pulling her leg back. Dr. Sauer prescribed pain medications. Petitioner then returned to Dr. Sauer on September 26, 2007 with complaints of pain along her leg. Dr. Sauer recommended she consider removal of the screws. Petitioner was otherwise authorized to return to work light duty with limited standing and walking, four hours per day or 20 hours per week for six weeks. She

testified in August and September she was given more responsibility which required her to walk more and wait on customers. Petitioner also described unpacking lingerie and stocking in the fitting room. RX #2; PX #3.

On October 5, 2007, Petitioner underwent a second surgery which consisted of removal of the screws from the tibia. Following the surgery, Petitioner was admitted overnight for post-operative nausea and vomiting. She was discharged the following day. Petitioner then returned to Dr. Sauer on October 8, 2007 at which time she was instructed to ambulate as tolerated. Dr. Sauer authorized Petitioner to return to work light duty with the same restrictions of working four hours per day. Petitioner testified she returned to work on October 15, 2007, performing seated work four hours per day. RX #2; PX #3.

Petitioner next saw Dr. Sauer on October 23, 2007 at which time she complained of soreness around the incisions. Dr. Sauer ordered physical therapy and authorized Petitioner to return to work light duty performing sit down work with limited standing and walking, four hours per day or 20 hours per week for four weeks. RX #2; PX #3.

On October 24, 2007, Petitioner resumed physical therapy at Beloit Memorial Hospital. She saw Dr. Sauer in follow-up on November 27, 2007 at which time he noted one wound remained open. Dr. Sauer referred Petitioner to the wound clinic and authorized her to return to work light duty six hours per day maximum and alternating sitting and standing for four weeks.

Petitioner began attending the wound clinic on November 27, 2007 at Beloit Memorial Hospital. At the time she saw Dr. Sauer on December 10, 2007, he noted the wound had turned into a deep ulcer and recommended excision of the ulcer. RX #2; PX #3.

On December 11, 2007, Petitioner underwent a third procedure consisting of excision of a right medial leg ulcer with debridement of soft tissue including skin and subcutaneous tissue and closure of the right leg wound. Following the procedure, Petitioner was authorized off work. RX #2; PX #3.

Petitioner returned to Dr. Sauer in follow-up on December 17, 2007. It was noted there were no signs of infection and Petitioner was instructed to complete the course of antibiotics. Petitioner next returned to Dr. Sauer on December 31, 2007 at which time the sutures were removed. RX #2; PX #3.

On January 14, 2008, Petitioner returned to Dr. Sauer for a recheck of the ankle wound. Dr. Sauer noted the wound was gradually closing and the amount of drainage had diminished. He authorized Petitioner to return to work performing sit down work with the right leg lifted, four hours per day for the next two weeks. Petitioner testified she returned to work in the fitting room on January 16, 2008. RX #2; PX #3.

On January 28, 2008, Petitioner saw Dr. Sauer and noted an improvement in pain. At that time, Dr. Sauer authorized Petitioner to return to work full duty but noted she may need to sit to rest at times over the next three weeks. There were no restrictions on the number of hours or days per week Petitioner was permitted to work. RX #2; PX #3.

Petitioner testified she continued to work for the store and began doing more work. She stated she began experiencing more pain and would go home in tears. She also indicated she was scheduled to work six days in a row and was being scheduled on weekends in 2008, while she was not scheduled to work on weekends in 2007. Petitioner testified she called in absent three times.

On January 31, 2008, Petitioner presented to Dr. Reinecke with concerns over continued swelling and numbness along the side of her foot and in the first and second toes. She also complained of her foot turning when she walked which made it more achy and sore. Dr. Reinecke diagnosed overpronation secondary to ankle injury and plantar fasciitis and explained to Petitioner that the thickness, swelling and

numb feelings were all expected after the type of injury and surgery since her foot was in a different position due to the injury. Dr. Reinecke recommended an orthotic. PX #11.

Petitioner returned to Dr. Reinecke on February 7, 2008 for purposes of casting for the orthotic. Dr. Reinecke noted Petitioner had questions regarding her foot position and wanted an explanation. Dr. Reinecke again explained the change in positioning of the foot and recommended an orthotic device to help support the foot and hopefully alleviate the irritation of the posterior tendon. PX #11.

On February 20, 2008, Petitioner presented to Dr. Sauer in follow-up. At that time, Dr. Sauer noted Petitioner was working full duty and was tolerating work without much difficulty. Dr. Sauer recommended an orthotic. Petitioner saw Dr. Reinecke on February 28, 2008 to pick-up the orthotic device. Petitioner then followed up with Dr. Reinecke again on March 11, 2008 at which time she reported no trouble with the orthotic but noted some soreness in the right leg. Dr. Reinecke recommended Petitioner work five hours per day. RX #2; PX# 3; PX #11.

Also on March 11, 2008, Petitioner saw Dr. Sauer in order to reassess work status. Petitioner reported she was working eight hours per day, six days straight and that she was having difficulty after five hours as well as tenderness at the fracture site. Dr. Sauer authorized Petitioner to return to work light duty working a maximum of five hours per day or 25 hours per week for eight weeks. RX #2; PX #3.

On March 31, 2008, Petitioner returned to Dr. Sauer with complaints of continued pain in the ankle and foot. She indicated her pain had gotten worse and she was having trouble tolerating five hours per day at work. Petitioner also reported she tried an orthotic but it did not help. Dr. Sauer ordered x-rays of the foot and ankle and a bone scan. He also referred Petitioner to Dr. Lang for a second opinion. Petitioner was otherwise authorized to return to work light duty five hours per day. RX #2; PX #3.

On April 3, 2008, Petitioner underwent a bone scan which demonstrated focus of activity in the distal tibia and to a much lesser extent the distal fibula which likely represented healing fractures. RX #2; PX #3.

On April 23, 2008, Petitioner testified she put in her two week notice at the store. She last worked for the store on May 4, 2008. RX #6; RX #9.

Petitioner saw Dr. Lang on June 9, 2008 for purposes of a second opinion. Dr. Lang felt there was nothing mechanical or structural to suggest or recommend further surgery as he suspected the bulk of Petitioner's symptoms were due to nerve pathology. He therefore recommended comprehensive evaluation and treatment with a pain management clinic. PX #13.

On June 18, 2008, Petitioner returned to Dr. Sauer with complaints of mild intermittent swelling of the foot. Dr. Sauer recommended a foot-ankle orthosis. RX #2; PX #3. Petitioner testified she still wears the orthosis all the time.

On August 14, 2008, Petitioner attended an IME with Dr. Holmes at the request of the Respondent. Dr. Holmes diagnosed a tib-fib fracture which resulted from the work accident and recommended a diagnostic ultrasound and EMG/NCV to determine whether there was nerve damage. He opined Petitioner's symptoms were causally related to the work accident. Dr. Holmes opined Petitioner could return to work in a sedentary or semi-sedentary position and anticipated MMI in three to six months. RX #10.

Petitioner next saw Dr. Sauer on October 1, 2008 with complaints of continued pain. Dr. Sauer recommended a CT scan, MRI and an EMG. He otherwise noted the claimant was completely off pain medications except Advil. He authorized the claimant off work and instructed her to follow-up three weeks after the EMG, MRI and CT scans. RX #2; PX #3.

On October 1, 2008, the claimant underwent a CT scan of the right lower leg which demonstrated healed fractures of the distal tibia and fibula with intermedullary rod within the tibia. RX #2; PX #3.

Petitioner underwent a MRI of the right ankle on October 10, 2008 which showed no bony, muscular or tendinous abnormality and mild soft tissue edema around the ankle. She also underwent a MRI of the right lower leg which showed subcutaneous soft tissue edema but no abnormal signal. RX #2; PX #3.

On October 13, 2008, Petitioner underwent an EMG/NCV which showed evidence of demyelinating and axonal neuropathy of the common peroneal nerve. However, it was noted Petitioner had 1+ bipedal edema during the examination which made testing difficult. It was also noted electrodiagnostic testing of the bilateral sural and saphenous nerves were undetectable. RX #2; PX #3.

Petitioner next saw Dr. Sauer on October 22, 2008 to review the test results. Dr. Sauer indicated his greatest concern was the possibility of a persistent nonunion of the tibial shaft fracture. He also noted nerve damage which may have occurred from the injury or due to entrapment in scar or irritation from hardware. Dr. Sauer instructed Petitioner to see Dr. Lang to confirm whether she had an ongoing nonunion of the tibia. He indicated if she had a bone grafting procedure, it may allow her to heal completely and improve her overall life. Dr. Sauer noted the alternative would be to leave her with a nonunion and ongoing pain with weightbearing. He indicated if Dr. Lang disagreed there was a nonunion then he was prepared to discharge her. PX #10.

On November 3, 2008, Petitioner returned to Dr. Lang with complaints of a significant amount of pain in her leg and difficulty walking. Dr. Lang felt adequate healing had taken place and noted he would not consider the fracture a nonunion. Instead, he felt the pain was neuropathic in nature and that pain medications may help Petitioner since her pain could not be reproduced with stressing of the leg. Dr. Lang also noted some patients benefited from rod removal and Petitioner could consider it. PX #13.

On February 9, 2009, Petitioner attended a repeat IME with Dr. Holmes who diagnosed a clear nonunion of the distal tibia status post tibial rodding which was directly related to the work accident. Dr. Holmes recommended surgery consisting of bone grafting which would give an 85-90% chance of healing. He further opined therapy would be useless and the tibia would not be stabilized by removing the rod. Dr. Holmes recommended an EMG when swelling was less and indicated a treatment plan for the nerve pain could be outlined. He opined Petitioner should either be off work or return to work in a strictly sedentary position. Dr. Holmes felt Petitioner would be at MMI within three to six months of bone grafting. RX #10.

On May 14, 2009, Petitioner underwent an EMG/NCV which was abnormal and showed evidence of right peroneal neuropathy at the ankle, mild peripheral polyneuropathy of the bilateral lower extremities, and mild posterior tarsal tunnel syndrome. PX #14.

Petitioner next presented to Dr. Blint at Rockford Orthopedic Associates on May 18, 2009. She complained of right leg, ankle and foot pain which was worse with pressure or standing on her leg. Dr. Blint diagnosed a closed tibia fracture and ordered a repeat MRI of the right leg. PX #14.

On May 29, 2009, Petitioner underwent a MRI of the right leg which demonstrated mild residual fracture deformities of the distal tibial and fibular shafts and mature osseous healing without osteomyelitis or other complications. PX #14.

Petitioner returned to Dr. Blint on June 8, 2009. At that time, Dr. Blint prescribed Neurontin and referred Petitioner to Dr. Bush for evaluation of tarsal tunnel syndrome. PX #14.

On June 11, 2009, Petitioner first saw Dr. Bush. She reported complaints of right foot, lower right leg and ankle pain. Dr. Bush diagnosed tarsal tunnel syndrome and neuritis. He instructed Petitioner to let the Neurontin take effect then return for a definitive plan. PX #14.

On July 9, 2009, Petitioner returned to Dr. Bush with complaints of pain and numbness on the medial aspect of the ankle. Dr. Bush diagnosed tarsal tunnel syndrome with right saphenous entrapment and neuritis of the right deep peroneal nerve. He prescribed Lidoderm. PX #14.

Petitioner next presented to Dr. Bush on August 6, 2009. At that time, Dr. Bush instructed the claimant to discontinue Neurontin due to side effects. He indicated he would not recommend surgery or injections due to a decrease in symptoms and recommended a brace. PX #14.

On August 18, 2009, Dr. Holmes prepared an IME addendum after reviewing the EMG/NCV and MRI report. He diagnosed a tibial nonunion, possible neuroma involving the peroneal nerve and overlying polyneuropathy. Dr. Holmes did not feel Petitioner had tarsal tunnel syndrome. He recommended use of a Lidoderm patch and a bone stimulator. Dr. Holmes noted the treatment options included bone grafting and immobilization and also indicated Petitioner may require decompression of the nerve or an attempt to release the neuroma. Dr. Holmes indicated he would not recommend rod removal. He noted Petitioner could take an additional three months to heal after bone grafting and if she did not heal after bone grafting, she could require full plating of the tibia. Overall, Dr. Holmes felt Petitioner would benefit from surgery. He opined she could return to work in a sedentary or semi-sedentary capacity with use of bracing and immobilization of the foot until a decision was made regarding surgery. Dr. Holmes felt Petitioner would be at MMI six months after surgery. RX #10.

Dr. Holmes saw Petitioner again on December 9, 2009. He diagnosed a nonunion and right peroneal nerve neuropathy. Dr. Holmes recommended a repeat CT scan and opined Petitioner could return to work light duty in a strictly sedentary position. RX #10.

On December 15, 2009, Petitioner underwent a repeat CT scan of the right leg which showed healed fractures of the tibia and fibula. RX #10.

On February 16, 2010, Dr. Holmes prepared an IME addendum after reviewing the updated CT scan. He opined the CT scan showed the fracture was not completely healed at one spot which could account for Petitioner's pain. Dr. Holmes indicated it may be helpful for Petitioner to undergo a re-evaluation to determine if she still has pain that may be from the potential continued nonunion of the tibia. RX #10.

Petitioner testified if she was going to have surgery, she wanted to treat with Dr. Holmes. She therefore requested a consultation with Dr. Holmes to discuss the surgery he was recommending. Petitioner attended a consultation with Dr. Holmes on April 15, 2010 at which time she testified she took paperwork for her SSDI case provided to her by her attorney for Dr. Holmes to fill out. Dr. Holmes noted Petitioner continued to have constant pain over the ankle and had developed ringworm on the top of her foot. He recommended a dermatology consultation which was unrelated to the work injury and pain management to resolve any pain prior to surgery. Dr. Holmes also completed a Physical Medical Source Statement which was required for Petitioner's SSDI case. He indicated Petitioner could sit for more than two hours, stand for five to ten minutes at a time, stand or walk less than two hours during an eight hour work day but sit for at least six hours, required a sitting position with the leg elevated and needed to use a cane, could not lift, twist, bend, crouch, squat or climb stairs or ladders. Dr. Holmes also recommended Petitioner be evaluated by a pain management doctor prior to returning to work. RX #10; PX #5.

On May 3, 2010, Petitioner presented to Dr. Jaworowicz at Medical Pain Management. She complained of pain starting in the right ankle and radiating to her knee and increased pain with any

activity. Petitioner reported her foot was cold and sensitive to touch. Dr. Jaworowicz diagnosed CRPS of the lower extremity, neuropathy and depression. He prescribed Topamax. PX #12.

On May 24, 2010, Petitioner last saw Dr. Jaworowicz. She reported trying the Topamax but woke up with shortness of breath, tremors and tachycardia. Dr. Jaworowicz noted Petitioner was not interested in a spinal cord stimulator. PX #12.

At the request of her attorney, Petitioner was evaluated by Dr. Coe on September 29, 2010. Dr. Coe diagnosed multiple fractures of the right ankle including a spiral intra-articular fracture of the right distal tibia, a fracture of the posterior malleolous and a fracture of the distal fibula. He opined there was a causal connection between the work injury and Petitioner's condition of ill-being. Dr. Coe opined Petitioner required additional treatment, including further pain management, possibly a spinal cord stimulator and a repeat right ankle surgery. He opined Petitioner required work restrictions including working in a primarily sedentary position with limited walking, kneeling, squatting and stair climbing, continued use of the right foot and ankle brace and a 10-lb lifting restriction. PX #6.

Also at the request of her attorney, Petitioner was evaluated by Susan Entenberg on May 2, 2011. Ms. Entenberg opined Petitioner was not able of performing her past work as a stocker and fitting room associate. She also felt Petitioner was not a good candidate for vocational rehabilitation and a stable labor market did not exist for her. Ms. Entenberg noted Petitioner had not performed a job search. She opined Petitioner did not have transferrable skills to a lighter occupation. PX #20.

On October 12, 2011, at the request of the Respondent, Ed Steffan of EPS Rehabilitation performed a labor market survey. He found 10 employers with 15 positions consistent with Petitioner's rehabilitation variables between $8.75-$13.00 per hour. Additionally, seven of nine employers had positions open and available at the time of his calls. The positions identified were located in the Rockford area. Mr. Steffan opined Petitioner should be able to obtain gainful employment based on the findings of the labor market survey and motivation of Petitioner to seek and secure employment. RX #11.

On November 15, 2011, Dr. Holmes prepared an IME addendum report. Dr. Holmes noted his opinions had not changed and he was still recommending the bone grafting procedure. He noted the bone grafting procedure would be considered a minor procedure and would probably require hospitalization for only one day after surgery. He further noted there was an 80-90% chance the procedure would improve Petitioner's condition. Dr. Holmes opined Petitioner could easily return to work in a sedentary capacity if not semi-sedentary or light duty. He otherwise recommended a FCE to determine work restrictions. RX #10.

On January 22, 2012, Susan Entenberg prepared an addendum report after reviewing the limited labor market survey. She felt the sedentary jobs identified in the labor market survey required basic computer skills, good communication, customer service skills and a light exertional level. She also felt the labor market survey did not consider the restrictions outlined by Dr. Holmes in the Physical Medical Source Statement dated April 15, 2010. Ms. Entenberg noted her opinions did not change as she felt Petitioner was not an appropriate candidate for vocational rehabilitation and a stable labor market did not exist for her. PX #20.

On May 11, 2012, Ed Steffan prepared an addendum report. Mr. Steffan noted although Petitioner was reporting difficulty with standing and walking, sedentary jobs are performed from a seated position. He further disagreed with Ms. Entenberg and felt Petitioner had transferrable skills from her prior work experience which she could use to pursue sedentary work. Mr. Steffan opined that based on the findings of his labor market survey and the reports of Dr. Holmes and Dr. Coe, Petitioner could pursue other positions besides those identified in the labor market survey, including a cashier,

switchboard operator, customer service representative, team assembler, security guard, monitor position, receptionist and information clerk. Mr. Steffan further opined that based on Petitioner's previous customer service experience, available physical capability and the labor market, there was an available and stable labor market which Petitioner could access if she was motivated to return to work. RX #11.

Petitioner underwent a FCE on September 17, 2012. The FCE was noted to be valid and demonstrated Petitioner had functional capabilities at the Light physical demand level. It was noted Petitioner previously worked as a fitting room attendant which was classified as a Light physical demand level occupation and Petitioner's current physical capabilities appeared to fall within the Light physical demand level but she failed to meet the expectations with floor to chair and above shoulder lifting. It was therefore recommended bending, stooping, stairs and right foot controls be performed on an occasional basis and balancing, squatting, and crouching be performed on a minimal basis. It was also recommended Petitioner not crawl at all. It was noted Petitioner was able to sit for 55 minutes with her right leg hanging down but as the assessment progressed, she requested a stool to elevate her leg and stated she experienced increased swelling and pain with prolonged sitting. It was therefore noted it would be important to consider the reports and behaviors if Petitioner was required to sit for extended periods of time. PX #19.

On September 29, 2012, Susan Entenberg prepared an addendum report after reviewing the FCE results. Ms. Entenberg's opinions remained the same that Petitioner was not an appropriate candidate for vocational rehabilitation and a stable labor market was not available. PX #20.

On October 31, 2012, Dr. Holmes prepared an addendum report after reviewing the FCE results. Dr. Holmes' opinions did not change regarding his prior surgical recommendations and he indicated if Petitioner did not undergo the bone grafting procedure, she would be at MMI. He otherwise opined Petitioner was capable of and able to return to work. Dr. Holmes could not provide a definite opinion regarding whether the fitting room associate position would be consistent with a sedentary position. However, he opined if the parties could find a job which was consistent with Petitioner's restrictions, she could return to work in those restrictions. RX #10.

On November 1, 2012, Ed Steffan prepared an addendum report after reviewing the FCE results and fitting room associate job description. Mr. Steffan's opinions did not change as he still felt there was a readily available and stable labor market Petitioner could access if she was motivated to use her physical capabilities to return to work. RX #11.

Susan Entenberg testified regarding her opinions on March 13, 2013. PX #20. Approximately 85% of the opinions Ms. Entenberg provides are at the request of the employee. Id at 34. Ms. Entenberg testified she did not feel Petitioner was a candidate for vocational rehabilitation and she did not feel a stable labor market existed for her. Id at 22, 24. She disagreed that Petitioner could perform the jobs identified in the labor market survey prepared by Ed Steffan. Id at 31. Ms. Entenberg testified she did not perform a labor market survey. Id at 35. Ms. Entenberg relied on the Physical Medical Source Statement prepared by Dr. Holmes in reaching her opinions. However, she acknowledged her report did not indicate that Dr. Holmes stated Petitioner could sit from 30-45 minutes up to two hours. Id at 37. She also admitted her report did not indicate that Dr. Holmes stated Petitioner could sit six hours out of an eight hour work day. Id at 38. Ms. Entenberg testified she relied on the doctors' opinions regarding work status and if Petitioner's work status was adjusted, it could impact her opinions. Id at 35-36. She admitted she did not review the November 15, 2011 report of Dr. Holmes and was therefore not aware Dr. Holmes felt Petitioner could return to work in a sedentary if not semi-sedentary or light duty capacity. Id at 49-50.

Ed Steffan testified regarding his opinions on June 5, 2013. RX #1. Approximately 60-70% of the opinions Mr. Steffan provides are at the request of the employee. Id at 5. Mr. Steffan testified regarding the labor market survey he performed. He used Petitioner's work history information as well as the opinions of Dr. Holmes and Dr. Coe and contacted 12 employers. Id at 8-9. Mr. Steffan testified 10 employers had 15 positions consistent with Petitioner's rehabilitation variables and seven employers had nine positions available. Id at 9. He also felt Petitioner could do jobs other than those identified in the labor market survey. Id at 17. Mr. Steffan opined a reasonably stable labor market exists for Petitioner. Id at 11, 20.

Mr. Steffan testified regarding the two subsequent reports he prepared. He explained Petitioner's prior work history was important and he considered it when rendering his opinions. RX #1 at 15. Mr. Steffan testified he believed Petitioner had transferrable skills which she acquired through her prior positions as a CNA and apartment demonstrator which she could use in a sedentary position. Id at 16-17. He concluded there is a readily available and stable labor market for Petitioner. Id at 20. Mr. Steffan acknowledged the Rockford labor market is smaller than the labor market of Chicago. Id at 11, 46. However, he explained the jobs he identified within Petitioner's restrictions were using his most conservative estimate and Petitioner has access to a labor market greater than just the town of Rockford. Id at 18. He further explained he did not list every possible job Petitioner could perform. Id at 55. Mr. Steffan testified the Physical Medical Source Statement is outdated as Dr. Holmes provided updated restrictions. Id at 54. He testified the updated restrictions do not preclude Petitioner from finding full-time employment. Id at 55.

Alicia Lawrence, store manager, testified on behalf of Respondent. Ms. Lawrence was the store manager on the accident date and during the time Petitioner worked for the store following the accident. She has worked for Respondent for a total of 18 years. Following the accident, Ms. Lawrence testified Petitioner returned to work with restrictions and the store was able to accommodate her restrictions with a position in the fitting room. Ms. Lawrence further confirmed Petitioner returned to work with a restriction on the number of hours she could work and the store was able to accommodate the restrictions with respect to Petitioner's hours.

Ms. Lawrence explained the employee schedules are generated by computer and there is no way for the computer to know whether an employee has a restriction on the number of hours she can work. Therefore, if the computer schedules an employee to work more than the number of hours allowed by their doctor, Ms. Lawrence explained the employee should tell the store so the hours can be adjusted. She further testified an employee's hours can be adjusted the same day she is scheduled to work provided the employee notifies the store of the issue. Ms. Lawrence recalled having one conversation with Petitioner regarding an issue with the number of hours she was being scheduled to work. She stated she told Petitioner to notify her if there was an issue with the hours so the schedule could be adjusted. Ms. Lawrence explained if Petitioner reported her hours or restrictions were not being accommodated, she would verify the restriction and adjust the hours. She confirmed Petitioner was not disciplined, punished or given fewer shifts to work due to her restrictions.

Ms. Lawrence testified Petitioner no longer works for the store because she turned in her resignation and quit. At the time she quit, Ms. Lawrence testified Petitioner's work restrictions were being accommodated and would have continued to be accommodated had she not quit. Ms. Lawrence explained there have been situations where employees with permanent restrictions have continued to work for the store and be accommodated since the date Petitioner quit.

With respect to her current condition, Petitioner testified she has to watch what she is doing to make sure she does not overdo it. She testified she is able to do laundry, watch TV, read, do puzzles and cook. Petitioner stated she is always has pain in her right leg and has problems with stairs. She is no longer able to dance, play with her five grandchildren or ice skate. Petitioner currently takes over the counter medications for pain. She last worked for the store on May 4, 2008 and has not attempted to returned to work since that time or performed a job search. She is not interested in undergoing additional surgery and is not currently seeing a doctor for her ankle.

With respect to (k), TTD benefits in dispute, the Arbitrator finds the following:

The Arbitrator finds Petitioner failed to prove she is entitled to additional TTD benefits. There is no dispute Petitioner quit working for Respondent when her work restrictions were being accommodated. Petitioner testified she put in her two week notice on April 23, 2008 and last worked for the store in May 2008. This was confirmed by Alicia Lawrence who was the store manager at the time of the accident and during the time Petitioner worked for the store. Ms. Lawrence confirmed Petitioner's work restrictions were accommodated during the time she worked for the store and would have continued to be accommodated had Petitioner not quit.

After Petitioner quit working for the store, she continued to be able to work light duty as indicated by both Dr. Holmes and Dr. Coe. On August 18, 2008, Dr. Holmes indicated Petitioner could return to work in a sedentary or semi-sedentary position. RX #10. Dr. Holmes indicated on February 9, 2009 Petitioner could either be off work or return to work in a sedentary position. On August 18, 2009, Dr. Holmes indicated Petitioner could return to work in a sedentary or semi-sedentary position. He stated on December 9, 2009 that Petitioner could work in a strictly sedentary position. On April 15, 2010, Dr. Holmes completed a Physical Medical Source statement in which he indicated Petitioner could sit for more than two hours and stand for five to ten minutes at a time, stand/walk less than two hours during an eight hour workday but could sit for at least six hours, required a seated position with her leg elevated and needed to use a cane and could not lift, twist, bend, crouch/squat or climb stairs/ladders. PX #5. The Arbitrator notes this is consistent with a sedentary or semi-sedentary position. The last doctor to see Petitioner was Dr. Coe on September 29, 2010. PX #6. Dr. Coe indicated Petitioner required work restrictions of a primarily sedentary position with limited walking, kneeling, squatting, stair climbing and a 10-lb lifting restriction. On November 15, 2011, Dr. Holmes indicated Petitioner could easily return to work in a sedentary if not semi-sedentary or light duty capacity. Dr. Holmes stated on October 31, 2012, Petitioner was capable of and able to return to work. RX #10. The medical evidence clearly demonstrates Petitioner continued to be able to work light duty after she quit. Furthermore, Ms. Lawrence testified Respondent would have continued to accommodate Petitioner's restrictions had she not quit.

Based on the foregoing, the Arbitrator finds Petitioner failed to prove she is entitled to additional TTD benefits.

With respect to (f) whether Petitioner's current condition of ill-being is causally related to the injury and (l) the nature and extent of the injury, the Arbitrator finds the following:

Petitioner is entitled to PPD benefits to the extent of 60% loss of use of the right foot and 15% man as a whole. Petitioner was diagnosed with a tibia-fibula fracture for which she underwent three surgical procedures consisting of fixation of the right ankle fracture with screws and rod, removal of the screws from the right tibia and excision of right medial leg ulcer with debridement of soft tissue including

skin and subcutaneous tissue and closure of leg wound. A fourth surgical procedure consisting of bone grafting in order to correct the nonunion of the fracture was recommended. Petitioner testified she does not wish to undergo another surgery. Following the third procedure, Petitioner was authorized to return to work full duty beginning on January 28, 2008. She was then given work restrictions of working five hours per day or 25 hours per week for eight weeks beginning on March 11, 2008 and returned to work for Respondent within the restrictions. Petitioner continued to work for Respondent within the work restrictions until she put in her two week notice on April 23, 2008. She last worked for the store on May 4, 2008. Petitioner testified she quit working for the store.

Although Petitioner wants the Arbitrator to ignore the fact she quit, it is undisputed Petitioner quit working for the store thereby removing herself from the labor force. The evidence establishes Petitioner's work restrictions were being accommodated at the time she quit and had she not quit, Respondent would have continued to accommodate her restrictions. The examining doctors of both Petitioner and Respondent established Petitioner could continue to work in a sedentary capacity. Furthermore, the testimony of the vocational experts, specifically Ed Steffan, establish there is a reasonable and stable labor market for Petitioner. Petitioner has made absolutely no attempt to return to work or look for a job. She has therefore failed to prove she is permanently and totally disabled.

The Arbitrator finds Petitioner's testimony that she was required to work outside of her restrictions unconvincing and not supported by the evidence based on the testimony of the witnesses and the evidence regarding Petitioner's work schedule.

The Arbitrator finds the testimony of Alicia Lawrence credible. Ms. Lawrence was the store manager on the accident date and during the time Petitioner worked for the store. She confirmed Petitioner returned to work with restrictions and the store was able to and did accommodate Petitioner's work restrictions until she quit working for the store. Although Petitioner testified she was required to work outside of the hourly restrictions placed by her doctor, Ms. Lawrence confirmed the store was aware of Petitioner's restriction on the number of hours she could work and accommodated the restriction. Ms. Lawrence explained the work schedules of the employees are generated by a computer and there is no way for the computer to know whether an employee has a restriction on the number of hours she can work. Therefore, if an employee has a restriction on the number of hours she can work and is scheduled to work more hours than the restriction allows, the store will adjust the hours so they are consistent with the restriction provided the employee alerts the store of the discrepancy. Ms. Lawrence stated the store is able to adjust the employee's hours the same day she is scheduled to work provided the employee notifies the store of the discrepancy. Ms. Lawrence recalled having one conversation with Petitioner regarding an issue with the number of hours she was scheduled to work. Ms. Lawrence testified she told Petitioner to notify her if there was an issue with the number of hours she was being scheduled so her hours could be adjusted. She further explained if Petitioner notified the store that her hours were not being accommodated, she would verify the restrictions and then adjust the hours accordingly. Ms. Lawrence confirmed Petitioner was not disciplined or given fewer shifts to work due to her restrictions. Furthermore, Ms. Lawrence testified Petitioner's work restrictions were being accommodated up until the time she quit and had Petitioner not quit, her restrictions would have continued to be accommodated.

The evidence regarding the days and hours Petitioner worked, specifically the work calendar and time clock archive, do not support Petitioner's contention that she was required to work outside her restrictions. PX #1, RX #8. Rather, the evidence demonstrates the store was accommodating Petitioner's work restrictions and complying with Petitioner's hourly restriction.

Immediately following the injury, Petitioner was authorized off work. On June 13, 2007, Dr. Sauer authorized Petitioner to return to work light duty with limited standing and walking, four hours per day for six weeks. RX #2; PX #3. Petitioner testified she returned to work on approximately June 18, 2007. The calendar confirms Petitioner worked a total of five days each week for the next six weeks. PX #1. Furthermore, the time clock archives confirm that for the next six weeks, Petitioner's hourly restrictions were also accommodated as she worked approximately 20 hours per week which equates to approximately four hours per day. RX #8:

6/16/2007-6/22/2007 = 20.24 hours worked; 5 days worked
6/23/2007-6/29/2007= 20.39 hours worked; 5 days worked
6/30/2007-7/6/2007 = 20.55 hours worked; 5 days worked
7/7/2007-7/13/2007 = 20.07 hours worked; 5 days worked
7/14/2007-7/20/2007= 20.15 hours worked; 5 days worked
7/21/2007-7/27/2007 = 19.99 hours worked; 5 days worked

Dr. Sauer next adjusted Petitioner's work restrictions on July 25, 2007. At that time, he authorized Petitioner to return to work light duty with limited standing and walking, four hours per day, five days per week, for two months. PX #3; RX #2. PX #1 confirms for the next two months, Petitioner worked five days per week, which is consistent with her work restrictions. The time clock archives also confirm that for the next eight weeks, Petitioner's hourly restrictions were accommodated as she worked five days each week for approximately four hours each day or 20 hours per week. RX #8:

7/28/2007- 8/3/2007 = 20.18 hours worked; 5 days worked
8/4/2007-8/10/2007 = 20.02 hours worked; 5 days worked
8/11/2007-8/17/2007 = 20.13 hours worked; 5 days worked
8/18/2007-8/24/2007 = 20.23 hours worked; 5 days worked
8/25/2007-8/31/2007 = 19.21 hours worked; 5 days worked
9/1/2007-9/7/2007 = 20.11 hours worked; 5 days worked
9/8/2007-9/14/2007 = 20.19 hours worked; 5 days worked
9/15/2007-9/21/2007 = 20.08 hours worked; 5 days worked

On September 26, 2007, Dr. Sauer authorized Petitioner to return to work light duty with limited walking and standing, 20 hours per week for six weeks. PX #3; RX #2. PX #1 indicates that for the next six weeks, Petitioner worked five days per week, consistent with the work restrictions. Additionally, the time clock archives also indicate the claimant worked five days each week and approximately 20 hours per week. RX #8:

9/22/2007-9/27/2007 = 20.10 hours worked; 5 days worked
9/29/2007-10/5/2007 = 16.35 hours worked; 5 days worked
10/6/2007-10/12/2007 = 0 hours worked
10/13/2007-10/19/2007 = 20.12 hours worked; 5 days worked
10/20/2007-10/26/2007 = 20.36 hours worked; 5 days worked

Petitioner returned to Dr. Sauer on October 23, 2007 at which time Dr. Sauer continued Petitioner's restrictions of sit down work with limited standing and walking, four hours per day and 20 hours per week for the next four weeks. PX #3; RX #2. PX #1 confirms Petitioner worked five days each week for the next four weeks. The time clock archive confirms Petitioner continued to work five days per week and approximately 20 hours per week. RX #8:

10/27/2007-11/2/2007 = 20.12 hours worked; 5 days worked
11/3/2007-11/9/2007 = 20.20 hours worked; 5 days worked

11/10/2007-11/16/2007 = 20.45 hours worked; 5 days worked
11/17/2007-11/23/2007 = 20.36 hours worked; 5 days worked

On November 27, 2007, Dr. Sauer authorized Petitioner to return to work light duty alternating sitting and standing, six hours per day for the next four weeks. PX #3; RX #2. PX #1 shows Petitioner continued to work five days per week for the next two weeks. The time clock archives also show Petitioner worked less than six hours per day or less than 30 hours per week for the next two weeks, which is again consistent with her work restrictions. RX #8:

11/24/2007-11/30/2007 = 22.01 hours worked; 5 days worked
12/1/2007-12/7/2007 = 27.36 hours worked.

Petitioner underwent surgery to her right lower leg on December 11, 2007 and was authorized off work following the procedure. She was then authorized to return to work light duty on January 14, 2008 performing sit down work and lifting her leg, four hours per day for two weeks. PX #3; RX #2. PX #1 shows Petitioner worked five days per week for the next two weeks. The time clock archives demonstrate Petitioner worked approximately four hours per day or 20 hours per week, which is again consistent with the work restrictions. RX #8:

1/12/2008-1/18/2008 = 12.26 hours worked; 3 days worked
1/19/2008-1/25/2008 = 20.61 hours worked; 5 days worked

Beginning on January 28, 2008, Dr. Sauer authorized Petitioner to return to work full duty and noted Petitioner may need to sit for periods to rest. PX #3; RX #2. Although Petitioner testified she began to work more during the month of January and was sometimes asked to work six days in a row, the Arbitrator does not find this is evidence that Respondent was not accommodating Petitioner's restrictions. Rather, PX #1 shows the entire time Petitioner worked for the store from February 5, 2007 through May 9, 2008, Petitioner worked six days in a row on one occasion from February 25, 2008 through March 1, 2008. During this period of time, Petitioner was authorized to work full duty and therefore, working six days in a row would not have been outside of her restrictions because Petitioner had no restrictions. Additionally, the time clock archives demonstrate during the time Petitioner was authorized to work full duty, she never worked more than 32.78 hours in one week. RX #8. The Arbitrator also finds Petitioner's testimony that she experienced more pain and would often go home in tears unconvincing. Again, the period of time Petitioner was referring to corresponds to when she was authorized to work full duty. Petitioner's testimony is also inconsistent with the medical records of Dr. Sauer on February 20, 2008 which indicate Petitioner was working full duty and tolerating work without much difficulty. PX #3; RX #2.

On March 11, 2008, Petitioner returned to Dr. Sauer who again authorized her to return to work light duty working a maximum of five hours per day or 25 hours per week for the next eight weeks. PX #3; RX #2. PX #1 demonstrates Petitioner continued to work five days per week. The time clock archive shows Petitioner continued to work within her hourly restriction of 25 hours per week until she quit working for the store. RX #8:

3/8/2008-3/14/2008 = 18.61 hours worked; 3 days worked
3/15/2008-3/21/2008 = 10.06 hours worked; 2 days worked
3/22/2008-3/28/2008 = 20.20 hours worked; 4 days worked
3/29/2008-4/4/2008= 23.10 hours worked; 5 days worked
4/5/2008-4/11/2008= 23.32 hours worked; 5 days worked
4/12/2008-4/18/2008= 20.32 hours worked; 5 days worked
4/19/2008-4/25/2008= 25.16 hours worked; 5 days worked

4/26/2008-5/2/2008= 16.21 hours worked; 4 days worked

5/3/2008-5/9/2008= 12.38 hours worked; 3 days worked

Based on the evidence contained in the work calendar and time clock archives, the Arbitrator finds Petitioner's testimony that she was being required to work more hours than allowed by her work restrictions, to be unconvincing. Instead, the Arbitrator finds the evidence establishes the opposite and shows Respondent was accommodating the hourly restrictions set forth by the claimant's treating doctor. When taken with the testimony of Ms. Lawrence who also confirmed the store was accommodating Petitioner's work restrictions, the Arbitrator finds the evidence proves Respondent was accommodating Petitioner's restrictions until the time she quit in May of 2008.

From a medical standpoint, the evidence shows Petitioner remained able to work in a sedentary or light duty capacity. Both the examining doctors of Petitioner and Respondent clearly felt Petitioner could return to work with restrictions. Dr. Holmes consistently opined Petitioner could return to work in a sedentary capacity, at a minimum. Petitioner first saw Dr. Holmes on August 14, 2008 for purposes of an IME at the request of the Respondent. Dr. Holmes opined Petitioner's condition was causally related to the work accident and opined she could return to work in a **sedentary or semi-sedentary** position. RX #10.

Petitioner saw Dr. Holmes a second time on February 9, 2009 for re-evaluation. Dr. Holmes recommended a bone grafting procedure which would give Petitioner an 85-90% chance of healing. He disagreed with the rod removal procedure suggested by Dr. Lang as he felt the procedure would not stabilize the tibia. Dr. Holmes opined Petitioner should be either off work or could work in a **strictly sedentary position.** On August 18, 2009, Dr. Holmes prepared an addendum to his report. He opined Petitioner would benefit from surgery and again recommended the bone grafting procedure. Dr. Holmes felt Petitioner had not yet reached MMI and therefore did not recommend a full duty return to work, but he did indicate Petitioner could work in a **sedentary or semi-sedentary capacity** until a decision was made regarding surgery. RX #10.

On December 9, 2009, Petitioner saw Dr. Holmes a third time. At that time, Dr. Holmes recommended a repeat CT scan and indicated Petitioner could return to work in a **strictly sedentary position.** Following the CT scan, Dr. Holmes prepared an addendum to his report in which he opined the fracture was not completely healed and recommended a re-evaluation to determine whether Petitioner still had pain from a continued nonunion of the tibia. RX #10.

Petitioner saw Dr. Holmes a fourth time on April 15, 2010. Petitioner admitted she requested a consultation with Dr. Holmes to discuss the surgery he was recommending. However, she also testified she took paperwork for Dr. Holmes to completed, specifically a Physical Medical Source Statement, which was provided by her attorney for purposes of her SSDI case. The Arbitrator finds this suspicious. Dr. Holmes recommended an unrelated consultation with a dermatologist for ringworm on her foot and an evaluation with a pain management doctor to resolve pain before surgery. Dr. Holmes completed the Physical Medical Source Statement in which he indicated Petitioner could **sit for more than two hours and stand for five to ten minutes at a time, stand/walk less than two hours during an eight hour workday but could sit for <u>at least</u> six hours, required a seated position with her leg elevated and needed to use a cane and could not lift, twist, bend, crouch/squat or climb stairs/ladders.** The Arbitrator finds the Physical Medical Source Statement indicative of Petitioner's ability to work and consistent with Dr. Holmes' prior opinions that Petitioner could work in a sedentary or semi-sedentary position. RX #10; PX #5.

On November 15, 2011, Dr. Holmes prepared an addendum report. Dr. Holmes' opinions regarding surgery did not change as he was still recommending the bone grafting procedure which he felt was a minor procedure and had an 80-90% chance of improving Petitioner's condition. Dr. Holmes otherwise opined Petitioner could return to work in a **sedentary, if not semi-sedentary or light duty capacity,** but recommended an FCE to determine restrictions. RX #10.

After reviewing the FCE results and a job description for a fitting room associate, Dr. Holmes prepared an addendum report dated October 31, 2012. His opinions regarding surgery did not change and Dr. Holmes stated if Petitioner did not undergo surgery, she would be at MMI. Although Dr. Holmes could not provide a definite opinion regarding whether the fitting room position would be consistent with a sedentary position, he opined **Petitioner was capable and able to return to work.** RX #10.

The opinions of Dr. Coe are consistent with the opinions of Dr. Holmes that Petitioner could return to work in a sedentary capacity. Dr. Coe examined Petitioner at the request of her attorney on September 29, 2010. Dr. Coe was also the last doctor who has seen Petitioner. He opined Petitioner **required work restrictions which included a primarily sedentary position with limited walking, kneeling, squatting, stair climbing and a 10-lb lifting restriction.** PX #6.

The opinions of Dr. Holmes and Dr. Coe are consistent as both doctors agreed Petitioner was capable of returning to work in a sedentary capacity at a minimum and therefore establish Petitioner remained able to work in a light duty capacity.

The opinions of Ed Steffan are more credible than the opinions of Susan Entenberg. Ms. Entenberg's opinions are biased as 85% of the vocational opinions she provides are at the request of the Petitioner. PX #20 at 34. Petitioner did not perform a job search and Ms. Entenberg did not perform a labor market survey. Id at 35. In reaching her opinions that there is no stable labor market for Petitioner and Petitioner is not a candidate for vocational rehabilitation, Ms. Entenberg relied largely on the Physical Medical Source Statement prepared by Dr. Holmes on April 15, 2010 for purposes of Petitioner's SSDI case, which has no relevance or bearing on the case at hand. However, Ms. Entenberg misread the physical capabilities indicated by Dr. Holmes. Specifically, Ms. Entenberg testified Petitioner could only sit for 30-45 minutes at a time and indicated this in her report. Id at 36. Her opinions were therefore based on this understanding. However, on cross-examination, Ms. Entenberg admitted she was not aware of and did not include in her report that Dr. Holmes stated Petitioner could sit 30-45 minutes up to two hours and she could sit **six** hours out of an eight hour workday. Id at 37-38.

Despite testifying she relied on the doctors' opinions regarding work status and admitted if work status was adjusted it could change her opinions, Ms. Entenberg admitted she was not aware of and did not review the November 15, 2011 report of Dr. Holmes. PX #20 at 35-36; 49-50. She was therefore not aware Dr. Holmes felt Petitioner could return to work in a sedentary if not semi-sedentary or light duty capacity. Ms. Entenberg was also not aware Dr. Holmes was recommending a minor surgery which had an 80-90% chance of improving Petitioner's condition. Id at 53. Ms. Entenberg therefore based her opinions on outdated information.

Furthermore, although she admitted she was aware of Dr. Coe's report and his opinions regarding work status, Ms. Entenberg completely disregarded and made absolutely no mention of Dr. Coe's opinions regarding work status in her report. PX #20 at 38-39. Ms. Entenberg's opinions are not credible and are therefore given little weight.

The opinions of Ed Steffan are more credible than the opinions of Ms. Entenberg. Mr. Steffan testified a readily available and stable labor market existed for Petitioner matching her rehabilitation variables. RX #1 at 11, 20. Mr. Steffan considered all information regarding Petitioner. Unlike Susan

Entenberg who only reviewed the initial reports of Dr. Holmes and the Physical Medical Source Statement, Mr. Steffan reviewed all of Dr. Holmes' reports. He testified he also considered the Physical Medical Source Statement which is used in SSDI cases, but felt it was outdated as Dr. Holmes prepared a subsequent report dated November 15, 2011 in which he again addressed Petitioner's work restrictions. Id at 54. Additionally, Mr. Steffan testified he also reviewed Dr. Coe's report, which is dated after the Physical Medical Source Statement, and also addressed Petitioner's work restrictions. Id at 8, 51. Mr. Steffan therefore considered all information regarding Petitioner's physical capabilities when rendering his opinions.

Unlike Ms. Entenberg, Mr. Steffan felt Petitioner had transferrable skills from her prior work as a CNA and apartment demonstrator which she could use in a sedentary position. RX #1 at 16-17. Also unlike Ms. Entenberg, Mr. Steffan performed a labor market survey in which he identified 10 employers with 15 positions consistent with Petitioner's rehabilitation variables. Id at 9. Mr. Steffan also identified seven employers with nine positions available within Petitioner's restrictions paying $8.75-$13.00/hour at the time the labor market survey was performed and which were located in the Rockford labor market. Id at 9-11. However, Mr. Steffan testified he felt Petitioner could perform other jobs than those listed in the labor market survey. Id at 17.

Following the labor market survey, Mr. Steffan prepared two additional reports in which he identified additional examples of positions Petitioner could access if she wanted to return to work which included 84,950 cashier positions, 4,206 switchboard operator positions, 66,640 customer service representative positions, 31,960 team assembler positions, 38,410 security guard positions, and 26,740 receptionist/information clerk positions. RX #1 at 18-19. Mr. Steffan explained he conservatively estimated 10% of the positions identified would be sit down, but believed a greater number would be available. Id at 18. Additionally, he testified he looked at the Bureau of Labor Statistics and identified in excess of 10,000 positions related to clerk and entry level unskilled positions which would be available to Petitioner. Id at 19. He therefore concluded there was a readily available and stable labor market for Petitioner. Id at 20.

When discussing the number of positions identified, Mr. Steffan explained he used the Chicago-Joliet-Naperville area. RX #1 at 18. He acknowledged the Rockford labor market is different and has less jobs available within the job positions he identified. Id at 11, 46. However, of the statistics related to the Rockford labor market which were presented to him at his deposition, Mr. Steffan testified there were jobs available within the positions he previously identified. Id at 48-49. Using the most conservative estimate of 10% and the information presented to him regarding the Rockford labor market, Mr. Steffan testified approximately 1000-1200 jobs would be available for Petitioner in the Rockford labor market alone. Id at 50. He further testified he did not list every possible job Petitioner could perform and Petitioner had access to a labor market greater than just the town of Rockford. Id at 55. Regardless, Mr. Steffan established there is a readily available and stable labor market for Petitioner. The Arbitrator therefore finds the testimony of Mr. Steffan to be credible and adopts his opinions over those of Susan Entenberg.

The Arbitrator notes Mr. Steffan was asked several questions on cross-examination regarding various factors which may preclude employment in a Social Security case, including the number of days per months a person could miss, the number of unscheduled breaks, non-exertional impairments, and being off task. RX #1, pgs. 35-41. The Arbitrator notes these are all factors considered by the Social Security Administration when evaluating a person's disability which have absolutely no relevance to the

case at hand. Inasmuch as this testimony was given from a Social Security Administration standpoint, the Arbitrator finds it irrelevant and gives it no weight.

Petitioner quit working for Respondent when her restrictions were being accommodated thereby removing herself from the labor force. Had Petitioner not quit, her restrictions would have continued to be accommodated. Both Dr. Holmes and Dr. Coe agreed Petitioner could continue to work at a minimum in a sedentary capacity. Petitioner wants the Arbitrator to ignore the fact she quit. Regardless of whether Petitioner quit, the testimony of the vocational experts, specifically Mr. Steffan, establishes there is a reasonable and stable labor market available for Petitioner. Petitioner has made absolutely no attempt to return to work or look for a job. For all these reasons, Petitioner failed to prove she is permanently and totally disabled. She is therefore entitled to PPD benefits to the extent of 60% loss of use of the right foot and 15% man as a whole.

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

Before the Illinois Workers' Compensation Commission

TAMMIE HOFFARD,

Petitioner,

vs.

No. 11 WC 39217
15 IWCC 0769

STATE OF ILLINOIS.
DU QUOIN IMPACT
INCARCERATION PROGRAM,

Respondent.

ORDER

The Commission on its own Motion recalls the Decision and Opinion on Review of the Illinois Workers' Compensation Commission dated October 21, 2015 under Section 19(f) of the Act.

The Commission is of the opinion that the Commission's Decision and Opinion on Review dated October 21, 2015 should be recalled due to a clerical error. The Decision should read **28.5 weeks**, as provided in §8(e), for the reason that the injuries sustained caused 10% loss of use of the left hand and 5% loss of use of the right hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated October 21, 2015 is hereby recalled and a Corrected Decision and Opinion on Review is issued simultaneously. The parties should return their original decision to Commissioner Michael J. Brennan.

Dated: OCT 30 2015

Michael J. Brennan

10/29/15
MJB:tdm
052

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TAMMIE HOFFARD,

Petitioner,

vs.

NO: 11 WC 39217
15 IWCC 0769

STATE OF ILLINOIS,
DU QUOIN IMPACT
INCARCERATION PROGRAM,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical, prospective medical, notice, temporary total disability (TTD), and permanent partial disability (PPD), and being advised of the facts and applicable 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.

So that the record is clear, and there is no mistake as to the intentions or actions of the Commission, we have considered the record in its entirety. We have reviewed the facts of the matter, both from a legal and a medical/legal perspective. The Commission has considered all of the testimony, exhibits, pleadings and arguments submitted by the parties. The Commission finds that Tammie Hoffard sustained 10 percent loss of use of the left hand as a result of her work-related injuries. The Commission further modifies the PPD rate from $698.39 to $695.78, the maximum PPD rate pursuant to Section 8(b)4 of the Act. All else is affirmed and adopted.

According to Section 8.1(b) of the Act, for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a);
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

The Commission adopts the Arbitrator's well-reasoned analysis of Section 8.1(b). The Commission notes, however, that Petitioner underwent left carpal tunnel release. She did not undergo surgery for her right carpal tunnel syndrome. Because of this, the Commission finds that Petitioner sustained 10% loss of use of the left hand, and affirms the award of 5% loss of use of the right hand.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on January 13, 2015, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $775.99 per week for a period of 1-3/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 28.50 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 10% loss of use of the left hand and 5% loss of use of the right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner all reasonable and necessary medical expenses under §8(a) of the Act and subject to the medical fee schedule. Respondent shall have a credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount

for which it is receiving this credit, pursuant to Section 8(j) of the Act.

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: OCT 30 2015

Michael J. Brennan

Thomas J. Tyrrell

Kevin W. Lamborn

MJB/tdm
O: 8/24/15
052

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HOFFARD, TAMMIE
Employee/Petitioner

Case# **11WC039217**

15IWCC0769

SOI/DuQUOIN IMPACT INCARCERATION PROGRAM
Employer/Respondent

On 1/13/2015, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

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

0969 THOMAS C RICH PC
MICHELLE M RICH
#6 EXECUTIVE DR SUITE 3
FAIRVIEW HTS, IL 62208

0499 CMS RISK MANAGEMENT
801 S SEVENTH ST 6M
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
KENTON OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

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

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

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JAN 13 2015

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

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

☐ 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

Tammie Hoffard
Employee/Petitioner

v.

State of Illinois/Du Quoin Impact Incarceration Program
Employer/Respondent

Case # 11 WC 39217

Consolidated cases: _____

15IWCC0769

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 **Edward Lee**, Arbitrator of the Commission, in the city of Herrin, on **November 12, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☒ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ 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 _____

15IWCC0769

FINDINGS

On **September 13, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned $**60,527.00**; the average weekly wage was $**1,163.98**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** 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 $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

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

ORDER

Respondent shall pay the reasonable and necessary medical expenses as outlined in Petitioner's group exhibit. Respondent shall have credit for all amounts paid through its group carrier, but shall indemnify and hold Petitioner harmless from any claims regarding payment of any amount for which it is receiving this credit, pursuant to §8(j) of the Act.

Respondent is liable for the temporary total disability benefits of $775.99/week for 1 3/7 weeks as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $698.39/week for 20.5 weeks, because the injuries sustained caused the 5% loss of the left hand, as well as the 5% loss of the right hand, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

1/8/14
Date

JAN 13 2015

FACTS

At the time her injuries manifested, Petitioner was a forty-nine (49) year old correctional counselor for the State of Illinois at its Du Quoin Impact Incarceration Program facility. (T.10-11). Petitioner testified that this facility is similar to a military boot camp, and that the facility houses approximately 230 inmates. (T. 11). Petitioner indicated that she had worked at Du Quoin since 2010, and prior to 2010, she was employed at a number of other correctional facilities for the State of Illinois. (T.11). Petitioner also testified that she prepared a job description detailing all of the job titles as well as the duties she was required to perform in those positions with the State of Illinois in her thirty (30) years of employment. (T.13-14). This was admitted into evidence as Petitioner's Exhibit 8.

When asked to describe her job duties on a daily basis at Du Quoin, Petitioner testified:

> I do a call line, which basically just includes having the inmates come to the office and address whatever issues that they may have. Depending on the day, if we've had a recent intake I'll do an orientation class. If we have need for a parole school, I will do a parole school with the inmates that are soon to be graduating. It just kind of depends on the day. I do a lot of computer entry and also a lot of computer inquiry depending on what the issue is that the inmates have at the time. (T. 12-13).

When asked to describe how she would characterize her work for the State of Illinois over the past thirty (30) years, Petitioner testified that she would typically spend eighty to ninety (80-90) percent of her time performing clerical work, which included computer work and data entry, and that the remaining ten to twenty (10-20) percent of her job would involve hand writing reports. (T.22; PX8).

For the first five (5) years of her employment with the State of Illinois, beginning in 1984, Petitioner testified that her job required the use of a manual typewriter, which she testified was more difficult and required more force on her upper extremities, and that until approximately 2009, she was required to use an electric typewriter, which she also indicated required more force than a modern day keyboard would (T.23-24; T. 47, PX8).

On cross-examination, Petitioner was asked how often she ran a parole school, which she testified involved explaining to soon-to-be-graduated inmates how to complete various documents before their graduation. (T.42). Petitioner testified that she did not run a parole school each week, and would only hold these courses two to three (2-3) times per month. (T.42). On the several days per month that she ran a parole school, Petitioner acknowledged that she would typically spend less than 5-6 hours per day typing. (T.42).

At the time of trial, Respondent also submitted Respondent's Exhibit 15, which were medical records from Petitioner's primary care physician obtained by subpoena, into evidence. (RX15). Respondent's Exhibit 15 contains the results of a nerve conduction study performed on Petitioner's upper extremities at Neurology of Southern Illinois, which was dated April 25, 2005. Notably, at that time, the nerve conduction studies revealed no electrographic evidence of carpal tunnel syndrome. (RX15). Petitioner testified that she did recall undergoing this test in 2005

when presented with the medical records confirming same. (T.46). She further indicated that after this test was performed, she would simply have kept working to the best of her ability. (T.51).

Petitioner testified that in the course of performing her job duties for the State, she began to notice symptoms in her upper extremities, and specifically began to experience numbness and tingling, as well as pain in her wrist, thumb, index and middle fingers. (T.14). She indicated that she ultimately sought medical care and treatment for these symptoms with her primary care physician, and saw Ann Browning, a physician's assistant, on September 13, 2011 for these complaints. (T.15). Petitioner testified that her physician suspected carpal tunnel syndrome, and a nerve conduction study was recommended as a result. (T.15).

Specifically, the records reveal that Petitioner presented to her primary care physician's office on September 13, 2011 with complaints of bilateral hand pain at a level of seven out of ten (7 out of 10), left greater than right. (PX3, Dr. Karen Strack, 9/13/11). It was noted that Petitioner had difficulty buttoning buttons, opening bottles, and with any activity that required thumb and index grasp. It was also noted that Petitioner was employed with the Department of Corrections as a counselor, and she was required to perform "lots of keyboarding" in the course of her employment. *Id.* Ms. Browning's assessment was left hand pain, and recommended a nerve conduction study of Petitioner's bilateral upper extremities, carpal tunnel splints, non-steroidal anti-inflammatory medication, and that Petitioner consider an orthopedic consultation. *Id.*

Petitioner testified that she was ultimately referred to an orthopedic specialist, Dr. George Paletta, who discussed her job duties with her. (T.16-17). Petitioner acknowledged that according to a phone message from Dr. Strack's office, she was referred to Dr. Paletta by her attorney's office. (T.26-27).

On October 12, 2011, Petitioner presented to Dr. George Paletta, a board certified orthopedic surgeon. Dr. Paletta took the following history of Petitioner's complaints:

> This is the first visit for the 49-year-old right-hand dominant white female. She works as a correctional counselor. She works at DuQuoin Impact Incarceration Program. She is a counselor for up to 200 inmates. She states that her job involves a lot of typing and writing. She states that 90% of her job duties are typing either data inquiry or entry. She states the remaining 10% of the day would be forms completion. When I asked her what kind of counseling she does for the inmates, she states that basically all she does is type and write. She states that two days per week she holds orientation or parole class. She states that on the days that she is doing orientation or parole class, 80% of her time spent on the computer, 5% of the time spent completing the forms, and 15% of class participation or presentation. (PX5, Dr. George Paletta, 10/12/11).

Dr. Paletta also noted that Petitioner presented with bilateral wrist pain, as well as numbness and tingling, left greater than right, and pain in the region of the thenar eminence, which Dr. Paletta explained is the fleshy prominence at the base of the thumb. (PX5, Dr. Paletta,

10/12/11; PX12, Deposition of Dr. Paletta, p. 49). He indicated that she had been employed in her current position for approximately one year, but that she had worked for the State of Illinois since 1984 and has been in similar jobs throughout that time. (PX5, Dr. Paletta, 10/12/11). At that point, Dr. Paletta's impression was possible carpal tunnel syndrome bilaterally, and no evidence of De Quervain's syndrome. *Id.* He recommended that EMG/nerve conduction studies be performed on Petitioner's bilateral upper extremities, as well as cock-up splints and anti-inflammatory medication. Dr. Paletta also opined that based on his understanding of Petitioner's job description and job requirements, that her data entry and computer activity would be an aggravating factor in her potential carpal tunnel syndrome. *Id.* He also acknowledged that while her age and gender would serve as risk factors for peripheral compression neuropathies such as carpal tunnel syndrome, that she had no other identifiable systemic conditions that would increase her risk for carpal tunnel syndrome. *Id.* Dr. Paletta opined that Petitioner could continue to work full duty. *Id.*

On October 19, 2011, Dr. Paletta reviewed the results of Petitioner's nerve conduction studies, which were performed by Dr. Daniel Phillips, and demonstrated a moderate sensory and motor medial neuropathy at the level of the right carpal tunnel syndrome, with a more severe carpal tunnel noted on the left side. (PX4, Neurological and Electrodiagnostic Institute, 10/12/11; PX5, Dr. Paletta, 10/19/11). He also noted that the nerve conduction study showed no evidence of neuropathy at the level of the cubital tunnel. *Id.*

At that point, Dr. Paletta recommended continued conservative treatment, but that if Petitioner did not experience improvement in the next six to eight weeks, he would recommend carpal tunnel release, with the left side performed first. *Id.*

Petitioner returned to Dr. Paletta on January 9, 2012 with continued complaints of numbness and tingling in her hands, with the left worse than the right. As a result, Dr. Paletta recommended the following: "I had a discussion with the patient regarding treatment options. Option #1 is to continue symptomatic treatment. Option #2 is to consider surgical treatment with carpal tunnel release. The left is much more symptomatic than the right. As such, she wants to consider surgical treatment. I would recommend the left be done first." *Id.*

On January 19, 2012, Petitioner underwent a carpal tunnel release on the left side. Following surgery, Dr. Paletta noted improvement in her left-sided symptoms, but with some continued pain at the base of her left thumb. (PX5, Dr. Paletta, 2/3/12). At that point, Dr. Paletta indicated that he would not recommend right-sided surgery, as she continued to have minimal symptoms. *Id.* He advised her to follow up in six weeks' time. *Id.* Dr. Paletta returned Petitioner to work full duty as of February 3, 2012. *Id.*

Petitioner was last seen by Dr. Paletta on March 16, 2012. At that time, Dr. Paletta noted continued improvement in her left-sided symptoms, and reported that Petitioner had essentially complete relief of her carpal tunnel symptoms on that side. (PX5, Dr. Paletta 3/16/12). It was indicated that Petitioner did have some basal joint symptoms. *Id.* Dr. Paletta recommended that since Petitioner did have some symptoms related to de Quervain's and basal joint arthritis, he recommended use of a Cool Comfort splint as needed, and placed her at maximum medical improvement with regard to her bilateral carpal tunnel syndrome. *Id.* Specifically, Dr. Paletta

indicated that Petitioner's symptoms were relatively mild on the right, and he would recommend holding off on any right-sided surgery at that point. *Id.*

Dr. Paletta also testified by way of deposition on November 6, 2014, and his deposition transcript was admitted into evidence as Petitioner's Exhibit 12. Dr. Paletta testified that he is a board certified orthopedic surgeon with fellowship training in sports medicine whose practice is primarily confined to problems of the upper extremity, shoulder, elbow, hand and the knee. (PX12, p. 4). Dr. Paletta further testified that approximately thirty-five (35) of his practice involves caring for injured workers, and the remaining percentage of his practice involves treating commercially insured patients. (PX12, p. 5-6). A small percentage of Dr. Paletta's practice also involves performing independent medical evaluations for insurance companies, employers, attorneys' offices. *Id.* He indicated that he performs approximately 3-4 IMEs per week, and 50% of those were performed at the request of employers, and 50% at the request of an employee in workers' compensation cases. *Id.* at 6. Dr. Paletta also testified that he has performed IMEs at the request of the Respondent in this case, the State of Illinois. *Id.* at 6-7.

Dr. Paletta testified consistently with his records that Petitioner presented to him with complaints of bilateral hand pain, as well as numbness and tingling, and indicated that he discussed her employment with the State of Illinois with her at her first visit on October 12, 2011. *Id.* at 13-14. Dr. Paletta confirmed that at the time he first saw Petitioner, she provided him with a written job description, which was admitted into evidence at trial as Petitioner's Exhibit 8. *Id.* at 13-14. He reaffirmed his opinion that there was a causal connection between Petitioner's job duties and her bilateral carpal tunnel syndrome, and specifically testified:

> Well, she reported to me, again, this long history of spending 90 percent of her time typing and doing data entry, and I felt that that was over a long enough duration of time and hand-intensive enough that it would be a contributing factor. *Id.* at 17.

Additionally, Dr. Paletta also testified that in his opinion, Petitioner's left basal joint arthritis was aggravated by her work duties. *Id.* at 25.

Dr. Paletta also testified that a concept known as a latency period can be applicable to conditions like carpal tunnel syndrome. He specifically indicated that a latency period is defined as "a period of time that basically expires or occurs from exposure to something and the development of symptoms related to that exposure. So, in medicine, a good example is asbestos exposure. An individual may have exposure to asbestos, but it takes a long time to develop an asbestos-released lung condition, and that period of time from exposure to development of a related condition is considered a latency period. Smoking is another example. It takes a long time for people to develop lung cancer related to their smoking. It doesn't happen immediately at the time of exposure." *Id.* at 20-21. Dr. Paletta testified that a latency period is applicable "in syndromes or conditions that are considered cumulative repetitive trauma conditions, yes." There is a period of time that one has to experience those exposures before they will develop symptoms, so yes, it does as a concept apply." *Id.* at 21.

Dr. Paletta was also asked about Petitioner's use of a manual and electric typewriter, and was asked the following question: "In looking at the job description that Ms. Hoffard provided

you with, it looks like her work may have transitioned out of use of a typewriter. By her accounts, it appears in 2009. Even if she was performing less strenuous or less hand-intensive job duties beginning in 2009, would you have expected her carpal tunnel syndrome to not deelop or not become symptomatic necessarily?"

Dr. Paletta provided the following response:

> Well, it's certainly possible that it would not have been symptomatic at that point and that it became symptomatic after the transition from typewriter to non-typewriter, and as you said, it looks like that occurred in November of 2009, so two years before I saw her." *Id.* at 21-22.

He was then asked, "Any why would it be that, even if somebody was removed from some of the stressors, that they may still develop those conditions?"

Dr. Paletta then replied:

> Well, the nerve is—runs through a space called the carpal tunnel. It's a confined space, and increased pressure on that can affect the nerve and cause the symptoms. But this is something that occurs gradually over time, and there may have been enough damage up to that point that it was—I'll use the word irreversible—in the sense that even a transition from that more demanding work to the less demanding work wasn't going to reverse the process of the development of that condition. Simple as that. *Id.* at 22.

Dr. Paletta was also provided with the forms contained in Respondent's Exhibit 7, and asked if viewing these documents would change his opinion on causal connection in this case. Dr. Paletta testified:

> Well, I'm not exactly sure what these represent in terms of the volume of work that she has to do. These are forms that appear to require some data entry, and she's signed all of those forms, but I'm not sure if this represents an hour of work, a day of work, a week of work. It's unclear what—exactly how much this represents. So it did not result in a change in my opinion at this point. *Id.* at 26-27.

Petitioner testified that she agreed with Dr. Paletta's treatment notes and the job description he testified to during his deposition. (T.17). Petitioner indicated that Dr. Paletta recommended a nerve conduction study, and following the completion of the study, he had advised her those studies demonstrated the presence of carpal tunnel syndrome in both of her upper extremities, but that the findings were worse on her left side. (T.17-18). She indicated that she ultimately underwent surgery on her left side, but that her right hand was never operated on. (T.18-19).

Following her consultation with her primary care physician's office, Petitioner reported her injury to Respondent by completing an employee's first notice of injury form on September 18, 2011. (PX9). Petitioner also confirmed that she provided notice of her injuries on September

18, 2011, to her supervisor, Mr. Campanella. (T.21). When asked why she reported her injuries on September 18, 2011, Petitioner testified: "Because of her suspect [sic] that it was carpal tunnel, and I thought just to be protected I probably should." (T.21).

Petitioner also testified that she attended an independent medical examination with Dr. James Williams at the request of Respondent. She testified that she spoke with Dr. Williams about her job duties with the State of Illinois, and described to him the same job duties that she did to Dr. Paletta. (T.24-25). Petitioner credibly testified that she was honest with Dr. Williams about her job and the frequency with which she performed certain activities. (T.24-25).

Respondent also had Petitioner examined pursuant to Section 12 of the Act by Dr. James Williams, who produced two reports, which were admitted into evidence as Respondent's Exhibits 5 and 6. Dr. Williams initially examined Petitioner on January 18, 2012, at which time he obtained an in-person history from Petitioner with regard to her job duties. The history taken from Petitioner on pages 2-3 of his January 18, 2012 report appears to be identical to Petitioner's Exhibit 8, which Petitioner testified she authored. (RX5, p. 2-3). Dr. Williams also reviewed many other documents describing Petitioner's job duties, as evidenced in his report. (RX5). After review of all of the information provided to him by both Petitioner and Respondent, Dr. Williams opined:

> At this point, my current diagnosis is that Tammie has left thumb CMC joint arthritis as well as left and right carpal tunnel syndrome. From the job histories that Tammie has given me over the course of time it looks like she has done a lot of manual typewriter type work as well as completion of paperwork by hand. I note she is right hand dominant and Tammie states to me that her typing duties are now 90% of her day and other days it is 80% of her day. I do feel, in light of that, that her bilateral carpal tunnel syndrome could have been aggravated by her job duties of typing as it is greater than 6 hours per day as well as would her CMC joint arthritis. (RX5, p. 5-6). [Emphasis added].

Dr. Williams also noted: "I did find the patient to be honest and forthcoming. I did not find her to present any evidence of symptom magnification or malingering. She gave a good effort throughout the examination and all my opinions have been based upon a reasonable degree of medical and surgical certainty. I did review all the records with her and when there were discrepancies, I have noted those in my report." *Id.* at 6.

Subsequently, Respondent provided Dr. Williams with additional materials, and asked for a supplemental report, which was authored on November 1, 2012. In that report, which was admitted into evidence as Respondent's Exhibit 6, Dr. Williams opined, "in light of the information you have provided me, which are the forms filled out at DuQuoin by a Correctional Counselor II at the Du Quoin Impact Incarceration Program, it clearly illustrates the forms that are filled out." (RX6, p. 1). He continued:

> If indeed this is found to be correct that these are the forms which she fills out and indeed these are the signatures of which she has done, of which she is required to do, I obviously change my opinion; that does not appear

> to be very repetitive. It does not appear to be very time intensive and, obviously, it appears as through her typing is done intermittently. The only reason, obviously, I felt typing was an issue was due to the time as well as the fact she stated she used a manual typewriter, which obviously requires more force than does a regular typrwriter. Obviously, if this was the very infrequent typing of which she did though and the very infrequent writing of which she did, I do not feel her work duties would have been either aggravating or contributory to her problem. I feel more so that the CMC joint arthritis of which she had both on the left and right sides, as well as her hypertension, would have more likely been contributory than would her work duties.

Dr. Williams also testified by way of deposition, and his testimony was admitted into evidence as Respondent's Exhibit 14. Dr. Williams testified that he performs approximately 200 independent medical examinations on a yearly basis, and approximately 90% of those exams are at the request of employers in workers' compensation cases. (RX14, p. 35-36). Dr. Williams also estimated that he performs approximately half of his IMEs for the State of Illinois, which would equate to 100 IMEs. *Id.* at 36. Dr. Williams also confirmed that the concept of a latency period can occur in conditions like carpal tunnel syndrome and CMC joint arthritis, and that every individual's physiology is different and conditions may manifest themselves at different points in time. *Id.* at 40. He also testified that he believes Dr. Paletta is a very good physician. *Id.* at 42. Dr. Williams also acknowledged that the job description that Petitioner provided to him was identical to the one she provided to Dr. Paletta, and that in his January 18, 2012 report, he agreed with Dr. Paletta that her job duties for Respondent constituted an aggravating factor in the development of her carpal tunnel syndrome. *Id.* at 44.

With regard to the supplemental materials he was sent in anticipation of his supplemental report, Dr. Williams testified that he could not verify where or from whom these forms were obtained. *Id.* at 45-46. Dr. Williams also confirmed that he did not have any of Dr. Paletta's medical records with regard to Petitioner at the time of his deposition, and the only medical record of Dr. Paletta's that he was provided with were his October 12, 2011 and October 19, 2011 reports. *Id.* at 47-48. He further confirmed that he found Petitioner to be an honest and forthcoming individual when he saw her, and when asked:

Q: So if everything that Ms. Hoffard told you about her job duties is true isn't it correct that your opinion would be consistent with your first report which found that her carpal tunnel and CMC joint arthritis was aggravated by her job duties?

A: If indeed all that stuff is correct, yes.

Q: And just in your opinion, Doctor, who would know Ms. Hoffard's job the best?

A: I would hope Ms. Hoffard. *Id.* at 49-50.

Dr. Williams further acknowledged that Petitioner would be in the best position to describe the various forms he was provided with if in fact she was responsible for preparing them. *Id.* at 50-51.

At the time of trial, Respondent submitted several documents and forms into evidence as Respondent's Exhibit 7. (RX7). On direct examination, when Petitioner was asked to identify these forms, she testified that these "are some of the forms that I would do on a regular basis, depending on the circumstances. It's part of our forms procedure that we have at the boot camp." (T.26-27). When asked if the activity of simply filling out these forms was an accurate representation of what she is required to do throughout the day, she testified, "I don't believe they're inclusive. There are some other forms that I do that I don't believe were included in those." (T.27). Petitioner also testified that in addition to filling out these forms, she is also required to perform computer work and call lines with inmates. (T.27).

Following surgery, Petitioner testified that she has no further complaints with regard to her left hand. (T.28-29). With regard to her right hand, which was never treated surgically, Petitioner testified that her level of symptoms have remained the same, and she still experiences loss of range of motion, and occasional tingling. (T.29).

Respondent also called Clement Campanella, Petitioner's former supervisor, to testify at the time of trial. Mr. Campanella testified that he has known Petitioner for approximately four (4) years, and that they worked together during those years. (T.65). During cross-examination, the following dialogue took place:

Q: And is she [Petitioner] a good employee, in your opinion?

A: Yes, she was or is.

Q: Is she a hard worker?

A: Yes, she is.

Q: Is there anything—you were in the room when she testified in this case, correct?

A: That's correct.

Q: Was there anything that she described that was inaccurate, in your opinion?

A: Nothing came to mind, no.

Q: And I wrote this down, you testified earlier when you were talking about the job of a correctional counselor as Ms. Hoffard explained, would that indicate to you that she got the description of her job right?

A: I believe so. (T.65-66).

Mr. Campanella testified that when he worked as a correctional counselor supervisor at DuQuoin, in approximately 1997, he performed some of the same job duties that Petitioner would perform as a correctional counselor II, but acknowledged that correctional counselors had additional job duties that were previously Mr. Campanella also confirmed that he has never worked in any of the same positions as Petitioner throughout her tenure with the State of Illinois and was unable to testify about the details of those jobs. (T.66-68).

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture,* 99 I.I.C. 0961. "The word 'accident' is not a technical legal term, and has been held to mean anything that happens without design, or an event which is unforeseen by the person to whom it happens…Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor." *Laclede Steel. Co. v. Industrial Comm.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (1955) citing *Baggot Co. v. Industrial Comm.*, 290 Ill. 530, 125 N.E. 254 (1919). Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205, 797 N.E.2d 665 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, "[*A*] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037, 723 N.E.2d 846 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C.& S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

In the repetitive trauma case of *Fierke*, the Appellate Court specifically applied the foregoing legal standard of causation specifically to a repetitive trauma case and noted that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Id.* at N.E.2d at 849. The Court specifically stated, "The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant." *Id.*

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission recently noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All*

Steel, Inc. v. Indus. Comm'n, 582 N.E.2d 240 (1991) and *Edward Hines supra.* The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988).

In 2009, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

Additionally, as the *Fierke* Court noted, employment need only be *a* factor in the total condition of ill-being. *Fierke supra.* If a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 37 Ill.2d 123, 227 N.E.2d 65, 67-68 (Ill. 1967); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill.2d 234, 362 N.E.2d 339 (Ill. 1977). The same theory applies to cases in which the employee's pre-existing condition is aggravated by the repetitive nature of the employment. *Cassens Transport Co. Inc. v. Indus. Comm'n*, 262 Ill.App.3d 324, 633 N.E.2d 1344 (2nd Dist.1994).

Furthermore, in support of a finding of causal connection, the Arbitrator notes that the job duties performed by Petitioner, including computer keyboarding and data entry have been held to be compensable by the Commission in the very recent past. *See Lewis Bebout v. State of Illinois/Pinckneyville Correctional Center*, 14 IWCC 0167 (2014); *Toma Osman v. State of Illinois/Tamms Correctional Center*, 11 IWCC 0601 (2011); *Cynthia Jenkins v. State of Illinois/Southern Illinois University, Carbondale*, 14 IWCC 0335 (2014); *Nancy Rambo v. State of Illinois/Department of Transportation,* 12 IWCC 1020 (2012).

In this case, Dr. Paletta and Dr. Williams both opined that Petitioner suffered from bilateral carpal tunnel syndrome, as well as left CMC joint arthritis in her thumb. The Arbitrator finds it significant that both Dr. Paletta and Dr. Williams were provided with an identical job description from Petitioner, which indicated that 80-90% of her day involved keyboarding and typing, which would contribute to and aggravate her conditions. (PX10; RX14). Additionally, both physicians testified that Petitioner's prolonged use of a manual and electric typewriter over the course of many years caused her condition to become aggravated and worsen. The Arbitrator notes that both Dr. Paletta and Dr. Williams testified to the presence of a latency period and its applicability to cases involving peripheral compressive neuropathies such as carpal tunnel syndrome and basal joint arthritis, which explains why Petitioner's symptoms may not have manifested until after she had been exposed to more extreme repetitive forces from using a manual and electric typewriter.

The Arbitrator also finds Petitioner to be a credible witness who testified credibly on her own behalf regarding the details of her job duties, and also notes that her testimony was consistent with the job descriptions she prepared, as well as the testimony of Respondent's witness, Mr. Campanella. The Arbitrator also notes that despite Respondent's contention, the genesis of a referral to a physician is irrelevant, as attorneys are frequently and routinely involved in the referral process. *See Timothy Knop v. State of Illinois/Menard Correctional Center*, 14 IWCC 0303 (2014).

The Arbitrator also gives great weight to the fact that the Respondent's own expert, Dr. Williams, initially opined that Petitioner's cumulative job duties would be an aggravating factor in the development of her condition, and testified that if in fact Petitioner's job description to him was accurate, he would still find her work to be a contributing and aggravating factor in her conditions. The Arbitrator also assigns great weight to the testimony of Mr. Campanella, who testified credibly and without rebuttal that Petitioner was a hard worker, good employee, and that he agreed entirely with her description of her job duties for Respondent.

Issue (D): What was the date of the accident?

The manifestation date can be set as: **(a)** the date the employee actually became aware of the physical condition and its relation to work through medical consultation; **(b)** the date the employee requires medical treatment; **(c)** the date on which the employee can no longer perform work activities; or **(d)** when a reasonable person would have plainly recognized the injury and its relation to work. *Durand v. Industrial Commission*, 224 Ill.2d 53, 862 N.E.2d 918 (2007), *see also Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987); *Oscar Mayer & Co. v. Industrial Commission*, 176 Ill.App.3d 607, 531 N.E.2d 174 (3rd Dist. 1988); *Three "D" Discount Store v. Industrial Commission*, 198 Ill.App.3d 43, 556 N.E.2d 261 (4th Dist. 1989).

As the Appellate Court in *A.C. & S.* noted, the Supreme Court **deliberately** modified the standards for determining the date of injury for repetitive trauma cases in order provide protection for injured workers. *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 840-841 (Ill. App. 1st Dist., 1999). It has even been permissible to change the date of accident during litigation as long as doing so would not prejudice the employer. *See Steven Beal v. Town of Normal,* 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010). "The purpose behind the Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work." *Durand*, 862 N.E.2d at 925.

The law also allows Petitioner to select a manifestation date that coincides with discovery of injury and its relation to work after medical consultation. See *Steven Beal v. Town of Normal,* 06 IL.W.C. 25261, 10 I.W.C.C. 0380 (2010); *see also White v Worker's Compensation Commission*, 374 Ill.App.3d 907, 873 N.E.2d 388, 392-393 (4th Dist. 2007) (holding Petitioner could select accident date); *A.C. & S. v. Industrial Commission*, 304 Ill.App.3d 875, 710 N.E.2d 837, 841-842 (1st Dist. 1999).

In this case, Petitioner alleged a manifestation date of September 13, 2011, when her condition first required treatment, and as this was the date that she plainly recognized the injury

and its relation to work. The Supreme Court in *Durand* noted that it is common practice to set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *Durand* citing *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 487 N.E.2d 356 (1985). Based upon said precedent, Petitioner has selected an appropriate manifestation date under the Act. The Arbitrator finds that Petitioner's injuries manifested on September 13, 2011.

Issue (E): Was timely notice of the accident given to Respondent?

The Act provides that notice may be given orally or in writing, regardless of the administrative procedures of the employer. 820 ILCS 305/6(c). The purpose of the notice requirement of the Act is to enable an employer to investigate an alleged accident, and to protect an employer from unjust or fraudulent claims. *Gano Electrical Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724, 727 (Ill. App. 4th Dist., 2004); *Thrall Car Manufacturing Co. v. Indus. Comm'n*, 64 Ill.2d 459, 356 N.E.2d 516 (1976). A claim is only barred if no notice whatsoever has been given. *Gano supra.* Because the legislature has mandated a liberal construction on the issue of notice, if some notice has been given, although inaccurate or defective, then the employer must show that he has been unduly prejudiced. *Gano supra*; *Thrall supra.*

The evidence clearly shows that Petitioner provided notice of her injuries. Petitioner testified without rebuttal that she provided written notice following her September 13, 2011 appointment with her primary care physician's office, and Petitioner's Exhibit 9 confirms that Petitioner provided notice to her supervisor on September 18, 2011, only five (5) days subsequent to this appointment. Respondent's ability to investigate was in no way impacted, and Respondent has not alleged or proved prejudice. The Arbitrator therefore finds that Petitioner met the notice requirements of the Act.

Issue (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? And;

Issue (K): What temporary benefits are in dispute? (TTD)

Upon a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n,* 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001).

Causal connection has been resolved in Petitioner's favor, and Respondent's Section 12 examiner, Dr. Williams, agreed that the treatment rendered to Petitioner was reasonable for her condition.

Respondent is therefore ordered to pay the medical expenses outlined in Petitioner's group exhibit. Respondent shall have credit for the amounts paid through its group carrier but

shall indemnify and hold Petitioner harmless from any claims pertaining to the payment of medical expenses for which it is receiving this credit.

Respondent is liable for 1 3/7 weeks of temporary total disability to Petitioner under 8(b) of the Act as she credibly testified that she was taken off work for a period of time following her left carpal tunnel surgery. This is also reflected and documented in Dr. Paletta's medical records.

Issue (L): What is the nature and extent of the injury?

The Arbitrator notes that Pursuant to §8.1(b) of the Act, the nature and extent of Petitioner's injuries is to be reached by evaluating five factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. The Act provides that "no single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1(b)(v).

(i) **Level of Impairment**: Neither Party submitted an AMA rating. Therefore, the Arbitrator will use the remaining factors to evaluate Petitioner's permanent partial disability.

(ii) **Occupation**: Petitioner has returned full duty to her prior employment, but testified that she experiences occasional numbness and tingling as well as pain in the right hand.

(iii) **Age**: Petitioner was 49 years old at the time of her injury. She has diminished healing capacity as a result thereof.

(iv) **Earning Capacity**: Petitioner testified to several physical limitations as a result of her injury. While there is no direct evidence of reduced earning capacity contained in the record; based on the amount of typing and use of her upper extremities that Petitioner's job requires of her, it is reasonable to conclude that such repercussions will manifest in the near future. Accordingly, the Arbitrator places great weight on this factor.

(v) **Disability**: As a result of her injuries, Petitioner underwent a left carpal tunnel release, and was never surgically treated on the right side, despite positive Electrodiagnostic studies confirming the presence of carpal tunnel syndrome on the right. Petitioner testified that while she is essentially symptom free on the left following surgery, she still suffers from some residual symptoms on the right side, including occasional pain, numbness and tingling. (T.28-29). She was also diagnosed with CMC basal joint arthritis in her right thumb, which was treated conservatively.

Based upon the foregoing, Petitioner sustained serious and permanent injuries that resulted in the 5% loss of her left hand, and 5% loss of her right hand.